

DATE: September 30, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-02550

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of criminal conduct from domestic violence and shoplifting in 1999 to failing to file his federal income tax returns for tax years 1999, 2001, and 2002, and his state tax return for tax year 1999. Applicant also has delinquent debts totaling more than \$4,900. Applicant deliberately provided false information to a Defense Security Service agent investigating his suitability for a clearance. Applicant failed to mitigate security concerns raised by his criminal and personal conduct, and 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 15 September 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision—security concerns raised under Guideline J (Criminal Conduct), Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on 15 November 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 20 May 2005. On 21 June 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 29 June 2005.

FINDINGS OF FACT

Applicant is a 59-year-old contract manager for a defense contractor. He married in May 1971, and separated and divorced in 1981. In 1984, the couple remarried. Ex. 3 at 2. They have two adult children. Ex. 3 at 2.

In 1995, Applicant was cited by police for failing to have insurance on his motor vehicle. He was fined and ordered to perform 20 hours of community service. He failed to complete the community service and a warrant was issued for his arrest. He was never arrested on the warrant. Instead, his checking account was attached for \$300 in the Spring of 2002. Answer; Ex. 3 at 7.

On 25 July 1999, Applicant's wife complained to police that Applicant had assaulted her earlier that day and had a history of emotionally and sexually abusing her in the past. She explained that Applicant was a manic-depressive and had not taken his medication for several days. As Applicant had left before the police arrived, a warrant was issued for his arrest. Applicant was arrested on 3 August 1999. Ex. 3 at 3; Ex. 6 at 1-2. Applicant pled guilty and his sentencing was deferred for one year, during which time Applicant was required to receive mental health and domestic violence evaluations and follow any recommendations flowing from the evaluations. Upon successful completion of the court's orders, the case was dismissed with prejudice on 28 November 2000.

In September 1999, police cited Applicant for shoplifting two packages of cigarettes from a store. He took the cigarettes out of the store and placed them on the other side of the fence. When he went to retrieve them, store security was waiting for him. He paid a \$40 fine. Applicant claims he committed this offense while under the influence of Vicodin, anti-anxiety medication, and an anti-depressant. Ex. 3 at 6-7.

Applicant knowingly and willfully failed to timely file his federal income tax returns for tax years 1991, 2001, and 2002. It is a misdemeanor to willfully fail to file an income tax return when required. 26 U.S.C. § 7203. He also failed to file his state income tax return for tax year 1999. Failing to file the state return is a misdemeanor. Applicant filed the delinquent returns in 2004. Tr. 51.

Applicant filed for Chapter 7 bankruptcy protection in November 1996. On 19 March 1997, more than \$248,900 in debts were discharged.

Applicant admits being delinquent on several debts he owes: a credit card account for more than \$1,350; and four other debts totaling approximately \$3,800. He produced evidence that corroborated his claim that he paid two of these debts totaling more than \$200. Ex. E. He claims a debt for \$78 is his daughter's and the debt for \$3,599 is his wife's, but failed to produce any corroboration of these claims.

As a result of Applicant's request for a security clearance, he was interviewed by a Defense Security Service (DSS) agent in November 2000. They discussed Applicant's arrest in August 1999 for domestic violence. The agent asked Applicant if he had had any other adverse contact with the police. Applicant answered "no." Applicant was agitated during the interview, felt he could do his job without a security clearance, and did not want to be interviewed. He felt her questions about his financial situation were intrusive. Applicant agreed to a follow-up interview so the agent could prepare a statement for him to sign. Tr. 22-23. On 17 November 2000, they met for the second interview. Applicant indicated he did not wish to continue with the background investigation and security officials from his company terminated the security clearance process. Applicant re-initiated the security clearance process when he submitted a new security clearance application (SCA) on 6 March 2003. Applicant listed both the shoplifting and domestic violence arrests on this SCA.

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 J-Criminal Conduct

In the SOR, DOHA alleged Applicant pled guilty to driving without insurance and a bench warrant was issued for his arrest because he failed to complete the court-ordered community service (¶ 1.a); pled guilty to harassment and domestic violence for a July 1999 incident (¶ 1.b); was fined \$40 for shoplifting in August 1999 (¶ 1.c); in violation of 26 U.S.C. § 7203, he willfully failed to file federal income tax returns for tax years 1999 (¶ 1.d), 2001 (¶ 1.e), and 2002 (¶ 1.f); and failed to file his state income tax return for tax year 1999 in violation of a state statute (¶ 1.g). Applicant admitted all the allegations, some with explanation. A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1.

The Government's evidence and Applicant's admissions constitute evidence of potentially disqualifying conditions under Guideline J. Applicant has a history of criminal conduct from domestic violence to shoplifting to failing to file his federal and state tax returns. He admitted multiple lesser criminal offenses. DC E2.A10.1.2.1, E2.A2.1.2.2. None of the mitigating conditions listed under Guideline J apply. However, although Applicant admitted he was issued a citation for failing to have insurance, there is no evidence in the record that this is "criminal activity" as contemplated by Guideline J of the Directive. In fact, typically such a charge is listed as a traffic offense, not a criminal offense. After carefully weighing all the facts and circumstances of this case, including the adjudicative process factors in Directive ¶ E2.2, I find against Applicant on all allegations in the SOR, except ¶ 1.a.

Guideline F-Financial Considerations

In the SOR, DOHA alleged Applicant had debts of over \$248,000 discharged in bankruptcy in 1997 (¶ 2.a), had a debt of more than \$1,350 charged off (¶ 2.b), had three accounts totaling more than \$300 placed for collection (¶¶ 2.c-e), and has an account of approximately \$3,600 that is delinquent more than 180 days (¶ 2.f). Applicant admitted each of the allegations with explanation. An individual 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. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1) and has demonstrated an unwillingness to satisfy his debts. Applicant suggests that, in part, his delinquent debts resulted from conditions beyond his control—periods of unemployment. *See* MC E2.A6.1.3.3. Yet in July 2002, when he completed a statement to the DSS agent, Applicant claimed he had \$1,482 remaining each month after paying his expenses.⁽²⁾ He paid two small debts totaling just over \$200. Applicant claims two of the debts are his wife's and his daughter's. Applicant provided no corroboration and failed to convince me he was not legally responsible for the debts. I find against Applicant on all of the allegations in ¶ 2, except ¶¶ 2.d and 2.e (the debts he paid).

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant deliberately falsified material facts during a November 2000 interview with a DSS agent by failing to disclose his 1999 shoplifting incident as an adverse contact with police (¶ 3.a). 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 Government's evidence and Applicant's admissions establish potentially disqualifying conditions under Guideline E. Applicant claims he forgot about the shoplifting incident when he was being interviewed by the DSS agent. After listening carefully to his testimony and observing his demeanor, I find he was deliberately trying to mislead me. I conclude he deliberately provided false information to the DSS agent by denying he had any other adverse contacts with police. DC E2.A5.1.2.3. An applicant may mitigate a disqualifying condition if the falsification was an isolated incident, was not recent (almost five years ago), and he subsequently provided correct information in his 2003 SCA. MC E2.A5.1.3.2. Based on my finding that he deliberately tried to mislead me during his testimony, I conclude his

falsification was not isolated. Therefore, MC E2.A5.1.3.2 does not apply. I further conclude Applicant failed to establish the applicability of any other mitigating conditions to his case. After weighing all of the evidence, the disqualifying and mitigating conditions, and the adjudicative process factors of the Directive ¶ E2.2.1, I find against Applicant on the allegation in SOR ¶ 3.

FORMAL FINDINGS

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

Paragraph 1. Guideline J: AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: Against 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

Paragraph 2. Guideline F: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: For Applicant

Subparagraph 2.e: For Applicant

Subparagraph 2.f: Against Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a: 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).

2. None of the delinquent debts listed in the SOR are noted on his personal financial statement.