

DATE: June 17, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-01059

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has over \$9,000 in delinquent debts. He failed to mitigate security concerns raised by his failure to satisfy his debts and list them 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 8 December 2003, DOHA issued a Statement of Reasons⁽¹⁾ (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 20 January 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 26 March 2004. On 7 April 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. DOHA received the hearing transcript (Tr.) on 15 April 2004.

FINDINGS OF FACT

Applicant is a 40-year-old senior technical specialist for a defense contractor. Ex. 1 at 1; Tr. 24. He has been married since 1999. Ex. 1 at 2. Applicant's supervisors, friends, and fellow employees find him to be a conscientious, hard-working, helpful, honest, and reliable employee. Exs. A-K.

On 5 March 1991, Applicant was involved in a motorcycle accident in which he suffered serious injuries that prevented him from working. He did not have disability insurance to cover this period he was unable to work. In August 1993, he had spinal cord surgery to repair some of the damage caused by the accident. Although he had some disability insurance to cover his expenses after the operation, his finances suffered. Tr. 17.

After the accident, Applicant was unable to make payments on his student loan from the U.S. Department of Education

(DOE). DOE declined Applicant's offer to pay a reduced amount because it would not cover the interest on the loan. So Applicant stopped paying on the loan. Applicant claims he renegotiated a payment plan with the DOE the day before the hearing. ⁽²⁾ Tr. 28.

In approximately August 1996, Applicant obtained a personal loan from a credit union in which he had a checking account. He had an overdraft of \$5 on his checking account and the credit union added a service charge that caused other checks to bounce. Applicant did not like the way the credit union handled the situation so he stopped making payments on the loan. Applicant settled the debt after being interviewed about his finances by a Defense Security Service (DSS) agent in October 2002. ⁽³⁾ Ex. 2 at 2; Tr. 27; Ex. R.

In 1997, Applicant was in an automobile accident. He did not have insurance at the time. Applicant's lawyer referred him to a clinic for treatment. Applicant thinks the treatments did not work, so he elected not to pay for them. Tr. 31-33.

Applicant paid off a few other small debts, but none since September of 2003. Applicant has not paid off any of the debts alleged in the SOR. Tr. 44. Despite his unpaid debts, Applicant financed a mortgage on his home and bought a new car for his wife. Tr. 17. He has a friend who lives with Applicant rent-free so he can attend school. Applicant still does not have a complete picture of his financial situation. Tr. 21.

On 2 May 2002, Applicant completed a security clearance application (SCA). Question 38 asked if, in the previous seven years, Applicant had debts delinquent more than 180 days. Question 39 asked if Applicant had any debts that were then delinquent more than 90 days. Applicant answered "yes" to question 38, but listed only two debts, neither of which was alleged in the SOR. Applicant answered "no" to question 39.

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 delinquent debts ((¶¶ 1.a.-1.j). totaling more than \$9,000. 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 established by substantial evidence and Applicant's admissions each of the allegations in the SOR. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1.) and is unable or unwilling to satisfy his debts (DC E2.A6.1.2.3.). Some of Applicant's financial difficulties can be traced to conditions largely beyond his control-his motorcycle and car accidents and the resulting medical expenses he incurred as a result. MC E2.A6.1.3.3. But Applicant has not made a good-faith effort to repay his creditors since the accidents, the latest of which was seven years ago. In fact, he paid none of the debts alleged in the SOR. I find against Applicant.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant falsified his SCA by deliberately failing to list debts that in the last seven years had been delinquent more than 180 days (¶ 2.a.) and debts that were then delinquent more than 90 days (¶ 2.b.). Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government established by substantial evidence that Applicant failed to fully disclose in his SCA his debts that were then delinquent more than 90 days and debts in the previous seven years that were delinquent more than 180 days. Proof Applicant omitted this information from his SCA shifted the burden to Applicant 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).

Applicant denied deliberately falsifying the SCA, claiming he was unaware of the debts. But he admits he purposefully decided not to pay the \$7,100 clinic debt (¶ 1.j.) because he was not satisfied with the medical treatment he received. He knew the debt had not been paid. After considering all of the evidence, Applicant failed to convince me the omissions in answering questions 38 and 39 of the SCA were not deliberate. DC E2.A5.1.2.2. None of the listed mitigating conditions apply to Applicant's case. I find 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.-1.j.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: 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. 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.
2. This debt was not alleged in the SOR. It is relevant and material only as it relates to Applicant's attitude toward the resolution of his debts.
3. This debt was not alleged in the SOR. It is relevant and material only as it relates to Applicant's attitude toward the resolution of his debts.