

DATE: October 18, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-04965

ECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of financial problems. Although he has recently paid all of the delinquent debts and judgments outstanding against him, insufficient time has elapsed to find he is now financially stable. Applicant deliberately omitted material financial information from his security clearance application by failing to list the judgments and the delinquent debts. 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 18 November 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 17 December 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 2 June 2004. On 7 July 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 21 July 2004.

RULINGS ON PROCEDURE

On 4 June 2004, Department Counsel moved to amend the SOR by adding subparagraph 2.c, as follows:

c. You falsified material facts on a Security Clearance Application, Standard Form 86, executed by you under date May 17, 2002, in response to "Question 40. Public Record Civil Court Actions. In the past 7 years, have you been a party to any public record civil court actions not listed elsewhere on this form?" You deliberately failed to disclose that you were a party to the civil court judgments resulting in the debts set forth in subparagraphs 1.a and 1.b, above.

The motion was granted at the hearing.

FINDINGS OF FACT

Applicant is a 53-year-old logistics analyst for a defense contractor. He served over 20 years in the U.S. Army, retiring in 1991 as a chief warrant officer (CW 2). He was married to his first wife from 1974-98 and his second wife from 1999-2000. He married his present wife in 2001.

Applicant had two civil judgments awarded against him totaling more than \$10,000. Applicant settled the \$4,000 judgment for \$2,000 (SOR ¶ 1.a). Applicant settled the \$6,000 judgment for \$2,2000 (SOR ¶ 1.b).

Applicant had four delinquent debts listed on his credit report as charged off totaling more than \$11,600. One charged off debt in the amount of \$1,400 has been paid and is no longer on his credit report (SOR ¶ 1.c). Another debt, in the amount of more than \$5,600 (SOR ¶ 1.d) was listed as being charged off in 1998. Upon Applicant's request for additional information on the account, on 17 January 2004, the creditor ordered the three credit bureaus to remove the information from their credit reports. Another account (SOR ¶ 1.e) that was charged off in July 2001 was paid off in December 2003. Applicant disputes the charged off account for \$2,900 alleged in SOR ¶ 1.g.

Applicant had two delinquent debts in collection totaling more than \$9,500. One debt in the amount of \$5,122 (SOR ¶ 1.f) has been in collection status since September 2002. This is the same account that was the subject of the judgment alleged in SOR ¶ 1.b. The other debt, in the amount of \$4,375 (SOR ¶ 1.h) has been in collection status since April 2003. This is the same account that was the subject of the judgment alleged in SOR ¶ 1.a.

Applicant had another debt for \$306 on an account that was past due since November 1997 (SOR ¶ 1.i). Applicant settled the account in December 2003.

Applicant completed a security clearance application (SCA) on 17 May 2002. Question 37 asked if, in the previous seven years, Applicant had any unpaid judgments. Question 38 asked if, in the previous seven years, Applicant had any debts that were delinquent more than 180 days. Question 40 asked if, in the previous seven years, Applicant had been a party to any public record civil court actions not listed elsewhere on the form. Applicant answered "no" to each of these questions.

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 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 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 two outstanding civil judgment against him (¶¶ 1.a-1.b), four accounts that had been charged off (¶¶ 1.c-1.e and 1.g), two debts in collection status (¶¶ 1.f and 1.i), and a debt that has been delinquent since November 1997. 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 each of the allegations in the SOR. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1.) and has been unable or unwilling to satisfy his debts (DC E2.A6.1.2.3.). Applicant initiated a good-faith effort to repay his overdue creditors or otherwise resolve his debts. MC E2.A6.1.3.6. In fact, it appears that all of the delinquent debts alleged in the SOR have been resolved. Nevertheless, I am unable to find for Applicant. Applicant's debts have been a long-standing problem. He did not take action to resolve these debts until after being interviewed by the DSS agent even though his family income exceeds his family's expenses by more than \$3,000 a month. Insufficient time has elapsed since the payment of his debts to find Applicant is now financially stable. I find for Applicant on ¶ 1.d. as the debt appears to have been listed on his credit report by mistake and ¶¶ 1.f and 1.h because they are the same debts alleged in ¶¶ 1.b and 1.a, respectively.

Guideline E--Personal Conduct

In the SOR, DOHA alleged Applicant falsified material facts on his SCA by deliberately failing to disclose his unpaid judgments (¶ 2.a), his debts that, in the previous seven years, had been delinquent more than 180 days (¶ 2.b), and his being a party to a public record civil court action (¶ 2.c). 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 established by substantial evidence that Applicant failed to disclose in his SCA the unpaid judgments, the debts delinquent more than 180 days, and his record of civil court actions. 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). Information concerning an applicant's financial situation is material to a determination of Applicant's security worthiness.

Applicant claims he was unaware of these judgment until confronted by a Defense Security Service agent investigating Applicant's security worthiness. He asserts that he was going through a nasty divorce and suggests his ex-wife may have thrown out the service of the summons and judgments. But the first judgment was sent to his post office box, not his home address. The second summons was served on Applicant's current home address well after he had divorced his second wife. Applicant was not credible. I conclude Applicant knew of the two judgments.

Applicant claims he failed to list his other debts on his SCA because he did not have all of the information he needed to do so (Ex. 2 at 1) and he did not have sufficient time to complete the SCA accurately. I find Applicant's explanation not credible. Applicant was over 50 years old when he completed the SCA. He had served over 20 years in the U.S. military, completed at least two other SCAs in the past, and was granted a top secret security clearance in 1989. He must have known the importance the Government placed on the accurate completion of the SCA and that, in the previous seven years, he had had debts that were delinquent more than 180 days. I find against Applicant.

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR. Applicant deliberately falsified material facts in the SCA. DC E2.A5.1.2.2. None of the mitigating conditions listed under the guideline apply.

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: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: 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. 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 (Directive).