

KEYWORD: Financial; Foreign Influence; Personal Conduct

DIGEST: Applicant is 40 years old, an immigrant in 1980 from Syria who became a naturalized U.S. citizen in 1990, is married with five children, who works as a software engineer for a defense contractor. Applicant has 22 delinquent debts, some of which he paid before the hearing. Applicant has family members citizens of and resident in Syria. He failed to disclose his two criminal arrests, his delinquent debts and judgments, and his 1995 bankruptcy on his 2002 security clearance application. Applicant did not mitigate the financial considerations, foreign influence, and personal conduct security concerns. Clearance is denied.

CASENO: 02-25641.h1

DATE: 03/16/2005

DATE: March 16, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-25641

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 40 years old, an immigrant in 1980 from Syria who became a naturalized U.S. citizen in 1990, is married with five children, who works as a software engineer for a defense contractor. Applicant has 22 delinquent debts, some of which he paid before the hearing. Applicant has family members citizens of and resident in Syria. He failed to disclose his two criminal arrests, his delinquent debts and judgments, and his 1995 bankruptcy on his 2002 security clearance application. Applicant did not mitigate the financial considerations, foreign influence, and personal conduct security concerns. 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 March 12, 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations), Guideline B (Foreign Influence), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on April 1, 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on September 15, 2004. On October 5, 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Applicant waived the 15 day notice period (Tr. 8). The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on October 15, 2004.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 40 years old, married with five children, and works as a software engineer for a defense contractor. He immigrated to the U.S. from Syria in 1980 to attend college, finally graduating in 2003 after having to disenroll several times due to the lack of funds. Applicant became a naturalized U.S. citizen on November 19, 1990. Applicant has dual citizenship with Syria. (Tr. 59, 84; Exhibits 1 and 2)

Applicant has had back problems since 1980, and incurred medical expenses attempting to bring himself relief from that pain. He sought medical treatments including operations even though he did not have the money to pay for them or the insurance to cover the expenses. Of the delinquent debts alleged in the SOR, 14 are for medical expenses and eight are non-medical debts. All but six of those debts are paid or settled, four remain unpaid and Applicant claims he will pay them. Two of the medical bills were written off by his family physician because the physician knew Applicant could not pay them. Applicant was able to pay some debts from a \$29,000 settlement from an auto accident lawsuit by applying \$14,000 to those debts. He used the remaining \$15,000 to pay for repairs to his pickup truck. In the past two years Applicant built a new house for his family, investing \$10,000 he borrowed from a friend, \$5,000 from his wife, and a \$170,000 mortgage, plus his own work on various parts of the house. (Tr. 25-49, 91)

Applicant's non-medical delinquent debts, all of which were paid or settled before the hearing, are as follows:

SOR 1.a. bank debt, \$281 (Tr. 38; Exhibits 3, G)

SOR 1.c. cable T.V., \$55 (Tr. 25, 27; Exhibits A, C, and G)

SOR 1.e. bank debt, \$339 (settled for \$271.06) (Exhibit B)

SOR 1.r. judgment for telephone company ad book, \$1,575 (Tr. 28, 33; Exhibit G, Answer attachments)

SOR 1.s. judgment for health club membership, \$482 (Exhibits 7, G; Answer attachment)

SOR 1.t. judgment by import company, \$1,931 (Tr. 33; Answer attachment)

SOR 1.v. judgment by purchaser of car sold by Applicant, \$1,300, discharged in bankruptcy (Tr. 32; Exhibit 4)

SOR 1.w. judgment by insurance company for alleged fraud in reporting car stolen for which payment was made, \$4,826, discharged in bankruptcy (Exhibits 4 and 8)

Applicant's delinquent medical bills that he paid or had discharged in bankruptcy are as follows:

SOR 1.d. medical testing, \$72 (Tr. 35, 36; Exhibits 6 and E)

SOR 1.g. medical practice, \$58 (Tr. 35; Exhibits C, G, H)

SOR 1.k. MRI diagnostic office, \$1,290 (Tr. 35; Exhibits D, G, H)

SOR 1.l. medical center bill, \$2,517 (Tr. 32; Exhibit G)

SOR 1.m. same medical center, \$10,214 (Tr. 32; Exhibit G)

SOR 1.n. same medical center, \$2,387 (Tr. 32; Exhibit G)

SOR 1.o. pathology office, \$87 (Exhibit G)

SOR 1.u. medical center judgment, \$18,228.76 settled for \$7,000 (Tr. 33; Exhibit G; Answer attachments)

Applicant continues to owe the following debts:

SOR 1.b. physician, \$360 (Tr. 34, 38; Exhibits B, C, and H)

SOR 1.f. physician, \$283 (Tr. 39, 42, 43; Exhibit H)

SOR 1.h. family physician, \$270, Applicant claims written off by physician, but it appears unpaid on Applicant's October 2004 credit report after Applicant claimed at the hearing it did not appear on his credit report. Applicant has no proof the debt was written off by the creditor. (Tr. 39; Exhibits G and H)

SOR 1.i. family physician, \$206, Applicant claims written off by physician and would not appear on his credit report, but it does appear there as of October 2004. Applicant had no proof the debt was written off by the creditor. (Tr. 40; Exhibit G)

SOR 1.j. orthopedic center, \$111 (Tr. 41-43; Exhibit H)

SOR 1.p. radiologist, \$1,549 (Tr. 42, 43; Exhibits G and H)

Applicant filed Chapter 7 bankruptcy in July 1995. He was discharged in bankruptcy in May 1996. Applicant did not list his bankruptcy on his security clearance application (SCA) he signed on April 9, 2002, because he did not think it occurred within the seven years requested by Question 33 (was a bankruptcy petition filed in the previous seven years) of the SCA. (Tr. 54-60; Exhibits 1, 2, 4)

Applicant's mother and father are citizens and resident in Syria, but have "green cards" from the U.S. obtained during their past visits. They would not immigrate to the U.S. because his mother prefers to stay near a daughter in Syria. His father is a retired contractor who worked regularly in Saudi Arabia, and his mother is a homemaker. Applicant sends his parents \$100 monthly to support them. Applicant also has a brother and sister who are citizens of and residents of Syria, but the brother works as a contractor in Saudi Arabia. Applicant calls his parents every two weeks, and talks to his brother and sister every two or three months. Applicant has three half-sisters and two half-brothers who are citizens and residents of Syria. He does not communicate with them regularly, and has not seen or spoken with some of them in 15 years. Applicant also has two brothers and a half-brother in the U.S. who are dual citizens of the U.S. and Syria (The Government stated during the hearing it would not present any evidence on that allegation in SOR 2.d). Applicant traveled to Syria with his family from July to September 1998, which was the only time he traveled there since he came to the U.S. in 1980. Syria and the U.S. have had policy concerns between them in the past 30 years. The U.S. is concerned about Syria's human rights record, its support for terrorist organizations at various times in the past 30 years, and Syria's continuing armed presence and influence in Lebanon. The U.S. imposed sanctions on Syria in May 2004 pursuant to the Syrian Accountability and Lebanese Sovereignty Restoration Act. Syria is an authoritarian regime with the trappings of a democratic system, with one political party being paramount. (Tr. 8, 64, 66-76, 97; Exhibits 1, 2 and 9)

Applicant was arrested in July 1997 after a domestic disturbance involving his wife. He was not convicted of any offense regarding this event. In September 1987 Applicant was charged with forcible rape and the prosecutor's office declined to prosecute the case. Applicant did not disclose either arrest on his SCA in response to Question 21 (charges or convictions for felony offenses) or Question 26 (any arrests in the previous seven years not otherwise disclosed on the SCA). Applicant was embarrassed by the charges and did not list them for that reason. The Government withdrew the allegations in Paragraph 3 under the criminal conduct guideline, but Applicant did not disclose these same arrests on his SCA. (Tr. 8, 61; Exhibit 2)

Applicant did not disclose the judgments set forth in SOR paragraphs 1.q through 1.v. in response to Question 37 of the SCA. Question 37 requests disclosure of unpaid judgments in the past seven years. Applicant claimed he was confused between civil and criminal judgments, and thought Question 37 referred to court convictions resulting in imprisonment. Question 37 appears on the SCA as one of a series of questions relating to financial history of an applicant. (Tr. 56-58; Exhibits 1 and 2)

Applicant did not disclose on his SCA in response to Question 38 (delinquent debts over 180 days in duration) or Question 39 (delinquent debts more than 90 days in duration). Applicant had debts more than 90 and 180 days delinquent as set forth in SOR paragraphs 1.a. through 1.o and 1.q through 1.u. Applicant had no explanation as to why he failed to list his delinquent debts. (Tr. 60; Exhibits 1 and 2)

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.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense

determination required.

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. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Financial Considerations: *The Concern*: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. E2.A6.1.1

Foreign Influence: *The Concern:* A security risk may exist when an individual's immediate family, including cohabitants, or other persons to whom he may be bound by affection, influence, or obligation, are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure. E2.A2.1.1

Personal Conduct: *The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. E2.A5.1.1

CONCLUSIONS

The Government established by substantial evidence and Applicant's admissions several of the allegations in paragraphs 1, 2, and 4 of the SOR, respectively. The Government withdrew the paragraph 3 criminal conduct allegations.

Regarding financial considerations and applicable Disqualifying Conditions (DC), Applicant has a history of not meeting financial obligations (E2.A6.1.2.1) and has an unwillingness or inability to satisfy his debts (E2.A6.1.2.3) Applicant incurred many debts, including many medical debts when knowing he had no insurance or ability to pay for the services rendered. He did not repay the debts for several years, including debts he incurred at a health club and for an ad in a telephone book, unrelated to his medical problems.

Regarding Mitigating Conditions (MC), Applicant has repaid all but six debts. He used the proceeds of a lawsuit settlement to do so, but about \$3,000 in debt remains. Instead of repaying those debts or arranging installment payment plans, Applicant used the \$15,000 balance of his settlement proceeds to fix a pickup truck. When he had the funds to pay his family physician's bill, he did not do so, instead claiming that person wrote off the debt. Those debts remain on Applicant's credit report even after Applicant asserted at the hearing they would not appear on that report. Applicant's back problem is a recurring medical problem, not an unexpected medical emergency. Applicant's repayment of debts makes applicable for those debts alone the MC of his initiation of a good-faith effort to repay overdue creditors or otherwise resolve debt (E2.A6.1.3.6). However, when considering six debts remain unpaid while Applicant also is borrowing money to build a new house, I conclude this security concern against Applicant.

The applicable foreign influence security concern DC is an immediate family member, or a person to whom the

individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country (E2.A2.1.2.1).

Because Applicant's parents and siblings living in Syria are in a position to be exploited by that government in a way that could force Applicant to choose between loyalty to his family and the United States, even though his family are not Syrian agents, I do not apply MC E2.A2.1.3.1. Furthermore, Applicant's semi-monthly contact with his parents and monthly financial support show his contact with them is not casual or infrequent, nor is his periodic contact with his brother and sister in Syria, so MC E2.A2.1.3.3 does not apply. I conclude this security concern against Applicant.

Applicant admitted he deliberately failed to disclose his delinquent debts, the several judgments against him, his 1995 Chapter 7 bankruptcy, and his 1987 and 1997 arrests on his SCA. The arrests he did not disclose to avoid embarrassment, he admitted. He had no explanations for the other disclosure failures, except his purported confusion between a criminal conviction and a civil judgment. I do not believe this explanation. He has a college degree and has been in the U.S. for over 20 years, and seemed quite capable of reading plain English-language questions that were on the SCA. Nor do I find persuasive his excuse that he needed a credit report to remember all his debts. Anyone who incurred all those debts without the ability to repay them certainly cannot forget them. I conclude there is a pattern of deliberate falsification in his answers on the SCA after I considered all the evidence. DC applicable are the deliberate falsification of relevant and material facts from any personal security questionnaire used to determine security clearance eligibility or trustworthiness (E2.A5.1.2.2), and a pattern of dishonesty or rule violations (E2.A5.1.2.5)

There are no MC applicable here. Applicant had no credible or persuasive explanation for his pattern of falsification and lack of complete and truthful information on the SCA. Therefore, I conclude this security concern against Applicant.

The Government withdrew the criminal conduct security concern at the hearing, so I do not need to discuss the issues in that security concern. The lack of disclosure of Applicant's arrest record was discussed in the personal conduct section. No formal findings are made on that security concern as a consequence.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: For Applicant
Subparagraph 1.b: Against Applicant
Subparagraph 1.c: For Applicant
Subparagraph 1.d: For Applicant
Subparagraph 1.e: For Applicant
Subparagraph 1.f: Against Applicant
Subparagraph 1.g: For Applicant
Subparagraph 1.h: Against Applicant
Subparagraph 1.i: Against Applicant
Subparagraph 1.j: Against Applicant
Subparagraph 1.k: For Applicant
Subparagraph 1.l: For Applicant
Subparagraph 1.m: For Applicant
Subparagraph 1.n: For Applicant
Subparagraph 1.o: For Applicant
Subparagraph 1.p: Against Applicant
Subparagraph 1.q: For Applicant
Subparagraph 1.r: For Applicant
Subparagraph 1.s: For Applicant
Subparagraph 1.t: For Applicant
Subparagraph 1.u: For Applicant
Subparagraph 1.v: For Applicant
Subparagraph 1.w: For Applicant

Paragraph 2. Guideline B: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: For Applicant

Subparagraph 2.e: Against Applicant

Paragraph 3. Guideline J: WITHDRAWN

Paragraph 4. Guideline E: AGAINST APPLICANT

Subparagraph 4.a: Against Applicant

Subparagraph 4.b: Against Applicant

Subparagraph 4.c: Against Applicant

Subparagraph 4.d: Against Applicant

Subparagraph 4.e: Against Applicant

Subparagraph 4.f: 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.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).