

DATE: April 30, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-23671

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Esq., Department Counsel

FOR APPLICANT

Mark Jansen, Personal Representative

SYNOPSIS

Applicant has a history of financial delinquencies and tax liens. He knowingly and willfully made materially false statements on his security clearance application, which he signed and certified on August 7, 2001. Applicant's financial problems and his lack of candor raise security concerns that he failed to mitigate. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On June 9, 2003, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on July 23, 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on October 29, 2003. On November 24, 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the transcript (Tr.) of the proceeding on December 3, 2003.

RULINGS ON PROCEDURE

The SOR was amended to conform with the record facts, without objection from either party, to reflect the correct names of the creditor alleged in SOR ¶ 1.d. and the governmental organization alleged in SOR ¶ 1.f.

FINDINGS OF FACT

The SOR contains nine allegations of disqualifying conduct. Six allegations were related to conduct charged under Guideline F, Financial Considerations, two allegations were related to conduct charged under Guideline E, Personal Conduct, and one allegation was related to conduct charged under Guideline J, Criminal Conduct. In his answer to the

SOR, Applicant denied all nine allegations.

Applicant is single, never married, and 44 years of age. From 1978 to 1983, he served in the U.S. Navy as a seaman (E3). He is employed as an advanced electronics technician by a government contractor. Since 1993, Applicant has lived at four different addresses, two in State X and two in State Y.

Applicant completed and certified a security clearance application (SF-86) on August 1, 2001. Applicant answered "no" to Question 36 on the SF-86, which reads as follows:

Your Financial Record - Tax Lien

In the last 7 years, have you had a lien placed against your property for failing to pay taxes or other debts?

In a signed, sworn statement to an agent of the Defense Security Service (DSS), dated April 12, 2002, Applicant acknowledged the existence of a State X tax lien and a dispute over taxes owed to State X for the tax year ending December 31, 1996. On October 23, 2002 Applicant's employer was served by State X with a notice and demand that the employer garnish Applicant's wages in the amount of \$947.92 in order to satisfy the unpaid back taxes owed by Applicant. On November 1, 2002, Applicant sent a cashier's check for \$947.92 to the Department of Taxation of State X in satisfaction of his debt for back taxes. (Ex. A.)

When Applicant completed and certified his SF-86 on August 7, 2001, he responded "no" to questions 38 and 39. Question 38 reads: "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Question 39 reads: "Are you currently over 90 days delinquent on any debt(s)?"

Applicant was treated by a psychologist in 1992 or 1993. The account was turned over for collection in March 1995. Applicant contacted the psychologist and learned that he owed \$202 for the treatment he received. In his signed sworn statement to the DSS agent on April 12, 2002, Applicant acknowledged the debt to the psychologist on his credit report and stated he would contact the psychologist about payment. At the time of his hearing, Applicant had not paid his debt.

Applicant was indebted to a department store from which, in 1992 and 1993, he had purchased items with a credit card issued by the store. Applicant was indebted to this creditor in the approximate amount of \$3,802.13. His account was referred for collection to a credit agency in April 2000 and then referred again to another credit agency in September 2000. In his signed, sworn statement, Applicant acknowledged purchasing items from the department store. He said he thought the account was paid off. At the time of his hearing, Applicant had not paid the debt. The original creditor had gone out of business. Applicant said he wanted to pay the original creditor and needed to know how much he owed. He did not want to do business with the collection agencies who had been assigned to collect the debt.

In 1999 or 2000⁽³⁾, Applicant was in an automobile accident and his automobile was damaged. Applicant was taken to a hospital and his car was towed to the lot of the towing service. When Applicant was released from the hospital, he went to the premises of the towing service to reclaim his car. The car was so badly damaged that it could not be driven. The towing company requested payment of \$35.00 for towing and \$75.00 for storage. Applicant did not have the money to pay the towing company's charges. He took some possessions from his car and left. When he returned several days later, he was told the towing company was charging him \$50 per day to store his car. Applicant did not pay the charges but gave an employee of the towing company the title to his car and told him to keep it. The employee did not give Applicant a receipt for the car. He told Applicant the towing company would likely auction the car and the proceeds would be applied to the charges owed by Applicant. Instead, the towing company continued to charge Applicant \$50 per day to store his car. A credit report, prepared by DOHA and dated September 2, 2001, indicated the towing company had continued to bill Applicant and that charges had accrued to over \$7,000. (Ex. 3.) In his signed sworn statement, Applicant called the debt "outrageous" and said he would not pay it. (Ex. 2, at 2)

Applicant owed approximately \$1,049.46 to a credit card company on an account that had been referred for collection in December 2000. In his signed sworn statement of April 12, 2002, Applicant acknowledged that he had possessed the credit card. He stated he had given it to his mother to use. He stated he and his family were unable to pay the charges and cancelled the card. He stated he thought the debt had been written off by the credit card company. He stated he would investigate the charges and arrange to settle the account. At his hearing, Applicant said he had contacted the

credit card company and had been told he did not owe any money. (Tr. 47-48.) He presented no evidence in support of this assertion.

Applicant was indebted to State Y for unpaid taxes for the tax year 1994. In January 1996 the Department of Tax and Revenue served Applicant with a notice of tax lien at his residence in State Y. (Ex. E.) In testimony Applicant stated that he had not received the notice of tax lien because he was not living in State Y in January 1996. He stated he had moved in October 1995 from the address noted on the tax lien. (Tr. 40; 79-82.) Applicant's signed and certified SF-86 indicates that he was living at the address listed on the tax lien in January 1996 and did not move away from State Y until October 1996. (Ex. 1, at 1.) At his hearing, Applicant presented a copy of a cashier's check, dated November 19, 2003, presented to State Y in payment of the tax lien (Ex. D) and a copy of a release of tax lien provided to him by State Y, dated November 20, 2003.

Applicant denied falsifying material facts on his security clearance application when he responded 'no' to questions 36, 38, and 39. When Applicant completed and signed his SF-86 on August 7, 2001 (Ex. 1, at 9), he acknowledged and certified the following statement, which appears above his signature:

CERTIFICATION BY PERSON COMPLETING FORM

My statements on this form, and any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both. (See section 1001 of title 18, United States Code.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, 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." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* 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.

CONCLUSIONS

Guideline F-Financial Considerations

The Government's concern under Guideline F, Financial Considerations, is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. Applicant has a history of not meeting his financial obligations, and his financial history suggests an inability or unwillingness to satisfy his debts, conditions which raise security concerns under subparagraphs E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F. DOHA's Appeal Board has concluded that "[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." ISCR Case No. 98-0810 at 4 (App. Bd. June 8, 2000).

In the SOR, DOHA alleged Applicant had unpaid state tax liens (§§ 1.a. and 1.f.) and accounts referred for collection (§§ 1.b., 1.c., 1.d., and 1.e.) that were unsatisfied as of April 12, 2002.⁽⁴⁾ An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

In his answer to the SOR, Applicant denied the tax liens alleged at §§ 1.a. and 1.f. of the SOR and also denied that the lien owed to State X had not been satisfied as of May 6, 2002 and the tax lien owed to State Y had not been satisfied as of April 12, 2002. At his hearing, he presented documentary evidence to show that he had satisfied the tax lien owed to State X by cashier's check dated November 1, 2002. He presented documentary evidence that he had satisfied the tax lien owed to State Y by cashier's check dated November 19, 2003. Applicant's testimony that he was unaware of his obligations to satisfy the tax liens was unpersuasive.

In his answer, Applicant also denied the debts identified at §§ 1.b., 1.c., 1.d., and 1.e. of the SOR. In testimony he demonstrated a familiarity with the circumstances surrounding each of the debts and he did not deny the debts were his. He was unable to present records of payment or to document communications with creditors. Despite Applicant's denials, the Government has established a *prima facie* case that Applicant has a history of not meeting his financial obligations and is unable or unwilling to satisfy his debts. Applicant provided no persuasive evidence to rebut the financial concerns specified in the SOR allegations §§ 1.a. through 1.f. and identified as disqualifying conditions under §§ E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F.

We turn to a review of the several conditions that could mitigate the security concerns raised by Applicant's financial delinquencies. Applicant's acknowledged delinquencies involve long-standing debts which continue to be unsatisfied to this day. Thus, neither mitigating condition E2.A.6.1.3.1. nor mitigating condition E2.A6.1.3.2. applies.

Nothing in the record suggests that Applicant's long-term financial difficulties could be attributed to circumstances largely beyond his control. Thus, mitigating condition E2.A6.1.3.3. does not apply. Applicant has not sought counseling or assistance in organizing his financial life, and, therefore, mitigating condition E2.A6.1.3.4. does not apply. At his hearing, he presented evidence that he had paid one of his long-overdue State tax liens only after the State notified his employer of its demand for garnishment of his wages to satisfy the lien. In his signed, sworn statement, dated April 12, 2002, he indicated he would try to pay or otherwise settle his debts. At his hearing, some 17 months later, Applicant had no plans in place for paying or otherwise satisfying or settling the debts alleged at §§ 1.b., 1.c., 1.d., and 1.e. of the SOR, and his creditors were left to shoulder the responsibility for his debts. Therefore, mitigating condition E2.A6.1.3.6. does not apply. Accordingly, SOR allegations §§ 1.a. through 1.f. are concluded against the Applicant.

Guideline E, Personal Conduct

In the SOR, DOHA alleged Applicant falsified material facts regarding his financial delinquencies in his answers to Questions 38 and 39 on his SF 86 (§ 2.a.) and falsified material facts when he answered "no" to Question 36 on his SF-86. Question 36 asked whether liens had been placed against his property for failure to pay taxes or other debts. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

With respect to the Guideline E conduct alleged in SOR subparagraphs §§ 2.a. and 2.b., Applicant falsified his SF-86 by omitting and concealing relevant and material information about his debts and financial obligations in his responses to

Questions 36, 38, and 39, bringing his conduct

under disqualifying condition E2.A5.1.2.2. He did not fully and truthfully provide the requested information, and thus mitigating condition E2.A5.1.3.6. does not apply.

A person's refusal to provide relevant and material information to the Government provides a rational basis for denial or revocation of access to classified information for that person. ISCR Case No. 98-0445 at 3 (App. Bd. April 2, 1999), (quoting *Gayer v. Schlesinger*, 490 F. 2d 740, 754 (D.C. Cir. 1973); *Clifford v. Shoultz*, 413 F. 2d 868 (9th Cir. 1969), *cert. denied*, 396 U.S. 962 (1969)).

With respect to the Guideline E conduct alleged in the SOR, the Government has established its case. Applicant's assertions that he did not intend to falsify his responses to Questions 36, 38, and 39 are not credible in light of his awareness of his financial problems over a period of several years and his creditors' many attempts to put him on notice of delinquent debts. His statements reveal that he failed to answer the three questions on his SF-86 completely, truthfully, and correctly, and this raises a security concern under ¶ E2.A5.1.2.2 of Guideline E. Applicant's conduct raises concerns under ¶ E2.A5.1.2.5. because it suggests a pattern of dishonesty or rule violation. Applicant's reticence to reveal the truth about his conduct suggests that, under some circumstances, he may put his interests before those of the Government.

Mitigating condition E2.A5.1.3.1. does not apply to this case. The information withheld by Applicant is pertinent to a determination of his judgment, trustworthiness, and reliability. Two other mitigating conditions under Guideline E might be applicable to the instant case. The security concern raised by Applicant's disqualifying conduct could be mitigated if the falsification was an isolated incident, was not recent, and if the Applicant subsequently provided the correct information voluntarily. ¶ E2.A5.1.3.2. While Applicant supplied some correct information about his financial delinquencies at his hearing, his falsifications were not isolated incidents and they are recent. Mitigating condition E2.A5.1.3.3. is also inapplicable, since Applicant did not make prompt good faith efforts to correct the falsification before being confronted with the facts. Accordingly, the allegations in subparagraphs 2.a. and 2.b. of the SOR are concluded against the Applicant.

Guideline J -Criminal Conduct

In the SOR, DOHA alleged Applicant knowingly and willfully falsified his answers to Questions 36, 38, and 39 on his security clearance application in violation 18 U.S.C. § 1001 and that these acts constituted felonious criminal conduct. An applicant with a history or pattern of criminal behavior raises serious doubts about his judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1.

It is a criminal offense to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the executive branch of the Government of the United States. 18 U.S.C. § 1001. Security clearances are within the jurisdiction of the executive branch of the Government of the United States. *See Egan*, 484 U.S. at 527. Applicant deliberately lied on the security clearance application he certified and signed for the purpose of obtaining a security clearance. Under all the circumstances, Applicant failed to convince me that he did not knowingly and willfully falsify his security clearance application. An applicant may be disqualified if allegations of criminal conduct are raised against him. ¶ E2.A10.1.2.1. The criminal

offense was an isolated incident, and therefore mitigating condition E2.A10.1.3.2 applies. Nonetheless, after weighing the disqualifying and mitigating conditions, the finding is against Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Paragraph 3 Guideline J: AGAINST APPLICANT

Subparagraph 3.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.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. Applicant was unable to specify the year in which the automobile accident occurred. He said he thought the accident occurred in the summer.
4. Allegation 1.a. of the SOR alleges that the tax lien to State X was not satisfied as of May 6, 2002.