

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant had liabilities discharged in bankruptcy in 1994. Nevertheless, he continues to have financial problems. He has delinquent debts totaling over \$4,700, he does not have the resources to pay these debts, and does not have a firm understanding of his financial situation. Applicant failed to mitigate the security concerns raised by his financial situation and his deliberate omission of his financial problems from his security clearance application. Clearance is denied.

CASENO: 03-09483.h1

DATE: 07/29/2004

DATE: July 29, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-09483

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant had liabilities discharged in bankruptcy in 1994. Nevertheless, he continues to have financial problems. He has delinquent debts totaling over \$4,700, he does not have the resources to pay these debts, and does not have a firm understanding of his financial situation. Applicant failed to mitigate the security concerns raised by his financial situation and his deliberate omission of his financial problems from 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 30 December 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 7 April 2004. On 25 May 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 4 June 2004.

FINDINGS OF FACT

Applicant is a 42-year-old operations assistant technician, serving on a military base as a scheduler, for a defense contractor. He is divorced and has two children, 13 and 16 years old, who live with him. Tr. 13. Applicant retired from the Air Force as an E-5 in 2001. Tr. 13-14; Ex. 1 at 4.

In 1994, at the suggestion of their attorneys, Applicant and his first wife⁽²⁾ filed for Chapter 7 bankruptcy before they divorced. Tr. 27-28. In July 1994, the court discharged approximately \$22,000 in liabilities owed by Applicant and his first wife. *Id.* at 28. Applicant purchased a washer and dryer and other items from a military exchange on a deferred payment plan. Applicant did not make regular payments on the plan. He was often late with his payments and was delinquent more than 90 days on more than three occasions. SOR ¶ 1.b; Ex. 2 at 1. The military exchange charged off the debt of \$2,071 in October of 2001. Ex. 2 at 1. The IRS applied \$1,009.20 from his income tax refunds in 2003 and 2004 toward payment of the debt. Exs. 4, A.

Applicant purchased a computer in 1998. He sent it back to the company for repairs, but it still did not work when he got it back. He stopped paying on it. In November 1999, after Applicant had been more than 120 days late in paying on at least two occasions, the company charged off the debt. SOR ¶ 1.a; Ex. 2 at 1. Applicant says he contacted the company and they have agreed to send him a bill, but he has not received it yet. He states that he intends to pay the bill and is financially able to do so. Tr. 15.

Applicant opened an account with a bank in 1998. In September 2001, the bank charged off \$752. SOR ¶ 1.c; Ex. 2 at 1. Applicant says he will pay the debt if he still owes it. Tr. 18.

Applicant is indebted to another creditor for \$78. The account was opened in April 1995 and is now in collection status.

Applicant completed a security clearance application on 21 February 2002. Question 38 asked if, in the previous seven years, Applicant had been delinquent more than 180 days in paying any of his debts. Question 39 asked if Applicant was then delinquent more than 90 days on any debts. Applicant answered "no" to both questions. Ex. 1 at 7.

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 delinquent debts that were in collection or charged off status (¶ 1.a-1.d) totaling approximately \$4,700 and had debts discharged in bankruptcy in 1994 (¶ 1.e). 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 is unable or unwilling to satisfy his debts (DC E2.A6.1.2.3). Applicant does not have a firm grasp on his financial situation. He claims he is working on paying the debt alleged in ¶

1.a, but has no corroboration. He believes his debt to the military exchange is now fully paid, but has no evidence to support his position. He asserts the debts alleged in ¶¶ 1.c and 1.d should have been discharged in his 1994 bankruptcy, but neither account was opened until after the bankruptcy was finalized. He says he will pay the debt alleged in ¶ 1.a, but clearly does not have the resources to do so. He arranged with the company to resolve the delinquency by paying \$200 every two weeks, but he is delinquent more than 30 days on the payment plan. Tr. 23-24. And Applicant admitted to a more recent delinquent debt, not included in the SOR, to a credit card company of approximately \$2,500. Some of Applicant's debts may have resulted from his divorces, which were largely beyond his control. MC E2.A5.1.3.3. But he has not shown significant movement toward resolving the debts. Applicant failed to mitigate the security concerns raised by his financial situation. I find against Applicant on ¶ 1.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant falsified material facts on his SCA by deliberately failing to disclose he had debts in the last seven years that were delinquent more than 180 days (¶ 2.a) and, at the time he completed the SCA, debts that were delinquent more than 90 days. 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 that, in the previous seven years, he had debts delinquent more than 180 days and debts that were then delinquent more than 90 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 asserts he failed to answer questions 38 and 39 on his SCA correctly because "the security guy was pushing to get the paperwork done before he left." Tr. 22. Applicant is not young and inexperienced. He served 20 years in the U.S. armed forces and completed an SCA as far back as 1982. After carefully observing his demeanor and listening to his excuse, I did not find his explanation credible. Applicant failed to provide credible reasons for his failure to accurately complete the SCA. I find against Applicant on ¶ 2.

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: Against Applicant

Subparagraph 1.e: 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 (Directive).

2. Applicant was married to his second wife from January 1998 to February 1999.