

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 45-year-old employee of a defense contractor. He has a history of failing to meet his financial obligations and inability to pay his debts, extending from about 1998 to the present. While many of these debts arose from circumstances beyond his control, Applicant has done nothing to attempt to resolve his debts. When completing his security clearance questionnaire in 2000, Applicant misunderstood the questions, and mistakenly denied filing for bankruptcy, or having unpaid judgments or debts over 180 or 90 days delinquent. Applicant failed to mitigate security concerns arising from his financial difficulties. Clearance is denied.

CASENO: 02-24922.h1

DATE: 04/25/2005

DATE: April 25, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-24922

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Gary Lorentzen, Personal Representative

SYNOPSIS

Applicant is a 45-year-old employee of a defense contractor. He has a history of failing to meet his financial obligations and inability to pay his debts, extending from about 1998 to the present. While many of these debts arose from circumstances beyond his control, Applicant has done nothing to attempt to resolve his debts. When completing his security clearance questionnaire in 2000, Applicant misunderstood the questions, and mistakenly denied filing for bankruptcy, or having unpaid judgments or debts over 180 or 90 days delinquent. Applicant failed to mitigate security concerns arising from his financial difficulties. Clearance is denied.

STATEMENT OF THE CASE

On November 10, 2000, 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 July 21, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleged security concerns raised under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, of the Directive.

Applicant answered the SOR in writing on August 5, 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 8, 2004. The department counsel introduced nine exhibits. Applicant presented the testimony of two witnesses and testified on his own behalf. DOHA received the transcript (Tr.) on December 28, 2004.

FINDINGS OF FACT

Applicant denied the allegations in ¶¶ 1.z and 2.c of the SOR. Applicant's Answer to SOR, dated August 5, 2004, at 2. He admitted the allegations in ¶¶ 2.a and 2.b of the SOR, but denied any intent to deceive. *Id.* at 1-2. Applicant admitted the remaining factual allegations in paragraph 1 of the SOR, with explanations. *Id.* Applicant's 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 45 years old. Ex. 1 at 1. He works as a machinist's helper for a defense contractor that provides services aboard U.S. Navy ships. *Id.* at 2; Tr. at 30.

Applicant joined the Navy shortly after high school, and served on active duty for about 20 years. Tr. at 36. He rose to the rank of petty officer first class (E-6). *Id.* While in the Navy, Applicant successfully held a security clearance. Tr. at 27.

Applicant got married in 1988. Ex. 1 at 4. Applicant was frequently deployed at sea, so his wife managed the family finances, including paying bills and filing tax returns. Tr. at 37-38. Applicant denied any knowledge of financial difficulties or delinquent debts. Tr. at 38. He was aware of one lawsuit and judgment for worthless checks written by his wife, but denied any knowledge of the other lawsuits filed against him. Tr. at 78.

Applicant recalls the state pursued his wife and himself for unpaid income taxes for the years 1998 through 2003. Tr. at 40. The state tax board put a lien on his property when he was still in the Navy, and later garnished his wages for outstanding income taxes from 1998 or 1999. Tr. at 54. Applicant testified he was not aware of the liens or the garnishment until 2000, after he left the Navy. Tr. at 59. The tax liens were satisfied in about 2000. Tr. at 40-41, 54.

In late 1999, Applicant's wife told Applicant they should file for bankruptcy. Tr. at 38-39. He understood that they were having difficulty paying bills because his wife had been laid off from her job during an earlier period. Tr. at 39. Applicant recalls meeting with an attorney to file for bankruptcy. Tr. at 39. Applicant and his wife filed a petition for Chapter 13 bankruptcy in October 1999. Ex. 5 at 1-2. The bankruptcy petition lists debts totaling \$28,874.86. *Id.* at 4. Applicant denies knowing the amount of his indebtedness at that time. Tr. at 39. The bankruptcy case was dismissed because petitioners failed to appear for a meeting of creditors in January 2000. Ex. 5 at 38, 39. Applicant denies any knowledge of further proceedings in the case. Tr. at 56.

Applicant's wife left him in about 2000. Tr. at 37. According to Applicant, she met someone and moved away. Tr. at 51. Applicant contends he was unaware of most of the unpaid debts because his wife handled the family's financial matters. Tr. at 42-43. Applicant asserts he first learned of many of these debts when interviewed by the security investigator. Tr. at 42.

Applicant retired from the Navy in 2000 and began working for his current employer in March 2000. Ex. 1 at 2. He is a mechanic's helper-a laborer with no special skills. Tr. at 14, 29. He requires a security clearance to work on board U.S. Navy vessels. Tr. at 14. His supervisors described him as being honest and reliable. Tr. at 14, 29.

In November 2000, Applicant completed an SF 86, Security Clearance Application. Ex. 1 at 1. The company's practice was to provide applicants a worksheet to complete, and their answers were then entered into the computer for electronic submission. Tr. at 25. The office secretaries helped input the information because the computerized form is challenging for those unfamiliar with computers. *Id.* After the form was completed, it was shown to the applicant who must sign it declaring that it is all true. Tr. at 26.

Question 33 of the security clearance application asked whether Applicant filed a petition for bankruptcy within the preceding 7 years. Ex. 1 at 7. Applicant answered this question "No." At the hearing, Applicant explained that he answered the question "No" because he had attempted to file for bankruptcy but had not received a response, so he thought it did not go through. Tr. at 57.

Question 37 on the form inquired whether Applicant had any unpaid judgments within the last seven years. Ex. 1 at 8. Applicant answered, "No." *Id.* Applicant understood the question, but contends he was unaware of any judgment against him at that time. Tr. at 59. Applicant could not explain why the court documents related to the other judgments reflect personal service upon him. Ex.6 at 15; Ex.7 at 8; Tr. at 78-81.

Question 38 on the application inquired whether Applicant had been over 180 days delinquent on a debt within the preceding 7 years. Ex. 1 at 8. Question 39 asked whether Applicant was then over 90 days delinquent on any debts. *Id.* Applicant answered both question, "No." At the hearing, Applicant explained that he thought the questions asked whether he had received any notices of debt in the mail within 180 or 90 days, respectively. Tr. at 60. He did not remember any notices, so answered both questions in the negative. *Id.*

Applicant has numerous unpaid debts. Creditors are garnishing about 25% of his wages. Tr. at 34. Applicant's regular expenses and debts exceed his income. Tr. at 75. Applicant has no plan to pay off his outstanding debts, other than allowing the creditors to garnish his pay. Tr. at 76.

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 history of not meeting his financial obligations. He has debts totaling over \$35,000.00 that have remained unpaid for many years. Applicant's current wages are insufficient to pay his delinquent debts. 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 1998, thus the original indebtedness is not recent. However, a large number 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 because of a variety of reasons. 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)." The available evidence indicates Applicant's wife got the family over-extended in credit card debts and mismanaged the family's finances. She initiated the bankruptcy proceeding, but allowed it to lapse without resolving the family's debts. She then left Applicant for another and initiated separation proceedings, creating another financial burden for Applicant. Applicant also indicated that some of his delinquent debts arose when his wife was unemployed. An unexpected loss of employment may be a circumstance beyond an individual's control and could mitigate the security concerns arising from financial difficulties. I find this mitigating condition applies.

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 sought some financial counseling by contacting an attorney for assistance in filing bankruptcy. However, the bankruptcy action lapsed through inaction. There is no evidence of a formal plan to repay or resolve his delinquent debts. Applicant intends to allow the creditors to collect their funds through garnishment. 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. As noted above, Applicant made no significant payment toward the delinquent debts listed in the SOR. I conclude this mitigating condition does not apply.

I considered the potentially disqualifying and mitigating circumstances in light of the "whole person" concept. At the time these financial difficulties arose, Applicant was a mature, responsible individual. He was then retiring from the Navy after 20 years' service and significant time as a petty officer. Applicant asserts he was unaware of the debts because his wife handled the family finances. However, he knew of tax liens and he signed the petition for bankruptcy, which should have made him aware of their precarious financial position. Applicant's separation from his wife exacerbated his financial difficulties. However, Applicant has done nothing to attempt to resolve his debts, and has no plan to do so, other than to allow the creditors to collect through garnishment. Applicant's conduct reflects a lack of judgment, reliability, and trustworthiness. 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 debts.

Personal Conduct

The Directive sets out various factors relevant to an applicant's personal conduct that may be potentially disqualifying. 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 that he filed for bankruptcy within the preceding seven years. Applicant asserts he misunderstood the question; he thought that he attempted to file for bankruptcy, but it was ineffective because it fell through. Considering all the evidence, including Applicant's demeanor at the hearing and the testimony of supervisors who worked with Applicant, I find Applicant simply misunderstood the question. I conclude the evidence does not support the allegation that Applicant intended to deceive the government with his negative response.

Paragraph 2.b of the SOR alleges Applicant falsified material facts on his security clearance application in response to Questions 38 and 39, by falsely denying that he had debts over 180 and 90 days delinquent. Applicant contends he misunderstood the question. I considered Applicant's demeanor and the testimony of his supervisors. I also note Applicant had significant trouble completing the security clearance application form (for example, he denied military service, but listed his jobs in the Navy). I find Applicant misunderstood the questions; he did not deliberately omit or conceal relevant and material facts.

Paragraph 2.c of the SOR alleges Applicant falsified material facts on his security clearance application in response to question 37 by falsely denying that he had any unpaid judgments. Applicant denies any knowledge of unpaid judgments at the time he completed the security clearance application. Although the court documents include attestations of personal service on Applicant, there are discrepancies and inconsistencies that call the reports into question. The remaining court records are all signed by Applicant's wife alone. Under the circumstances, I find the available evidence does not persuade me Applicant deliberately lied on the application form. The available evidence does not support the allegations in ¶ 2 of the SOR.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

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

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m: Against Applicant

Subparagraph 1.n: Against Applicant

Subparagraph 1.o: Against Applicant

Subparagraph 1.p: Against Applicant

Subparagraph 1.q: Against Applicant

Subparagraph 1.r: Against Applicant

Subparagraph 1.s: Against Applicant

Subparagraph 1.t: Against Applicant

Subparagraph 1.u: Against Applicant

Subparagraph 1.v: Against Applicant

Subparagraph 1.w: Against Applicant

Subparagraph 1.x: Against Applicant

Subparagraph 1.y: Against Applicant

Subparagraph 1.z: Against Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For 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