

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is an engineer on call for an engineer placement firm providing engineers for defense contractors. Applicant had a security clearance while working for various defense contractors. Applicant has been on sick leave after an accident for about five years and is now able to work and requires a security clearance. He has five long standing debts, most stemming from medical treatment, he has not satisfied. The sum total of these debts is small and Applicant has sufficient resources to pay the debts. Applicant is unwilling to satisfy them until he is employed. Applicant also exaggerated his education level at the hearing before an Administrative Judge but this was not a deliberate intent to deceive the government. Clearance is denied.

CASENO: 03-21012,h1

DATE: 01/31/2005

DATE: January 31, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-21012

**DECISION OF ADMINISTRATIVE JUDGE**

**THOMAS M. CREAN**

**APPEARANCES**

## **FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

## **SYNOPSIS**

Applicant is an engineer on call for an engineer placement firm providing engineers for defense contractors. Applicant had a security clearance while working for various defense contractors. Applicant has been on sick leave after an accident for about five years and is now able to work and requires a security clearance. He has five long standing debts, most stemming from medical treatment, he has not satisfied. The sum total of these debts is small and Applicant has sufficient resources to pay the debts. Applicant is unwilling to satisfy them until he is employed. Applicant also exaggerated his education level at the hearing before an Administrative Judge but this was not a deliberate intent to deceive the government. Clearance is denied.

## **STATEMENT OF THE CASE**

On July 20, 2004, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb 20, 1990), 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). Applicant acknowledged receipt of the SOR on July 26, 2004. The SOR alleges security concerns under Guideline F (Financial Considerations) of the Directive.

Applicant answered the SOR in writing on August 13, 2004. He admitted six and denied three of the allegations under Guideline F. He requested a hearing before an administrative judge. The request for a hearing was received by DOHA on August 17, 2004. Department Counsel was prepared to proceed with the case on September 9, 2004. The case was assigned to another administrative judge on September 10, 2004, and reassigned to me on November 10, 2004. A Notice of Hearing was issued on November 29, 2004. The hearing was held on December 14, 2004. Twenty-six government exhibits and five Applicant exhibits and the testimony of the Applicant were received during the hearing. The record was held open for 15 days for Applicant to provide documentary information one of the debts had been satisfied. The documentary evidence was received on December 23, 2004. The SOR was amended at the trial without objection by

Applicant to include one allegation under Guideline E (Personal Conduct). Applicant denied the allegation at the hearing. The transcript was received on December 30, 2004.

### **FINDINGS OF FACT**

Applicant is a 60-year-old engineer on call for a personnel placement service providing engineers to defense contractors. Applicant has been employed by various defense contractors in engineer capacities for over 30 years. He was injured in an accident in 2000 and has since been on sick leave from his employment. At the request of his employer anticipating his return to work, Applicant submitted a security clearance application in 2002. Applicant is now able to work and his defense contractor employment placement agency wants him to have a security clearance so he can be placed with a defense contractor.

Applicant's credit bureau report and background investigation revealed nine debts either subject to collection, past due, or under civil judgment. Initially, Applicant contested three of the debts and admitted six were valid debts but he was waiting for documentary information to establish some may be mistakes. At the hearing, documentary information shows debt b was paid by Applicant's medical insurance. Government Exhibit 6. At the hearing, documentary information shows debt h to an attorney was a mistake and is now resolved. Government Exhibits 4 and 9. Documentary information at the hearing shows the incident, listed as criminal child non-support and debt i, was not prosecuted by the State since Applicant was providing adequate support for his children. Government Exhibit 12. Of the six other debts, Applicant presented documentary information after the hearing to show debt a has been satisfied. Five of the debts are still not satisfied.

The five debts still not satisfied and admitted by Applicant amount to approximately \$600. The debts are mainly medical co-payments not paid by insurance. The debts were not paid because Applicant was unemployed or injured. Applicant receives approximately \$1,500 a month in social security disability payments. Applicant stated he has over \$25,000 in money order in a locked cabinet in his room. (Tr. p. 53) Applicant will not use these funds to satisfy his debts. Applicant stated he would satisfy the debts when he was finally employed.

During the hearing, Department Counsel asked Applicant for his education level. Applicant answered he had a bachelors degree. (Tr. p. 55.) In response to questions from the Administrative Judge, Applicant could not state what accredited university awarded him a bachelor's degree. Applicant's security clearance application does not list a bachelor's degree but does list two associate's degrees in engineering subjects. Applicant stated he "self-awarded" the bachelor's degree based on the two associate degrees and his work experience. He mentioned organizations that awarded degrees based solely on work experience and not based on academic work. (Tr. ps. 60-62.) Applicant's statement concerning his bachelor's degree was the basis for Department Counsel to amend the SOR to add the allegation under Guideline E.

## 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 judgement, 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 Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

"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: (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 applicant'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 of recurrence. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

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, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between

proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determination should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

## CONCLUSIONS

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

Under Guideline F (Financial Considerations), a security concern exists for an individual who is financially irresponsible. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. Directive ¶ E2.A6.1.1. Under Guideline E (Personal Conduct), a security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, *lack of candor*, *dishonesty*, or unwillingness to comply with rules or regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

Applicant's debts that have not been satisfied brings the matter within Financial Consideration Disqualifying Condition Directive ¶ E2.A6.1.2.2 (*a history of not meeting financial obligations*); and Directive ¶ E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*). Applicant's five debts have been outstanding for a number of years. He refuses to satisfy them even though he claims he has the resources to do so. I conclude the disqualifying conditions have been established.

The Financial Consideration Mitigating Conditions that should be considered for Applicant's debts are: Directive ¶ E2.A6.1.3.1 (*the behavior was not recent*); Directive ¶ E2.A6.1.3.2 (*it was an isolated incident*); Directive ¶ E2.A6.1.3.3 (*the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, business downturn, unexpected medical emergency, or a death, divorce or separation)*); and Directive E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Appellant's debts are long standing some being outstanding for approximately seven years. The debts are separate and incurred at separate times so they are not isolated. While initially Applicant may not have been able to pay the debts for reasons beyond his control, he now has the ability to pay the debts but refuses to use his assets to do so. He has made no

effort to pay his creditors. In fact, Applicant refuses to pay the debts until he determines it is appropriate to do so. His irresponsible disregard for his debts provides an indication that his personal beliefs and desires may take precedence over the rules to safeguard classified information. I conclude Applicant has not mitigated the financial consideration security concerns.

Applicant's false information at the hearing on his education brings the matter under Personal Conduct Disqualifying Condition Directive ¶ E2.A5.1.2.3 (*deliberately providing false or misleading information concerning relevant and material matters to . . . other official representative in connection with a personnel security or trustworthiness determination*). A finding of falsification requires evidence that the Applicant acted with an intent to mislead or deceive the government. The record evidence as a whole must be considered to determine whether there is direct or circumstantial evidence concerning Applicant's intent or state of mind at the time the statement was made. Applicant stated at the hearing he had a bachelor's degree. His security clearance application does not list a bachelor's degree but does list two associates degrees. On further questioning by the Administrative Judge, Applicant stated he "self awarded" the degree since he had the associates degrees and significant work experience. He alluded to organizations awarding degrees based on work experience and not academic work. I conclude from a reading of the record evidence and questioning of the Applicant at the hearing that he did not have an intent to mislead or deceive the government in making the statement he had a bachelors degree. It is his belief, no matter how misguided, that he has education and work experience equivalent to a bachelor's degree and thus he has one. The Personal Conduct Disqualifying Condition has not been established. While the disqualifying condition has not been established, the testimony of Applicant and the circumstances of the hearing will be considered under the "whole person" concept in determining Applicant's suitability for access to classified information.

I carefully considered all of the circumstances in light of the "whole person" concept and apply a fair, impartial, and commonsense decision. I conclude Applicant is not eligible for access to classified information.

### **FORMAL FINDINGS**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For 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.: For Applicant

Subparagraph 1.i.: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

### **DECISION**

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

Thomas M. Crean

Administrative Judge