

DATE: June 2, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-02805

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Juan J. Rivera, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant accrued nearly \$25,000 in delinquent debts through at least seven personal credit accounts as well as unpaid taxes between 1996 and at least 2003. Applicant's tax debts stem from his failure to file his income tax returns on time for five different tax years. Applicant's financial problems started with a job change but have been exacerbated by poor financial management and unwillingness to pay according to terms he agreed to with various creditors. Applicant also deliberately omitted several delinquent accounts from his security clearance application. Clearance is denied.

STATEMENT OF THE CASE

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to give Applicant a security clearance. On April 5, 2004, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline E (personal conduct) and Guideline F (financial considerations). Applicant timely answered the SOR (Answer), denied all but one⁽²⁾ of the allegations, and requested a hearing.

The case was assigned to me on September 10, 2004, and I convened a hearing October 18, 2004. The parties appeared as scheduled and the government presented eight exhibits (GE 1 through 8), which were admitted without objection, and the testimony of one witness. Applicant testified in his own behalf and submitted eight exhibits (AE A - H), also admitted without objection. Further, I left the record open after hearing to allow Applicant time to submit additional information I deemed relevant and material to the issues herein. Applicant timely submitted a 10-page exhibit, admitted without objection as AE I. DOHA received the transcript (Tr) on October 27, 2004.

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is 51 years old and employed by a defense contractor as a structures assembler by a large defense contractor, and he seeks to retain a security clearance required for his job. Applicant has been married to the same woman for nearly 20 years. They have one child who will enter college in fall 2005.

Applicant has worked for the same defense contractor since 1980. During that time he has been reassigned to different jobs depending on contract needs. In 1996, he was assigned to a job that paid him significant overtime; however, he was reassigned later that year to a job that did not require overtime resulting in enough lost income that Applicant either fell behind on the credit cards he was using or had to resort to other forms of credit to maintain his then-current level of spending. As the interest rates on his credit accounts caused the balances to grow, Applicant decided, through his own admitted stubbornness, he would challenge the balances rather than pay or otherwise resolve the delinquencies.

Between 1996 and 2003, Applicant failed to timely file his income tax returns. He knew he would owe taxes because he did not have enough withheld from his paycheck throughout the tax year. Applicant acknowledged he failed to adjust his exemptions and to file on time because he needed cash. Applicant is currently paying a tax arrearage for several tax years through involuntary wage garnishments and estimates he owes about \$9,000 in taxes, interest, and penalties. (SOR ¶1.h)

In 1999, despite having chronic debt problems, Applicant and his wife bought a timeshare at a popular vacation destination. However, he soon defaulted on the loan used to finance the timeshare, and still owes approximately \$9,810 on what amounts to a foreclosure. (SOR ¶1.c) The couple also travels to casinos two or three times annually to gamble, and Applicant spends between \$50 and 150 monthly on lottery tickets.

Applicant was interviewed about his financial problems by a special agent of the Defense Security Service (DSS) in September 2002. A personal financial statement (PFS) he submitted with a written statement after the interview showed he had a positive monthly cash flow of about \$600 even after making payments to his creditors (which he was doing only sporadically at the time). The PFS also reflected significant assets in a 401K retirement account, antiques, jewelry and real estate.

During the aforementioned interview, Applicant acknowledged the debts that were listed in his credit report at the time; however, he told the agent he would begin paying the debts off as soon as possible. Yet Applicant took no action on his debts until late 2003. In his 2002 written statement, Applicant cited his 401K account as a source of funds to use in paying his debts, but at hearing stated he could not take out another loan against the 401K while he was still paying an earlier loan from that account. It is unclear for what purpose he used the proceeds from his 401K loan.

Applicant submitted a security clearance questionnaire (SF 86) on April 23, 2001. In response to question 34 (wage garnishments), Applicant failed to disclose his pay had been garnished within the preceding seven years to satisfy a 1996 tax debt. (SOR ¶2.a) Applicant knew his pay had been garnished and that he had ongoing unpaid tax obligations due to his failure to file returns as required. In his Answer, Applicant claimed he had provided this information as part of a prior investigation, but he produced nothing further in support of this claim at hearing. Further, it does not appear he has been investigated for a clearance between the time his wages were garnished and the time he submitted this SF 86.

In response to SF 86 question 39 (debts over 90 days past due), Applicant listed two credit card debts alleged in SOR ¶¶1.d and 1.f, but failed to list the debts listed in SOR ¶¶1.a, 1.b, 1.c, 1.e, and 1.g, all of which were at least 90 days delinquent when he completed the questionnaire. (SOR ¶2.b) Applicant does not dispute he knew of these debts but avers he omitted them because he was unsure what the balance on each was. He provided precise balances for the two accounts he disclosed for this question.

Applicant claims he has paid the debt alleged in SOR ¶1.a after not paying anything on it between January 2000 and October 2003; however, the evidence shows Applicant has multiple accounts with this credit card company and the delinquency was merely merged with one of the other accounts. At best, it is unclear what the status of this credit card delinquency is. Based on the government's evidence establishing a delinquency for this account, and in the absence of any evidence to clearly rebut or extenuate the allegation, I specifically find Applicant is still delinquent on this account.

At hearing, Applicant initially claimed he had paid the gas card debt alleged in SOR ¶1.b; however, he later

acknowledged he has not done so. Applicant appears to have paid the debts alleged in SOR ¶¶1.d, 1.f, and 1.g., all in October or November 2003. The debt alleged in SOR ¶1.c appears to still be delinquent as a collection account. It was a loan taken to pay some of his other debts.

Applicant and his wife both work. Their combined income appears to be sufficient to enable Applicant to satisfy his delinquencies, and Applicant acknowledges he must change how he manages his money now that he will soon be faced with the costs of sending his child to college. He has considered seeking help from financial advisors or credit counselors but has yet to do so.

POLICIES

The Directive sets forth adjudicative guidelines⁽³⁾ for consideration when evaluating an Applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are Guideline E (personal conduct) and Guideline F (financial considerations).

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽⁴⁾ for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.⁽⁵⁾ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁽⁶⁾

CONCLUSIONS

The security concern under Guideline F is that someone who is financially overextended through delinquent debt and poor personal financial management may be at risk of engaging in illegal acts to generate funds to resolve their fiscal difficulties. Here, the government's concerns about Applicant's suitability to hold a clearance are based on his record of delinquent debts totaling almost \$25,000. The government has presented sufficient information to support the stated reasons for denying Applicant a security clearance because of financial concerns. In so doing, it has established a *prima facie* case for disqualification under Guideline F. Applicant has been in financial difficulty since at least 1996 when he stopped paying income taxes and when a job change reduced his monthly income. By his own admission, most of the debts listed in the SOR became delinquent because Applicant was too stubborn to pay. He has the resources to pay but refuses to do so, and his tax debts will not be satisfied for the next few years as it appears there are still questions about whether he has filed returns since the close of this investigation in late 2003. Notwithstanding the fact he has paid three of the debts alleged in the SOR, his remaining liabilities and his questionable approach to his finances and debt obligations support application of Guideline F disqualifying condition (DC) 1⁽⁷⁾ and DC 3.⁽⁸⁾ Applicant's inaction regarding his delinquencies, even after being interviewed on this very issue by DSS, and his failure to show any discernable change in his attitudes toward his finances preclude application of any of the corresponding mitigating conditions. Therefore, I conclude Guideline F against the Applicant.

Under Guideline E, a security concern arises where it is shown an applicant has exhibited questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Such conduct may indicate the person may not properly safeguard classified information.⁽⁹⁾ Here, the government questions Applicant's trustworthiness because it appears he deliberately omitted from his SF 86 facts about his financial difficulties. Applicant has admitted he deliberately omitted several of his debts from his SF 86 because he was unsure of the balances for those accounts. He also claimed he had already disclosed his tax garnishment in a prior background investigation. As to the omission of debts from his response to question 39, Applicant knew he had delinquencies greater than 90 days past due and should have disclosed those debts even if he had to approximate the balances due. As it was, he provided precise balances of the two accounts he disclosed and it stands to reason he had that information available for the other debts. Regarding his response to question 34, Applicant has proffered nothing to show he was investigated between his 1996 tax garnishment and his 2001 SF 86, thus giving him an opportunity to disclose that fact. Based on all of the foregoing, I conclude Applicant acted deliberately to mislead the government about the true extent of his financial problems. Guideline E DC 2⁽¹⁰⁾ applies and, because Applicant has failed to provide sufficient information to refute, extenuate, or mitigate the resulting security concerns, none of the listed mitigating conditions under Guideline E are applicable. Accordingly, I conclude Guideline E against the Applicant.

I have carefully weighed all of the available evidence, and I have applied the appropriate disqualifying and mitigating conditions. Further, I have tried to make a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. Reasonable doubts persist about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Absent substantial information to mitigate these doubts, which Applicant has failed to provide, I cannot conclude he has overcome the government's case.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline F (Financial): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: For the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: For the Applicant

Subparagraph 1.g: Against the Applicant

Subparagraph 1.h: Against the Applicant

Paragraph 2, Guideline E (Personal Conduct): AGAINST THE APPLICANT

Subparagraph 2.a: Against the Applicant

Subparagraph 2.b: Against the 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 or continue a security clearance for the Applicant. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Applicant admitted the allegation of delinquent debt in SOR ¶1.h.
3. Directive, Enclosure 2.
4. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
5. *See Egan*, 484 U.S. at 528, 531.
6. *See Egan*; Directive E2.2.2.
7. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;
8. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;
9. Directive, E2.A5.1.1.
10. Directive, E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;