

DATE: November 6, 2003

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-32946

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Catherine Engstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Forty-six-year-old machine operator had a history of failing to meet his financial obligations. Although he has paid most of his bad debts off, he remains deeply in debt as a result of a judgment, and his monthly payments are not sufficient to pay off the accumulating interest. Applicant deliberately falsified relevant and material facts about financial condition on his security clearance application. 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 11 March 2003, under the applicable Executive Order ⁽¹⁾ and Department of Defense Directive, ⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on 29 April 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 13 August 2003. The case was originally scheduled to be heard on 18 September 2003, but as the U.S. Government was closed on that date due to Hurricane Isabel, the hearing was rescheduled with Applicant's consent. On 30 September 2003, 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 transcript (Tr.) of the proceeding on 7 October 2003. I kept the record open so that Applicant could submit three additional exhibits that were admitted without objection from department counsel.

FINDINGS OF FACT

Applicant is 46 years old. He is a skilled machine operator who is assigned jobs out of his union hall. One of the companies for whom he has worked wishes to employ him in a position that requires a security clearance. Tr. 15-17. He is married and lives with his wife and one of his three children.

Applicant's financial problems began when he was self-employed as a general contractor. In 1996, Applicant purchased

a four-wheel drive backhoe, an end-loader, a dump truck, and a trailer for his business. Within a year, he was unable to make the payments on the \$43,000 loan as he was unable to sustain his business. Sometime thereafter, possibly 1998, the equipment was repossessed and sold. Tr. 20-22. In 1999, the creditor obtained a judgment against Applicant for over \$18,000. Tr. 22. Applicant pays \$125 a month, at over 11 percent interest, to satisfy the judgment. Tr. 22. He has not always been able to make the payments. His current debt is over \$25,000. Ex. B.

Applicant and his wife have settled the delinquent accounts to two department stores and the dentist. Applicant's home state filed a tax lien against Applicant in 1999 for non-payment of a state tax debt of \$242. The lien was released in December 1999. Exs. A, C, D. In June 2002, Applicant settled a delinquent debt for medical services of over \$600 after the provider of those services filed a civil action against him. In 2001, Applicant owed a timber tax of approximately \$1,500. The tax was collected by intercepting Applicant's federal tax refund.

On 23 April 2002, Applicant completed his security clearance application (SCA) and certified that his statements on the form were true, complete, and correct to the best of his knowledge and belief. Applicant answered "no" to the following questions on the SCA:

36. In the last 7 years, have you had a lien placed against your property for failing to pay taxes or other debts?

37. In the last 7 years, have you had any judgments against you that have not been paid?

38. In the last 7 years, have you ever been over 180 days delinquent on any debts?

39. Are you currently over 90 days delinquent on any debts?

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.

Enclosure 2 of the Directive sets forth personal 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 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).

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.

CONCLUSIONS

Guideline F-Financial Considerations

In the SOR, DOHA alleged Applicant had an unpaid judgment for over \$18,000 (¶ 1.a.), had two debts that were referred for collection (¶¶ 1.b., 1.c.), had a debt charged off (¶ 1.d.), had a state tax lien against him (¶ 1.e.), and his monthly income does not permit him to repay his delinquent debts (¶1.f.). An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

Applicant has paid off all of his delinquent accounts except for the judgment that resulted from his failure to pay his loan to purchase the equipment for his business. As these debts no longer represent a security concern, finding is for Applicant on ¶¶ 1.b. - 1.d. November 5, 2003

Applicant is paying off his judgment at the rate of \$125 a month. But, because of the interest rate and amount of the judgment, Applicant is not making any progress. His debt of over \$18,000 has ballooned to over \$25,000. At an interest rate of over 11 percent, Applicant will never pay down the principle until he pays substantially more than \$125 a month. Applicant has a history of not meeting his financial obligations. DC E2.A6.1.2.1. He is unable to satisfy this debt. DC E2.A6.1.2.3. Although Applicant initiated a good-faith effort to repay overdue creditors (*see* MC E2.A6.1.3.6), at the current rate, he will never be able to satisfy the judgment against him. Finding is against Applicant on ¶ 1.a. and 1.e.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant deliberate falsified his answer to questions 36 (¶ 2.a.), 37 (¶ 2.b.), and 38 and 39 (¶ 2.c.) on his SCA. Under Guideline E, 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. Directive ¶ E2.A5.1.1.

The Government's evidence and Applicant's admissions establish by substantial evidence that Applicant answered questions 36, 37, 38, and 39 of his SCA incorrectly. The deliberate falsification of relevant and material facts from a security clearance application is a disqualifying condition. DC E2.A5.1.2.2. Thus, the issue is whether Applicant deliberately answered those questions incorrectly. Applicant contends that he did not handle the household finances, was unaware of the debts, and was mistaken concerning the unpaid judgment because he thought it occurred more than seven years prior to his completion of the SCA. I do not find Applicant's excuses persuasive.

(1) Question 36 asks about tax liens in the previous seven years. It is difficult to believe Applicant was not aware of the 1999 tax lien because he was not handling the household finances. Finding is against Applicant.

(2) Question 37 asks if Applicant had an unpaid judgment in the past seven years. Applicant has not paid this debt to date, and surely knew the judgment was still outstanding on the date he completed his SCA. Finding is against Applicant.

(3) Applicant was also well aware that he was over 180 days delinquent on debts in the past seven years and was currently over 90 days delinquent on some of the debts. Under the circumstances, none of the mitigating factors listed under the guideline apply. Finding is against Applicant.

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.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: 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.

James A. Young

Administrative Judge

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