

DATE: July 19, 2005

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-20353

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Victoria Boynton, Esq.

SYNOPSIS

Applicant is a 47-year-old employee of a defense contractor. He has a long history of failing to meet his financial obligations and inability to pay his debts, extending from about 1996 to the present. When completing his security clearance questionnaire in 2001, Applicant fraudulently concealed delinquent debts. He has shown significant progress in resolving his delinquent debts through repeated refinancing of his home, but has not yet been able to satisfy his creditors. Applicant failed to mitigate security concerns arising from his financial difficulties and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On December 12, 2001, Applicant submitted an application for a security clearance. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On March 25, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, of the Directive.

Applicant answered the SOR in writing by letter dated May 21, 2004. Applicant elected to have a hearing before an administrative judge.

The case was originally assigned to another administrative judge, but was reassigned to me on November 2, 2004. With the concurrence of the parties, I conducted the hearing on December 9, 2004. The department counsel introduced 11 exhibits. Applicant presented documents admitted as Exhibits A through D, and testified on his own behalf. DOHA received the transcript (Tr.) on December 28, 2004.

FINDINGS OF FACT

Applicant denied the allegations in ¶¶ 1.b, 1.d, 1.f, 1.g, 1.h, 1.l, 1.m, 1.n, 1.p, 1.q, 1.r, 1.w, 1.x, 1.y, and 2.a of the SOR. Answer to SOR, dated May 21, 2004, at 1-2. He admitted the remaining factual allegations in the SOR, with explanations. *Id.* Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant is 47 years old. Ex.1 at 1. He works as a mechanic (pipefitter and welder) for a defense contractor, and seeks a security clearance. *Id.* at 2.

Applicant entered active duty in the U.S. military in February 1975. *Id.* at 5. He served aboard several ships and supervised the staff of a Navy brig. *Id.* at 2-3. Applicant was married and divorced twice.

In 1993, Applicant acquired a condominium as rental property. Ex. 2 at 1. The payments were automatically deducted from his military pay and he rented out the property. *Id.* Thereafter, the tenants refused to pay the rent and Applicant evicted them. He began living in the condominium and commuting to his military assignment. Subsequently, while on a lengthy deployment, his military pay stopped, resulting in non-payment of the mortgage. Although his pay problem was later resolved, Applicant let the property go in foreclosure. *Id.*

In about 1996, Applicant became over-extended in consumer debt and experienced problems paying his bills. He purchased a vehicle but was unable to make the payments and it was repossessed in 1997. Tr. at 72.

Applicant was married for the third time in April 1997. *Id.* at 3. Applicant and his wife had considerable consumer debt, requiring them to juggle monthly payments to creditors. Ex. 2 at 2.

Applicant retired as an E-6 in 1998. Ex. 1 at 5. After his retirement, Applicant's income decreased substantially and he was unable to pay his bills when due. *Id.* He consulted an attorney who advised him to file for bankruptcy protection. *Id.*

Applicant filed for bankruptcy under Chapter 7 in October 1998, with total debts of about \$65,000.00. Tr. at 41; Ex. 2 at 2; Ex. 11. The bankruptcy court discharged Applicant's debts in February 1999. Ex. 3. Applicant and his wife exempted certain obligations from the bankruptcy action and set up direct payments by allotment from his military retirement pay. Ex. 4.

Applicant began working for a defense contractor in February 1999. Ex. 1 at 2. The additional income allowed Applicant and his wife to incur additional debt.

In about November 2000, Applicant's wife fell from a ladder at work and injured her back. Tr. at 37. She received workmen's compensation benefits for a period, but has been unable to work outside the home since that time because of her injury. Tr. at 19, 25.

Applicant and his wife bought a house in about April 2001. Tr. at 27, 37. At the time they acquired the house, they were about \$70,000.00 in debt. Tr. at 27, 77. Due in part to his wife's inability to work, Applicant fell behind in some debts. Exs. 5, 7. In about 2001, Applicant purchased a motorcycle. Tr. at 73. Applicant was unable to make the payments and the finance company repossessed the motorcycle in about November 2001. *Id.*

Applicant completed an SF 86, Security Clearance Application, on December 3, 2001. Ex. 1 at 1. In response to questions on the application form, Applicant reported his bankruptcy and the repossession of his vehicle in 1997. He did not report the repossession of his motorcycle in November 2001. Tr. at 76. Question 38 of that form inquired whether Applicant had been more than 180 days delinquent on any debts within the preceding seven years. Applicant answered "Yes" to that question. He reported debts in the amount of \$80,000.00, and indicated they were incurred on "1998/10/01" and were satisfied on "1999/02/01." The form requested specific information on the debts, including the type of loan or obligation, the account number, and the name and address of the creditor or obligee. Applicant filled in the word, "various" in response to these questions. Question 39 on the SF 86 asked whether Applicant was currently more than 90 days delinquent on any debts. Applicant answered that question "No," even though he was then more than 90 days delinquent on several debts. Tr. at 78-79.

Applicant resides with his wife, his daughter from a previous marriage, and his stepson. Tr. at 40. His wife conducts an

embroidery business from their home, earning about \$300.00 to \$400.00 per month. Tr. at 19. Applicant has not obtained any formal counseling on managing his money, because the services were unavailable or inconvenient. Applicant and his wife refinanced their home four times to generate funds to pay their delinquent debts. Tr. at 20. They were awaiting approval of funding for the fifth refinancing at the time of the hearing. Tr. at 20.

The current status of the debts listed in the SOR is shown below.

SOR	Account	Amount	Status
¶1.b	Utility bill	\$101.00	Paid. Ex. 6 at 9; Tr. at 82.
1.c	Bank credit card	2,256.00	Paid. Ex. D; Tr. at 83.
1.d	Telephone service	146.00	Paid (No receipt). Tr. at 82.
1.e	Consumer credit loan	1,684.00	Unpaid. Ex. 9; Tr. at 83.
1.f	Dental services	134.00	Paid. Ex. 10 at 1; Tr. at 83.
1.g	Bank credit card	2,792.00	Paid. Ex. D, Ex. A at 4; Tr. at 83. (Same as 1.c, above.)
1.h	Cellular telephone services	520.00	Discharged in bankruptcy. Ex.11, Sched. F, Sheet 7; Tr. at 84.
1.i	Communication services	356.00	Unpaid. Ex. 9, Ex. A at 6; Tr. at 84.
1.j	Telephone services	205.00	Unpaid. Ex. 9; Tr. at 85.
1.k	Utility bill	286.00	Unpaid. Ex.9; Tr. at 85.
1.l	Gas station credit card	77.00	Paid (No receipt). Tr. at 85.
1.m	Service station credit card	77.00	Paid (No receipt). Tr. at 85. (Same as 1.l, above.)
1.n	Automotive club	44.00	Paid (No receipt). Tr. at 85.
1.o	Consumer credit loan	409.00	Unpaid. Ex.8; Ex. A at 5; Tr. at 85.
1.p	Credit Union (overdraft)	2,943.00	Discharged in bankruptcy. Ex. 11, Sched. F, Sheet 6; Tr. at 85.
1.q	Consumer credit loan	211.00	Unpaid. Ex. 9, Ex. A at 6; Tr. at 86.
1.r	Collection agency	77.00	Paid. Ex. 9, Ex. A at 4-5; Tr. at 86.
1.s	Collection agent	54.00	Paid. Tr. at 86.
1.t	Collection agent	35.00	Paid. Tr. at 86.
1.u	Consumer credit loan	15,000.00	Paid. Ex. 9; Tr. at 86.
1.v	Military exchange debt	5,441.00	Unpaid. Ex.9; Tr. at 87.
1.w	Collection agency	4,535.00	Unpaid. Ex. 8; Tr. at 52.
1.x	Military exchange debt	5,944.00	Unpaid. (Same as 1.v, above.)
1.y	Telephone services	538.00	Paid (No receipt). Tr. at 52.

POLICIES

The President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline F, Financial Considerations. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive, ¶ E2.A6.1.1.

Guideline E, Personal Conduct. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the applicant may not properly safeguard classified information. Directive, ¶ E2.A5.1.1.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. *Id.*

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. Directive, ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2.

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Financial Considerations

Paragraph E2.A6.1.2.1 of the Directive provides that it may be a disqualifying condition if the evidence reveals "[a] history of not meeting financial obligations." Similarly, ¶ E2.A6.1.2.3 indicates that an "[i]nability or unwillingness to satisfy debts" may be disqualifying. Applicant has a long history of not meeting his financial obligations. He admits having delinquent debts totaling over \$10,000.00 that have remained unpaid for many years, specifically the debts listed in the SOR at ¶¶ 1.e, 1.i, 1.j, 1.k, 1.o, 1.q, 1.v, 1.w, and 1.x (same as 1.v). I find Applicant has shown both a history of failing to meet his financial obligations and an inability to satisfy his debts. I conclude both these potentially disqualifying conditions apply.

The security concerns arising from Applicant's financial difficulties can be mitigated under certain circumstances. Under the Directive, ¶ E2.A6.1.3.1, it may be mitigating where "the behavior was not recent." Some of Applicant's delinquent debts date from 1996, thus the original indebtedness is not recent. However, several of the debts remain unpaid at this time. I find Applicant's inability to pay delinquent debts is recent, therefore this mitigating condition does not apply.

Paragraph E2.A6.1.3.2 of the Directive provides that it may be mitigating where the financial difficulty "was an isolated incident." Applicant's numerous delinquent debts arose over many years, even after his discharge in bankruptcy. I conclude this mitigating condition does not apply.

Under ¶ E2.A6.1.3.3, it may be mitigating where, "[t]he conditions that resulted in the behavior were largely beyond the

person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)." In this case, some of Applicant's financial problems arose from circumstances beyond his control and some did not. Applicant first got into financial problems because of an unexpected loss of pay that pushed him to the brink of foreclosure on his condominium. Of course, an unanticipated loss of income is a condition beyond an individual's control. In this case, it mitigates Applicant's early financial problems. However, Applicant became over-extended in debt shortly thereafter, resulting in personal bankruptcy in 1999. This was not due to circumstances beyond his control. In about 2000, Applicant's wife lost her job due to an injury, and the loss of income resulted in significant delinquencies. This unexpected loss of employment was a circumstance beyond their control and mitigates the security concerns arising from Applicant's financial difficulties at that time. For these reasons, I find this mitigating condition applies in part.

Proof that "[t]he person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control," may be mitigating, under ¶ E2.A6.1.3.4 of the Directive. Applicant has not received financial counseling since filing for bankruptcy in 1998. I find this mitigating condition does not apply.

Finally, it may be mitigating where "[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Directive, ¶ E2.A6.1.3.6. Applicant has made significant progress toward payment of his delinquent debts through repeated refinancing of his home. Using that tool, he paid off many of the outstanding amounts due, as shown on the chart, above, and reduced his delinquent indebtedness from about \$70,000.00 to about \$10,000.00. Unfortunately, his efforts have not been sufficient to repay or resolve all or substantially all his delinquent debts. I conclude this mitigating condition does not apply.

I considered the potentially disqualifying and mitigating circumstances in light of the "whole person" concept. Applicant is a mature individual with many years of experience in leadership positions and as a noncommissioned officer, therefore he should be able to keep his financial affairs in order. Some of the unpaid debts resulted from circumstances beyond Applicant's control, but a substantial part arose from Applicant's carelessness about his debts. His financial problem is serious, to the extent that it involved a large amount of money and remained an issue for a very long time. Applicant did not obtain financial counseling or attempt to pay his debts through discretionary funds remaining after monthly expenses-instead he relied on a Chapter 7 bankruptcy and successive refinancing of his home to discharge or settle some of his larger debts. Presently, his only plan for resolving the numerous delinquent debts is to hope that his home continues to appreciate, that he will be able to refinance it for the fifth time at favorable rates, and that he will be able to use those funds to effect settlements for those debts. I conclude Applicant has not mitigated the security concerns arising from his history of failing to meet his financial obligations and his inability to pay his debts.

Personal Conduct

The Directive sets out various factors relevant to an applicant's personal conduct that may be potentially disqualifying. Paragraph E2.A5.1.2.1 provides that "[r]eliable, unfavorable information" tending to show questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, may indicate that the person may not properly safeguard classified information. Applicant's history of failing to meet his financial obligations tends to show questionable judgment, unreliability, and a lack of trustworthiness. I find this potentially disqualifying condition applies.

Under ¶ E2.A5.1.2.2 of the Directive, "[t]he deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire" may be disqualifying. Paragraph 2.a of the SOR alleges Applicant deliberately failed to report on his security clearance application debts that were over 180 days delinquent arising after his bankruptcy in February 1999. Applicant asserts he does not remember why he answered the question as he did, but suggests he was confused. He denies any intent to deceive. Tr. at 56-57.

Applicant's statement in response to Question 38 that his delinquent debts had been satisfied in February 1999 was false. In determining whether Applicant deliberately concealed or falsified the information in response to Question 38, I considered all the facts and circumstances. Reviewing the credit reports dated August 1999 (Ex. 6) and December 2001 (Ex. 7), and the debts exempted from the earlier bankruptcy (Ex. 4 at 2), I find Applicant had several debts over 180 days delinquent at the time he completed the security clearance application. I also find that information about

Applicant's delinquent debts was material and relevant to his security clearance application. Considering the recency of his many financial problems and his ability to recall some of his delinquent debts, I am not persuaded that Applicant forgot the debts that became delinquent after his bankruptcy. Applicant's declaration that he did not understand Question 38 is not persuasive in light of his response addressing the debts listed in his bankruptcy. I also note that Applicant falsely denied having debts over 90 days delinquent in response to Question 39. In response to Question 35, he did not report the repossession of his motorcycle, even though that had occurred just one month before he completed the security clearance application. I considered these false statements for the limited purpose of determining whether Applicant intended to deliberately omit, conceal or falsify material and relevant facts in response to Question 38. I conclude Applicant deliberately concealed or falsified material and relevant facts in response to Question 38, therefore ¶ E2.A5.1.2.2 of the Directive applies.

Under the Directive, an applicant may mitigate the security concerns arising from questionable personal conduct under certain circumstances. Directive, ¶ E2.A5.1.3. Under ¶ E2.A5.1.3.1, it may be mitigating where "[t]he information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability." Applicant's admissions and the government evidence demonstrate the information about Applicant's financial difficulties is substantiated. Also, the information was pertinent to a determination of his judgment, trustworthiness, and reliability. I find this mitigating factor does not apply.

Paragraph E2.A5.1.3.2 of the Directive arises where "the falsification was an isolated incident, was not recent, and the individual subsequently provided correct information voluntarily." The available evidence shows Applicant was less than honest on several questions on the security clearance application, therefore it is not clear that this was an isolated incident. Also, Applicant has not shown that he subsequently provided correct information voluntarily. I conclude this potentially mitigating condition does not apply.

Under the Directive, it may be mitigating where, "[t]he individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts." Applicant has not met his burden of proving that he made good-faith efforts to correct the omissions in his security clearance application, or that his efforts were prompt. I find this potentially mitigating condition does not apply. I also considered carefully the other potentially mitigating conditions and conclude they do not apply.

I considered carefully all the facts and circumstances in this case in light of the "whole person" concept. I conclude Applicant has not mitigated the security concerns arising from his personal conduct.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: For Applicant

Subparagraph 1.m: For Applicant

Subparagraph 1.n: For Applicant

Subparagraph 1.o: Against Applicant

Subparagraph 1.p: For Applicant

Subparagraph 1.q: Against Applicant

Subparagraph 1.r: For Applicant

Subparagraph 1.s: For Applicant

Subparagraph 1.t: For Applicant

Subparagraph 1.u: For Applicant

Subparagraph 1.v: Against Applicant

Subparagraph 1.w: Against Applicant

Subparagraph 1.x: Against Applicant

Subparagraph 1.y: For Applicant

Subparagraph 1.z: Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Michael J. Breslin

Administrative Judge