

DATE: November 15, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-24733

ECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Braden Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant wrongfully used a company credit card for personal expenses. He failed to disclose numerous delinquent debts on his security clearance application. He has paid off many delinquent debts, but he remains almost \$6,300.00 in debt and his income barely covers current expenses. Applicant rebutted deliberate falsification of his security clearance application and mitigated security concerns based on credit card abuse, but he did not mitigate security concerns based on delinquent debts. Clearance is denied.

STATEMENT OF THE CASE

On July 13, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. This action was taken under Executive Order 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). The SOR alleges security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on July 16, 2004, and requested a hearing. Under Guideline F, he admitted one allegation of credit card abuse and eight delinquent debts, and he offered explanations. He asserted that two debts had been paid. Under Guideline E, he admitted that he was fired from a previous job for cause and abused a company credit card in retaliation, and he offered an explanation for his conduct. He denied an allegation he intentionally falsified his security clearance application.

The case was assigned to me on August 12, 2004. On August 23, 2004, DOHA issued a notice of hearing setting the case for September 9, 2004. Applicant appeared as scheduled. DOHA received the transcript (Tr.) on September 17, 2004.

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I also make the following findings:

Applicant is a 34-year-old heavy equipment operator for a defense contractor. He has worked for his present employer since September 1, 2001. (Government Exhibit 1, p. 2, Tr. 7) He is a high school graduate. (Tr. 77)

Applicant married his current wife on November 11, 1994, and he has a 14-year-old stepdaughter. Applicant was previously married in January 1991 and divorced in January 1994. (Government Exhibit 1, p. 3; Tr. 59)

In the summer of 2000, Applicant's former employer ordered him to travel out-of-state at a time when Applicant's wife and stepdaughter were scheduled to return home after a six-week absence. His stepdaughter's father had abducted her and Appellant's wife was away from home for six weeks locating her and bringing her back home. (Tr. 90) When Applicant refused to travel at that time, his employer fired him and refused to pay him for his last pay period.

After being told that he was fired, Applicant then used a company credit card to buy gasoline and groceries for his family in the amount of \$778.78, which was less than the pay due to Appellant. (Tr. 90-91) In an interview with a Defense Security Service (DSS) investigator, Applicant admitted he used the credit card because he was angry about being fired. (Government Exhibit 4, p. 3)

Applicant was indicted on March 6, 2001, for felony credit card abuse. He pleaded guilty on May 14, 2001, and was sentenced to three years' probation, a \$1,000.00 fine, restitution of \$778.78, and court costs of \$287.25. (Government Exhibit 7, pp. 1, 5) Applicant successfully completed his probation on May 13, 2004. (Applicant's Exhibit C) On August 26, 2004, the case was dismissed. (Applicant's Exhibit D)

In his current position, Applicant has held a company credit card for four years. He was given the card even though his employer knew about the previous credit card abuse. He has not abused this credit card. (Tr. 61-62)

On September 18, 2002, Applicant executed an electronic version (EPSQ) of a Security Clearance Application (SF 86). He disclosed he had been fired from a previous job and arrested for credit card abuse. The SF 86 reflects a negative answer to question 38, asking whether Applicant had any debts in the last seven years that were more than 180 days delinquent. (Government Exhibit 1, p. 9) This answer is inconsistent with Applicant's handwritten worksheet, which disclosed a delinquent credit card debt of \$2,500.00 incurred on July 1, 1993. (Applicant's Exhibit Z, p. 27. The SF 86 also reflects a negative answer to question 39, asking whether Applicant currently had any debts more than 90 days delinquent, but the handwritten worksheet reflects that he disclosed a debt of \$3133.00 incurred on July 11, 1993. Applicant's facility security officer explained that the EPSQ would not accept Applicant's negative answer to question 38 because the disclosed debt was more than seven years old. (Applicant's Exhibit B)

Applicant previously completed a SF 86 in 2000, using the same worksheet. He made a copy of his 2000 worksheet and resubmitted it in 2002. When he was interviewed by a DSS agent about his 2000 security clearance application, he submitted a detailed list of all his delinquent debts. (Government Exhibit 4, pp. 6-7) He did not update his worksheet when he resubmitted it in 2002, nor did he submit a list of delinquent debts along with his worksheet.

At the hearing, Applicant testified that when he executed the SF 86 in 2002 he "didn't really care about it," and he did not understand that it was "that big of a deal" until he was questioned about it by a security investigator. (Tr. 99) He merely "skimmed" the EPSQ before signing it. (Tr. 103) He testified that he does not understand why his debts were not listed on the 2002 SF 86 because he had provided "a whole list of [his] debts." (Tr. 107) It did not occur to him that the old SF 86 worksheet was out of date and that he needed to resubmit an updated list of delinquent debts. (Tr. 108).

In his answer to the SOR, Applicant admitted eight delinquent debts totaling \$6,883.00. All were more than 180 days delinquent. Five were more than five years old. None were reflected on the EPSQ or Applicant's worksheet.

A number of delinquent debts not listed on the SOR have been paid in full. They include \$1000.00 for delinquent income taxes and a total of \$6,000.00 in personal loans from four persons who helped Applicant when he was arrested for credit card abuse. (Government Exhibit 4, p. 7; Government Exhibit 8, pp. 8-11; Applicant's Exhibit A, p. 2)

Many of Applicant's debts were incurred during his first marriage because his wife spent large sums of money for telephone calls and travel to visit with her family. After Applicant was divorced, he was responsible for all the debts from the marriage. Until about five years ago he "was a young bullhead," and he refused to pay these debts. (Tr. 85)

After Applicant remarried, his second wife was responsible for the debts from her first marriage. (Government Exhibit 4, p. 1) In the summer of 2000, Applicant's financial problems were exacerbated by the parental abduction of his stepdaughter, which cost Applicant the equivalent of a month's pay in travel expenses and legal fees.

Applicant's wife manages the family finances. At the hearing, Applicant was unable to answer many specific questions about his finances and deferred to his wife. She produced evidence that four delinquent debts (SOR ¶¶ 1.c., 1.e., 1.f., and 1.g.) were paid in November 2003. (Applicant's Exhibit A, pp. 3-4; Tr. 66-69) Although Applicant admitted the debt alleged in the SOR ¶ 1.c. when he answered the SOR, his wife's testimony and documentary evidence indicates this debt was paid. (Tr. 66, 68, Applicant's Exhibit 4, p. 4) She produced evidence that Applicant had attempted to pay a \$190.00 legal fee (SOR ¶ 1.b.), but the lawyer was seriously ill, had closed his office, and could not be found. (Applicant's Exhibit A; Tr.6) Applicant still owes about \$6,295.00 to six creditors listed in the SOR ¶¶ 1.b., 1.d., 1.h., 1.i., 1.j., and 1.k.

Applicant's take-home pay is about \$2,000.00 per month (Tr. 81), and his wife's is about \$1,000.00 per month. (Tr. 60) She receives child support \$440.00 per month from her ex-husband, who sometimes fails to pay. (Tr. 61) In a month with no unexpected expenses, their net monthly remainder after paying all bills is about 25 to 30 dollars. (Tr. 64) Applicant's wife has worked with a credit counseling agency for several years and continues to do so. (Tr. 73-74, 111)

Applicant is regarded as hard-working and trustworthy by many of his friends, associates, co-workers, and supervisors. (Applicant's Exhibits M-U; Applicant's Exhibit X, pp.13-33) He served in the U.S. Army from August 1990 until July 1994, and he received numerous certificates of training and letters of commendation and appreciation. (Applicant's Exhibit X, pp. 1-12).

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 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 a fair, impartial, and 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.

In evaluating an applicant's conduct, 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 or 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 determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

Guideline F (Financial Considerations)

Under Guideline F, an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Based on the entire record, I conclude that three disqualifying conditions (DC) are established. DC 1 is established because the record reflects a history of not meeting financial obligations. Directive ¶ E2.A6.1.2.1. DC 2 (deceptive or illegal financial practices) is established by Applicant's admitted credit card abuse. Directive ¶ E2.A6.1.2.2. DC 3 (inability or unwillingness to satisfy debts) is established by Applicant's admitted inability to pay \$6,295.00 in delinquent debts to six creditors. Directive ¶ E2.A6.1.2.3.

Several mitigating conditions (MC) are applicable to this case. MC 1 (behavior not recent) and MC 2 (isolated incident) apply to the credit card abuse that occurred in July 2000 and the financial ramifications of that conduct. Directive ¶¶ E2.A6.1.3.1., E2.At.1.3.2. Although Applicant's financial problems are long-standing and continue to the present, he enjoys a reputation for hard work and integrity. The credit card abuse was a one-time incident that has not been repeated even though Applicant has continued to be entrusted with a company credit card for four years. I conclude that the credit card abuse alleged in the SOR ¶ 1.a. is mitigated.

MC 4 is established when financial conditions "were largely beyond the person's control." Directive ¶ E2.A6.1.3.3. MC 4 is established with respect to the abduction of Applicant's stepdaughter and expenses related to that incident. It is also established regarding the legal fee alleged in the SOR ¶ 1.b., because Applicant has been unable to locate the creditor. I conclude that the conduct alleged in SOR ¶ 1.b. is mitigated.

MC 5 is established when "[t]he persons has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control." Directive ¶ E2.A6.1.3.4. The first prong of this condition has been established by testimony that Applicant's wife, who is the family financial manager, has received and continues to receive help from a credit counseling agency. The second prong has been established for the debts that have been paid (SOR ¶¶ 1.c., 1.e., 1.f., and 1.g). With respect to these debts, I conclude that Applicant's conduct has been mitigated. However, the second prong is not established for the debts alleged in the SOR ¶¶ 1.d., 1.h., 1.i., 1.j., and 1.k., because the evidence does not establish that these debts are being resolved or are under control.

MC 6 is established when an Applicant has "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Based on the testimony of Applicant and his wife, supported by documentary evidence, I conclude that MC 6 is established.

Notwithstanding the mitigating conditions established by the evidence, when I view Applicant's financial situation as a whole in light of the applicable disqualifying conditions, mitigating conditions, and the general adjudicative guidelines, I conclude that Applicant has not mitigated the security concerns under Guideline F. Applicant appears to be hard-working, loyal, and patriotic. Unfortunately, he is also financially overextended. He and his wife live on the financial edge. They have no discretionary funds to cover unexpected expenses. They have no specific plan for getting out of

debt. With a net remainder after expenses of no more than \$30.00 per month, the likelihood that they will be able to resolve \$6, 295.00 in delinquent debts in the foreseeable future is not encouraging.

Guideline E (Personal Conduct)

Termination of Employment and Credit Card Abuse (SOR, ¶ 2.a.)

Under Guideline E, security concerns may be raised by "conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations." Applicant's termination for refusal to accept an out-of-state assignment during a time of family crisis raises no significant security concerns. However, his abuse of a company credit card after being terminated raises issues of trustworthiness, reliability, and honesty. Although he used the credit card for family necessities, he was motivated in part by anger rather than concern for his family.

DC 1 is established where there is "reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances." Directive ¶ E2.A5.1.2.1. Information about Applicant's credit card abuse was provided by his former employer and corroborated by Applicant's admissions and guilty plea. Under the general adjudicative guidelines, I have noted that Applicant's conduct was serious (Directive ¶ E2.2.1.1.), that he was a mature adult who should have been aware of the seriousness of his conduct (Directive ¶ E2.2.1.4.), and that his conduct was motivated in part by anger (Directive ¶ E2.2.1.7).

DC 4 (personal conduct that increases vulnerability to coercion, exploitation, or duress) is not established because Applicant's conduct quickly became public knowledge. Applicant disclosed his conduct to his current employer. DC 5 (pattern of dishonesty or rule violations) is not established because the credit card abuse was a single incident, not a pattern.

Several mitigating factors under the general adjudicative guidelines are relevant. I note that Applicant's conduct was a single incident that occurred four years ago (Directive ¶ E2.2.1.3.). Applicant has behaved with integrity since the incident (Directive ¶ E2.2.1.6); he is not vulnerable to coercion, exploitation, or duress (Directive ¶ E2.2.1.8); and the likelihood of recurrence is remote (Directive ¶ E2.2.1.9). On the basis of the entire record, I conclude that Applicant has mitigated the security concerns under Guideline E that are based on his credit card abuse.

Falsification (SOR ¶ 2.b.)

The disqualifying condition at issue is DC 2, deliberate omission of relevant and material facts from the security clearance application. A "deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire" can raise a security concern and may be a disqualifying condition. Directive ¶ E2.A5.1.2.2. When deliberate falsification is alleged there must be "a showing that the applicant acted with intent to mislead or deceive the government by not disclosing the information." ISCR Case No. 00-0302, 2001 DOHA LEXIS 337 at *5 (App. Bd. Apr. 23, 2001). Applicant admits omitting the information regarding his delinquent debts, but he denies that intentionally falsified his application. Proof Applicant omitted this information from his SF 86 shifted the burden to him to explain the omissions sufficiently to negate a finding of knowing and deliberate falsification. *See* ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004).

Based on the specific facts of this case, I am satisfied that Applicant did not intentionally falsify his answer to question 38 on his SF 86. He appears to be an intelligent, straightforward, honest person, but he has no talent for or interest in record keeping and financial management. Based on his testimony and the entire record, and having observed his demeanor while testifying, I find his denial of intentional falsification plausible and credible. When he filed out his SF 86 worksheet in 2000, he answered question 38 in the affirmative and listed one delinquent debt. There was room on the form for one debt and one is all he listed. He did not have a copy of his credit report at that time. He disclosed other derogatory information: he had been previously fired, and he had been arrested for credit card abuse. He disclosed another delinquent debt under question 39. He fully disclosed his delinquent debts when he was interviewed by a DSS agent in October 2001.

When Applicant was required to complete another security clearance application in September 2002, he simply copied

his previous worksheet without updating it and submitted it to his security officer. It did not occur to him that the list of delinquent debts he previously had submitted to the DSS investigator would not automatically be reported. Even though he had answered "yes" to question 38 on his worksheet, the EPSQ would not accept a "yes" answer because the only listed debt was more than seven years old. Accordingly, a negative answer was entered. Applicant carelessly skimmed the electronic form and signed it. Based on the entire record, I conclude that Applicant was negligent, but not guilty of intentional falsification.

FORMAL FINDINGS

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

Paragraph 1. Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Paragraph 2. Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

DECISION

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

LeRoy F. Foreman

Administrative Judge