

DATE: June 29, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-11912

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of not meeting his financial obligations. He has been financially

overextended for several years and has refused to pay debts remaining from a failed business. He falsified material facts regarding his financial delinquencies on his security clearance application. His continuing financial problems and his lack of candor about them raise serious security concerns. 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 May 7, 2004, under the applicable Executive Order [\(1\)](#) and Department of Defense Directive, [\(2\)](#) DOHA issued a Statement of Reasons (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 May 26, 2004, and requested his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on September 28, 2004. The FORM contained documents identified as Items 1 through 9. By letter dated October 1, 2004, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the FORM on October 12, 2004, and his response was due November 11, 2004. Applicant submitted a timely response to the FORM. Department Counsel objected to the admissibility into evidence of the comments filed by Applicant but did not specify the reasons for her objection. On May 26, 2005, the case was assigned to me for a decision. After reviewing Applicant's comments, and in the absence of a reasoned argument to exclude them, I admitted them to the record for whatever probative value they might have. (*See* Applicant's undated one-page response to the FORM.)

FINDINGS OF FACT

The SOR contains ten allegations of disqualifying conduct charged under Guideline F, Financial Considerations, and one allegation charged under Guideline E, Personal Conduct. In his answer to the SOR, Applicant admitted eight of the

allegations under Guideline F. He denied two allegations under Guideline F and the one allegation under Guideline E. His admissions are incorporated as findings of fact.

Applicant is a 50-year-old senior engineering technician employed by a defense contractor. In 1988, as a federal employee, he was awarded a Confidential security clearance. Applicant was divorced from his first wife in approximately 1997. He remarried in 1998. He is the father of four children and the stepfather of two children. (Item 4; Item 9.)

In 1994 Applicant was laid off from his job, and he started a small business. He was self-employed for approximately 2 ½ years. Applicant asserts the debts identified in ¶¶ 1.a., 1.b., 1.d., 1.f., and 1.g. of the SOR were unsecured accounts related to his business. (Item 2, at 1.) The business failed in 1996. Applicant was re-hired by his former employer and divorced from his first wife. Applicant consulted his accountant for advice in dealing with his mounting debts. He was advised he could file for bankruptcy, or he could sell the equipment from his business to pay some debts and "let the unsecured accounts go." (Item 2, at 1.) Applicant chose to pay some creditors with proceeds from the sale of his business equipment and not to pay the unsecured accounts. (Item 2, at 1.) This advice resulted in Applicant paying high rates of interest for any credit extended to him. Applicant has been employed by defense contractors from 1997 to the present.

Applicant provided a signed, sworn statement to a special agent of the Defense Security Service (DSS) on April 30, 2003. Included with the DSS statement was Applicant's personal financial statement indicating a total net monthly income of \$5,618, total monthly expenses of \$1,793, and monthly debt payments of \$3,585. After paying these debts, Applicant had \$240 remaining. (Item 5, at 6.)

In his DSS statement, Applicant said he had been enrolled in credit counseling since about February 2003 and was paying \$382 per month on the debt alleged in ¶ 1.j. of the SOR, which had a remaining balance due of \$5,198. He said he and his wife were paying \$150 a month from their joint account on a past due credit card account with a balance of approximately \$9,155, identified in the SOR at ¶ 1.h. He said he would pay a debt of \$61.00, referred to collection in about January 1997 and identified in the SOR at ¶ 1.e., if the health care provider creditor would send him a bill. (Item 5, at 2.)

Applicant stated a representative of a mortgage company told him not to worry about the delinquencies and bad debts "because they were charged off accounts and had been written off by the creditors already." (Item 5, at 3.) He stated he had been granted a mortgage in spite of his bad debts and delinquencies. (Item 5, at 3.)

Applicant then stated: "All of the remaining accounts reflected on my 28 Mar 03 DSS Report (DSS ROC) as delinquent or charged off or bad debts I will not pay." (Item 5, at 2-3.) He identified debts alleged at ¶¶ 1.a., 1.b., 1.c., 1.d., 1.f., and 1.g. of the SOR. as among the debts he would not pay. He denied the debt alleged at ¶ 1.h. was his, and said it was his wife's debt that she brought with her to the marriage. He said he would not pay debts to federal credit unions which were listed on his March 28, 2003 credit report because he had not been offered acceptable settlement terms by the creditors. (Item 5, at 4.) Applicant asserted the debts alleged at ¶¶ 1.b. and 1.i. of the SOR were one and the same. He also asserted the federal credit union debts alleged at ¶¶ 1.c., 1.f., and 1.g. "are the same base account, which totals about \$9,000." (Item 2, at 1.)

Applicant completed a security clearance application (SF-86) on October 22, 1999. He completed a second SF-86 on February 15, 2002. Question 38 on both versions of the SF-86 reads as follows: "In the last 7 years, have you been over 180 days delinquent on any debts?" Applicant responded "no" to question 38 on the SF-86 he completed on October 22, 1999 and on the SF-86 he completed on February 15, 2002. Applicant also answered "no" to question 39 on both versions of the SF-86. Question 39 asked if he was currently over 90 days delinquent on any debt.

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

The Government's concern under Guideline F, Financial Considerations, is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. Applicant has a history of not meeting his financial obligations, and he has asserted an unwillingness to satisfy his debts. These conditions raise security concerns under subparagraphs E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F. DOHA's Appeal Board has concluded that "[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." ISCR Case No. 98-0810 at 4 (App. Bd. June 8, 2000).

In the SOR, DOHA alleged the following financial delinquencies: that Applicant owed approximately \$598 to a communications utility, that the debt dated to September 1996, and that as of April 30, 2003, the debt had not been satisfied (¶ 1.a.); that he owed approximately \$2,605 to a bank credit card company, that the debt dated to September 1996, and that as of April 30, 2003, the debt had not been satisfied (¶ 1.b.); that he owed approximately \$4,140 on an federal credit union account, that the debt dated to September 1996, and that as of April 30, 2003, the debt had not been satisfied (¶ 1.c.); that he owed a creditor approximately \$2,176 on an account charged off as a bad debt in about November 1996, and that as of April 30, 2003, the debt had not been satisfied (¶ 1.d.); that he owed approximately \$61.00 to a health care provider for an unpaid account referred to collection in about January 1997, and that as of April 30, 2003, the debt had not been satisfied (¶ 1.e.); that he owed approximately \$4,103 to a federal credit union on a debt charged off as a bad debt in about March 1997, and that as of April 30, 2003, the debt had not been satisfied (¶ 1.f.); that he owed approximately \$5, 237 on a federal credit union account that had been referred to collection in about April 1997, and that as of April 30, 2003, the debt had not been satisfied (¶ 1.g.); that he owed approximately \$9,155 on a credit card account that had been charged off as a bad debt in about July 2002, and that as of April 30, 2003, the debt had not been satisfied (¶ 1.h.); that he owed approximately \$3,303 on an unpaid credit card account which had been referred to collection in about September 2002, and that as of April 30, 2003, the debt had not been satisfied (¶ 1.i.); and that he owed approximately \$5,198 on an unpaid credit card account since about October 2002, and that as of April 30, 2003 the debt had not been satisfied. (¶ j.1.)

An applicant who is financially overextended is at risk of having to engage in illegal acts to

generate funds. Directive ¶ E2.A6.1.1. Applicant admitted eight of the ten unsatisfied delinquent financial obligations identified in the SOR, specifically the allegations at ¶¶ 1.a. through 1.g and the allegation at ¶ 1.j. He denied the allegation at ¶ 1.h. and asserted it was a debt incurred by his wife before their marriage in 1998. He presented evidence to show the account was in his wife's name, and he also presented evidence in his signed, sworn statement that he was party, with his wife, to a settlement agreement with the creditor for payment of the account. (Item 5, at 2.) The SOR identifies the account as charged off as a bad debt in about July 2002, some four years after Applicant's marriage to his wife. I conclude that Applicant has not met his burden of persuasion to rebut the allegation that the account was his. Applicant also asserts the debt alleged at ¶ 1.i. is the same debt alleged at ¶ 1.b. of the SOR. Applicant's credit report for March 28, 2003 substantiates his assertion. The credit report shows the credit card bad debt dating to 1996, which Applicant admits, was sold to another creditor in September 2002. Thus, the allegation in ¶ 1.i. of the SOR is incorrect insofar as the debt is now owed not to the original creditor, as stated in the SOR, but to the creditor who purchased the debt from the original creditor. Even so, it is a debt that resides with the Applicant.

The Government has established, through the FORM and Applicant's admissions, a *prima facie* case that Applicant is financially overextended. Applicant provided no persuasive evidence to rebut the financial concerns specified in the SOR and identified as disqualifying conditions under ¶¶ E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F.

We turn to a review of the several conditions that could mitigate the security concerns raised by Applicant's financial delinquencies. Applicant's acknowledged delinquencies involve long-standing debts which continue to be unsatisfied to this day. Thus, neither mitigating condition E2.A.6.1.3.1. nor mitigating condition E2.A6.1.3.2. applies. If a person's financial delinquencies were largely caused by conditions beyond his control, then mitigating condition E2.A6.1.3.3 might apply. While Applicant's business failed in approximately 1997, he has held a steady job since that time. Applicant's business failure, while unfortunate, does not explain or mitigate his long-standing financial difficulties and refusal to pay the business-related debts. Thus, mitigating condition E2.A6.1.3.3. does not apply.

The record evidence does establish that Applicant has sought counseling for his financial problems. However, he seems to have consulted with individuals not necessarily qualified to give him sound advice or to help him devise a plan to fully resolve his debts. His refusal to pay or satisfy debts associated with his failed business does not demonstrate a good-faith effort to meet his financial obligations or to resolve or bring under control his financial delinquencies. Thus, neither mitigating condition E2.A6.1.3.4. nor E2.A6.1.3.6. applies to the facts of Applicant's case. Accordingly, the allegations in ¶¶ 1.a. through 1.h. and ¶ 1.j. of the SOR are concluded against the Applicant. The allegation at ¶ 1.i. is concluded for the Applicant.

Guideline E - Personal Conduct

In the SOR, DOHA alleged Applicant deliberately falsified his answers on his SF-86 to Questions 38 and 39 (¶ 2.a.). Applicant's denials of falsification are not persuasive, given his awareness since 1996 of a failed business and his unwillingness to repay those who extended credit to him. His deliberate misrepresentations cause serious security concerns. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

An applicant has a responsibility to provide truthful and complete responses to questions on his SF-86. An applicant's financial history is material to a determination of his security worthiness. With respect to the Guideline E conduct alleged in SOR subparagraph 2.a., I conclude Applicant falsified his SF-86 by omitting and concealing relevant and material information about his financial delinquencies in response to questions 38 and 39, bringing his conduct under disqualifying condition E2.A5.1.2.2. He did not make a prompt, good-faith effort to correct the falsification before being confronted with the facts, and thus mitigating condition E2.A5.1.3.3. does not apply. Applicant's falsifications were recent and not isolated incidents, and he did not supply the correct information voluntarily. Thus mitigating condition E2.A5.1.3.2. does not apply. While he stated he stopped paying the creditors associated with his business on the advice of his accountant, his refusal to supply correct information on his indebtedness on his SF-86 was not based on advice from legal counsel, and thus C E2.A5.1.3.6. is inapplicable.

Applicant's deliberate concealment of his financial delinquencies increased his vulnerability to coercion, exploitation, or duress, and thus disqualifying condition E2.A5.1.2.4. applies. He has not taken positive steps to reduce or eliminate his vulnerability to coercion, exploitation, or duress, and thus mitigating condition E2.A5.1.3.5. does not apply.

With respect to the Guideline E conduct alleged in the SOR, the Government has established its case. Accordingly, the allegations in subparagraph 2.a. of the SOR are concluded against the Applicant.

In all adjudications, the protection of our national security is the paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct. Having done so, I conclude Applicant should not be entrusted with a security clearance. In reaching my decision, I have considered the evidence as a whole, including the appropriate factors and guidelines in Department of Defense Directive, 5220.6, as amended.

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

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: For Applicant

Subparagraph 1.j.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: 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.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.

2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.