

DATE: November 30, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-23765

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has more than \$29,000 in delinquent debts. He filed for Chapter 13 bankruptcy protection and his payment plan was approved in July 2005, shortly before the hearing. Applicant failed to mitigate security concerns raised by his financial situation and his deliberate falsification of his security clearance application about his financial situation. 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 9 December 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations), Guideline J (Guideline J), and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on 4 February 2005, and elected to have a hearing before an administrative judge. The case was assigned to me on 27 June 2005. On 17 August 2005, 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 hearing transcript (Tr.) on 25 August 2005.

At the hearing, Department Counsel moved to amend the SOR ¶ 2 by changing the citation to ¶¶ 1.a(1), (2), (3) and 1.b to ¶¶ 3.a and 3.b. Applicant had no objection, and I granted the motion.

FINDINGS OF FACT

Applicant is a 45-year-old technician for a defense contractor. Applicant retired from the U.S. Army at the rank of staff sergeant (E-6) after 22 years of service. He had a clearance from 1983 until 1999 while he was in the Army. He had an interim clearance for his current contractor, but it was suspended pending resolution of the SOR allegations.

In April 1979, while Applicant was in the Army, military authorities conducting a health and welfare inspection of his barracks, found marijuana in Applicant's wall locker. He was punished for possession of marijuana under Article 15,

UCMJ.

Applicant was arrested for driving while intoxicated (DWI) in September 1980 by military authorities. After being taken to a military police station, he was released. He was never charged with or convicted of any offense in relation to this incident. Answer; Tr. 25.

In 1997, Applicant was arrested for and charged with driving under the influence of alcohol. His blood/alcohol content was .118%. The county prosecutor dismissed the case. Ex. 6. Applicant mistakenly listed the date of this offense as 1991 in his security clearance application.

In December 1998, Applicant was involved in a traffic accident. Applicant left the scene and later returned. A private citizen made a citizen's arrest, charging him with DWI. Police took him into custody and provided him a breath test. Applicant provided two samples; one tested at .041%, the other tested at .039%. Both were considerably below the statutory limit. Applicant was released and never formally charged with an offense.

Applicant completed a security clearance application (SCA) on 7 March 2002 by certifying that his statements were "true, complete, and correct" to the best of his knowledge and belief, and acknowledging that he could be fined or imprisoned, under 18 U.S.C. § 1001, for "a knowing and willful false statement." Ex. 1 at 10. Question 24 of the SCA asked if Applicant had ever been charged with or convicted of any offenses related to alcohol or drugs. Applicant answered "yes," and listed a DUI offense in July 1991 as being dismissed. Ex. 1 at 8.

Question 38 asked if, in the previous seven years, Applicant had ever been delinquent more than 180 days on any debts. Question 39 asked if Applicant was then delinquent more than 90 days on any debts. Applicant answered "no" to both questions. Ex. 1 at 1.

Applicant incurred several debts which he did not pay in a timely manner. Applicant admits to having more than \$14,000 in bad debts that were charged off and more than \$15,000 in debts were in collection status when he was served with the SOR. Answer. Applicant received debt management credit counseling and had a plan to pay off some of the debts. Ex. 2 at 7. Nevertheless, a credit report from February 2004 showed that several of these debts still had not been resolved.

Applicant submitted evidence that he filed for Chapter 13 bankruptcy protection and, in July 2005, the court issued an order confirming the plan and valuing the claims to be paid. Applicant asserts all of the remaining debts have been consolidated in the payment plan.

Applicant was unemployed the first six months of 2001.

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline F-Financial Considerations

In the SOR, DOHA alleged Applicant had delinquent debts totaling more than \$15,700 that were in collection status (¶¶ 1.a, 1.e-1.h); had delinquent debts totaling more than \$15,800 that had been charged off as bad debts (¶¶ 1.b-1.d, 1.i-1.o); and was personally able to pay these debts but chose not to do so (¶ 1.p). Applicant admitted each of the allegations, except those in ¶¶ 1.b, 1.f, and 1.i. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government's evidence and Applicant's admissions constitute evidence of potentially disqualifying conditions under Guideline F. The Government established by substantial evidence each of the allegations in the SOR, except for those in ¶¶ 1.1.b, 1.f, and 1.i. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1.) and has unable or unwilling to satisfy his debts (DC E2.A6.1.2.3.). An applicant may mitigate financial considerations disqualifying conditions by showing his debts were largely beyond his control. MC E2.A6.1.3.3. Applicant explained that he was out of work for six months in 2001. Applicant also made a good-faith effort to resolve these debts. MC E2.A6.1.3.6. He paid off a few of the minor debts, participated in a debt consolidation plan, and now has a Chapter 13 bankruptcy plan. Nevertheless, I find Applicant has not fully mitigated the security concerns raised by his financial situation. Although he was out of work for six months in 2001, he has failed to substantially reduce his debts in the past four years. He participated in a debt consolidation plan, but produced no evidence to establish that he had resolved any of his debts through the plan. He has an approved Chapter 13 plan to resolve these debts, but the plan is only a few months old and requires him to make substantial payments each month-\$1,300 a month to the trustee for the first six months and \$1,800 a month thereafter. Under the circumstances, I conclude Applicant has not demonstrated a sufficient record of solvency and paying his bills to mitigate the financial security concerns.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant falsified his SCA by failing to disclose all of the instances in which he had been charged with or convicted of a drug or alcohol-related offense (¶ 3.a) and failing to disclose that, in the previous seven years, he had debts that were delinquent more than 180 days, and that he then had delinquent debts that were delinquent more than 90 days (¶ 3.b). Applicant denied both allegations. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The deliberate omission of relevant and material facts from any SCA is a security concern and may be disqualifying. DC E2.A5.1.2.2. Information is material if it would affect a final agency decision or, if incorrect, would impede a thorough and complete investigation of an applicant's background. ISCR Case No. 01-06870, 2002 WL 32114535 at *6 (App. Bd. Sep. 13, 2002). An applicant's criminal history and financial situation are matters that could affect a final agency decision on whether to grant the applicant a clearance and his failure to disclose it would impede a thorough investigation of the applicant's background.

Question 24 of the SCA required Applicant to admit and list any alcohol- or drug-related offenses for which he was "charged or convicted." The term "charged" is a legal term of art meaning that an indictment, information, or complaint had been filed in a criminal proceeding. The record establishes that Applicant was only formally charged in a criminal proceeding for the 1997 DUI, which Applicant listed on his SCA, albeit with the 1991 date. Although possession of marijuana is a criminal offense, Applicant was never criminally charged with the offense. He was charged under Article 15, UCMJ, which is a nonjudicial proceeding. Although he was arrested for other alcohol-related offenses, he was never formally charged. Therefore, I conclude Applicant did not falsify his answer to question 24.

Question 38 asked for financial delinquencies in the previous seven years that were delinquent more than 180 days, and question 39 asked for delinquencies that were then delinquent more than 90 days. Applicant asserts he thought he was current because he was current on his debt consolidation plan. Under all the circumstances, I find this answer to be incredible. Applicant knew he was delinquent on his debts-that is why he had the consolidation plan. Furthermore, it is obvious that some of the debts in the consolidation plan had been delinquent more than 180 days during the previous

seven years. I conclude Applicant deliberately falsified his SCA in his answers to question 38 and 39.

After careful consideration, I find none of the mitigating conditions listed under the guideline apply. Although the falsification occurred some time ago, in arch 2002, it was part of the investigation of his current application for security clearance. Under all the circumstances, I find against Applicant on ¶ 3.b.

Guideline J-Criminal Conduct

In the SOR, DOHA alleged Applicant possessed marijuana in April 1979 (¶ 2.a); drove while intoxicated in September 1980 (¶ 2.b); drove under the influence in July 1997 (¶ 2.c); drove while intoxicated in December 1998 (¶ 2.d); and violated 18 U.S.C. § 1001 by falsifying his SCA in March 2002. Applicant admitted the allegation in ¶ 2.a, but denied the remaining allegations. A history or pattern of criminal activity creates doubt about an applicant's 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 or knowingly make or use a false writing in any matter within the jurisdiction of 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. An Applicant's criminal conduct and financial situation are relevant and material to a determination of an Applicant's security worthiness. After carefully reviewing all of the evidence, I conclude Applicant deliberately falsified his security clearance with regard to his financial situation.

I conclude Applicant engaged in criminal conduct amounting to a serious offense and multiple lesser offenses-DC E2.A10.1.2.1 and DC E2.A10.1.2.2-for possession of marijuana in 1979, driving while intoxicated in 1997, and violating 18 U.S.C. § 1001 by deliberately falsifying his SCA with regard to his financial condition. Violating 18 U.S.C. § 1001 is a serious offense-it is a felony punishable by five years in jail. None of the mitigating conditions listed under the guideline apply. Therefore, I find against Applicant on ¶¶ 2.a, 2.c, and 2.e. Although Applicant was arrested for DWI in 1980 and 1998, the evidence does not support a finding that he actually engaged in the criminal conduct alleged in ¶¶ 2.b and 2.d.

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: For Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: For 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

Paragraph 2. Guideline J: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: For Applicant

Subparagraph 2.e: Against Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a: For Applicant

Subparagraph 3.b: Against Applicant

DECISION

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

James A. Young

Administrative Judge

1. As required by 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).