

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a truck driver for a defense contractor with a security clearance for over 10 years. He had delinquent debts based on judgments, car loans, personal loans, and credit cards. He paid off and satisfied most of these delinquent debts. He has been working with a credit counseling agency for over 6 months to satisfy the remaining two debts. He has sufficient monthly income to continue to pay off these debts. Applicant did not list two judgments in responding to a question on the security clearance application. Applicant did not know of the judgments nor did he understand the nature and extent of judgments. He did not deliberately conceal the judgments on the security clearance application. Clearance is granted.

CASENO: 03-13013.h1

DATE: 04/27/2005

DATE: April 27, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-13013

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Esq., Department Counsel

James Bradley Norman, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a truck driver for a defense contractor with a security clearance for over 10 years. He had delinquent debts based on judgments, car loans, personal loans, and credit cards. He paid off and satisfied most of these delinquent debts. He has been working with a credit counseling agency for over 6 months to satisfy the remaining two debts. He has sufficient monthly income to continue to pay off these debts. Applicant did not list two judgments in responding to a question on the security clearance application. Applicant did not know of the judgments nor did he understand the nature and extent of judgments. He did not deliberately conceal the judgments on the security clearance application. Clearance is granted.

STATEMENT OF THE CASE

On June 29, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on July 7, 2004. The SOR alleges security concerns under Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on July 10, 2004. He admitted five and denied two of the allegations under Guideline F, and denied the allegation under Guideline E. He requested a hearing before an administrative judge and the request was received by DOHA on July 26, 2004. Department Counsel was prepared to proceed with the case on August 11, 2004, and the case was assigned to another administrative judge on August 12, 2004. The case was reassigned to me on February 1, 2005, and a notice of hearing was issued on February 22, 2005. A hearing convened on March 29, 2005. Eight government exhibits, 11 Applicant exhibits, and the testimony of the Applicant were received during the hearing. The record was held open for Applicant to submit additional documents. Applicant timely submitted additional documents which are admitted to the record without objection from Department Counsel. The transcript was received on

April 7, 2005.

FINDINGS OF FACT

Applicant is a 46 year old employed for 10 years as a driver for a defense contractor. He has been married for 27 years and has three grown children. Applicant was doing well financially until he, his wife, and his father-in-law opened a restaurant in 1993. The restaurant lost money and Applicant and his wife did not receive any salary. Applicant started to work for the defense contractor in 1995. He was granted a security clearance when he started work and submitted a security clearance application for a periodic update. The SOR alleges Applicant has seven delinquent debts under Guideline F totaling over \$19,000. Applicant started using a credit counseling agency in August 2004 after receiving the SOR to assist him in settling his delinquent debts.⁽¹⁾ Applicant's present monthly income is \$2,000 with \$1,300 in monthly expenses. He has approximately \$700 per month for discretionary spending and debt reduction.⁽²⁾

Debt 1.a. in the SOR is for a judgment resulting from the remaining indebtedness on a car loan. Applicant voluntarily turned in the car for repossession because of his delinquent debts. He is paying this debt using the services of a credit counseling agency.⁽³⁾

Debt 1.b. in the SOR is a judgment resulting from delinquent payments on a personal loan from a credit union. Debt 1.d. in the SOR is the same delinquent debt but with a successor creditor.⁽⁴⁾ Applicant has paid and settled this debt in June 2004.⁽⁵⁾

Debt 1.c. in the SOR is a delinquent debt from a credit card. Applicant paid off and settled this debt in March 2005.⁽⁶⁾

Debt 1.e. in the SOR is for a personal loan from a bank. Applicant paid off and settled this debt in April 2005.⁽⁷⁾

Debt 1.f. in the SOR is for a personal loan in default sent to a collection agency. Applicant paid off and satisfied this debt in December 2003 through a garnishment of wages.⁽⁸⁾

Debt 1.g. in the SOR is for an account placed in collection for computer equipment. This debt is being paid through the credit counseling agency.⁽⁹⁾

Applicant answered "NO" to question 37 on the security clearance application asking if in the last seven years he had any judgments against him that had not been paid. At the time, Applicant had two judgments against him that had not been paid. Applicant stated he knew he had the delinquent debts but did not know they were based on court judgments. He did not know there was a judgment against him until he received the SOR. He did not understand the meaning or concept of a judgment.⁽¹⁰⁾

POLICIES

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."⁽¹¹⁾ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.⁽¹²⁾

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽¹³⁾ An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of recurrence.⁽¹⁴⁾

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.⁽¹⁵⁾ 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 present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.⁽¹⁶⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁽¹⁷⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽¹⁸⁾ "

[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ⁽¹⁹⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." ⁽²⁰⁾

Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline F - Financial Considerations: A security concern exists for an individual who is financially irresponsible. An individual who is financial irresponsibility may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Guideline E - Personal Conduct: A security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions section below.

CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

The government has established its case under Guideline F. Applicants delinquent debts brings the matter within Financial Considerations Disqualifying Conditions Directive ¶ E2.A6.1.2.1 (*a history of not meeting financial obligations*); and Directive ¶ E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*). Applicant has delinquent debts as far back as 1994. He has only recently paid some of these debts. Applicant has a history of not meeting his financial obligations and he has been unable or unwilling to satisfy his debts in the past. I conclude the above Financial Considerations Disqualifying Conditions have been established.

I have considered Financial Considerations Mitigating Condition Directive ¶ E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant has paid off or satisfied five of his delinquent debts. He is working with a credit counseling agency to assist him in paying his two remaining debts. He is making monthly payments on these debts through the credit counseling agency and he has sufficient discretionary income monthly to continue to pay these debts. I conclude Applicant has initiated a good-faith effort to pay overdue creditors and has mitigated the Financial Considerations security concerns.

Applicant's incorrect answer to question 37 on the security clearance application pertaining to judgments brings the matter within 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 security clearance eligibility or trustworthiness. . .*). Applicant stated he did not know there was a judgment against him and did not even know the nature of a judgment. The first time he knew of the judgments was when he received the SOR. I find Applicant's testimony that he did not know about or understand the meaning of judgments to be credible. Since he did not know of the judgments when he completed the security clearance application, he could not have deliberately omitted them in answering question 37. I conclude Applicant did not deliberately conceal or falsify material facts on his security clearance application and the Personal Conduct Disqualifying Condition is not established.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is eligible for access to classified information.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations in the SOR, as required by Section E3.'25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant or continue a security clearance for Applicant. Clearance is granted.

Thomas M. Crean

Administrative Judge

2. Tr. 50-51.
3. Applicant exhibit A (Credit counseling agency statement of account, dated Feb. 23, 2005).
4. Tr. 33-34; Applicant's additional documents at 3 (Letter of merger, dated Jan. 30, 2002).
5. TR. 29-32; Applicant exhibit H (Settlement letter, dated Jun. 1, 2004); Applicant exhibit I (Settlement letter, dated Mar. 23, 2005).
6. Tr. 46; Applicant additional documents at 2 (Settlement letter, dated Apr. 1, 2005).
7. Applicant additional documents at 1 (Settlement letter, dated Apr. 6, 2005).
8. Tr. 26-29; Applicant exhibits B, C, D, and E (Garnishment documents, dated Dec. 4, 2003).
9. Applicant exhibit A (Credit counseling agency statement of account, dated Feb. 23, 2005).
10. Tr. 52-54.
11. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
12. Directive ¶ E2.2.1.
13. *Id.*
14. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
15. *See* Exec. Or. 10865 § 7.
16. Directive ¶ E3.1.14.
17. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
18. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
19. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
20. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.