

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is 61 years old, divorced with two children of his own, and works as an analyst for a defense contractor. Applicant has ten delinquent debts, and failed to disclose in Question 40 of the security clearance application three lawsuits in the 1990s in which he was a party. Applicant did not mitigate the financial considerations and personal conduct security concerns. Clearance is denied.

CASENO: 03-17066.h1

DATE: 07/28/2005

DATE: July 28, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-17066

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 61 years old, divorced with two children of his own, and works as an analyst for a defense contractor. Applicant has ten delinquent debts, and failed to disclose in Question 40 of the security clearance application three lawsuits in the 1990s in which he was a party. Applicant did not mitigate the financial considerations and personal conduct 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 November 8, 2004, 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 December 3, 2004, and elected to have a hearing before an administrative judge. The case was assigned to me on January 31, 2005. On May 18, 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on June 6, 2005.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 61 years old, divorced in 1994, with two children and two stepchildren. He works as a senior analyst on combat training systems for defense contractor. He is a retired Army officer whose annual income, including retirement pay, exceeds \$100,000, making him financially capable of paying his debts. His monthly income exceeds his monthly expenditures by over \$1,000. He is current on his monthly financial obligations. Applicant was unemployed for several years during the mid-1990s. Applicant had a security clearance for many years while on active duty with the Army. (Tr. 19, 20, 32, 33; Exhibits 1, C, E, F, and R)

Applicant completed his security clearance application (SCA) on April 20, 2001. He answered Question 40 (*In the last 7 years, have you been party to any public record civil court actions not listed elsewhere on this form?*) with "no". Applicant answered Question 43 (*Do you have any additional remarks to enter in your application?*) with "yes" and admitted he did not list each credit problem he had, but would discuss his credit record with the government investigator and would add a supplement to the SCA as soon as he could gather the information. Applicant did not list his lawsuit for wrongful termination against a former employer in 1996, a 1997 judgment against him for failure to repay borrowed money from a friend, and a June 1997 judgment against him by a person to whom he owed money in a real estate transaction. Applicant could give no explanation why he did not list specifically these three lawsuits to which he was a party when he knew about them, claiming it was a mistake not to list them, especially when he listed other debts on the SCA. (Tr. 15, 32, 34-36, 42, 43, 48, 49, 57; Exhibits 1, 6-9)

Applicant has several delinquent debts listed in the SOR, some of which he has paid, others he is attempting to pay but has procrastinated in that effort, and others are being paid on the installment basis. Those debts and their current status are as follows:

SOR DEBT LIST	CURRENT STATUS	RECORD EVIDENCE
1.a. IRS \$44,781	Negotiated settlement, lien released for \$29,263.79 for the tax years 1986, 1987, 1989, 1991-1993, but owes \$10,000 for more recent tax years.	Tr. 23-30, 50; Exhibits 3 and G
1.b. Credit card, \$1,607	Unpaid because does not recognize debt, wrote to creditor seeking resolution.	Tr. 56; Exhibits 2, 3, 4, and H
1.c. Credit card, \$1,091	Paid on February 9, 2005.	Exhibits 2, 3, 4, D, and I
1.d. Credit card, \$480	Paid in February 2004.	Tr. 31; Exhibits 2, 3, 4, and J
1.e. Friend from whom Applicant borrowed money, \$1,289.50 judgment	Judgment satisfied May 30, 2003.	Tr. 34, 36; Exhibits 2, 3, 8, D, and K
1.f. Repossessed car, \$6,010	Paid and account closed prior to May 9, 2005.	Exhibits 2, 3, 4, D, and L
1.g. Cable T.V. bill, \$171	Paid May 6, 2005.	Exhibits 2, 3, 4, D, and M
1.h. Telephone bill, \$492	Paid May 9, 2005.	Exhibits 2, 3, 4, D, and N
1.i. NSF check redemption, \$64	Claims paid in 1997, no proof, sent letter May 4, 2005, to	Tr. 55; Exhibits

	collector, returned as undeliverable, not contact original merchant.	2, 3, 4, D, and O
1.j. Medical treatments, \$40	Claims paid, but no proof, sent letter May 4, 2005, to collector.	Tr. 31, 56; Exhibits 2, 3, 4, D and P
1.k. Net monthly income of \$3,143	Has financial ability to pay debts, but has not done so timely.	Exhibits 2, 5, E, F, and R

Applicant is paying the judgment for \$35,080 rendered by a state court in July 1995 in favor of a person with whom Applicant entered an agreement to sell his house and received \$35,000 in excess of the market or sale price, that excess being a loan at 9% interest. Applicant did not repay the loan in a timely manner, so the plaintiff filed a lawsuit. Applicant is now paying him \$400 monthly, having already paid him \$6,500 on the debt. The Plaintiff gave Applicant a satisfaction of judgment in 2004. (Tr. 34-36, 42, 43; Exhibits 5, 9, D, and Q)

Applicant owed the Internal Revenue Service (IRS) \$44,000 for unpaid taxes, primarily from a self-employment business in the late 1980s. He did not file his tax returns or underpaid his taxes for about five years in that period. His pattern of not paying his federal taxes and/or not filing his tax returns continued from 1987 to 1997. The IRS garnished his wages for \$1,200 monthly for about a year until the garnishment stopped in 1998. He owes the IRS another \$10,000 from unfiled and unpaid income taxes for several more recent years. The tax forms have now been filed, and Applicant recently paid the IRS \$2,000, but does not pay the IRS a regular monthly amount, though he is willing to do so. (Tr.23-30, 52, 53; Exhibits 3, D, and G)

Applicant borrowed money from two friends in the 1990s, who sued him to recover the debts. Applicant also received non-judicial punishment under Article 15 of the Uniform Code of Military Justice for soliciting military subordinates to loan him money in the 1990s. Applicant waited until May 2005 to seek proof of payment of delinquent debts listed in Paragraphs 1.b., 1.i., and 1.j. of the SOR after receiving the SOR on November 13 2004. (Answer; Tr. 32, 34, 40, 58; Exhibits 8, 9, D, K, and Q)

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry*

§ 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

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. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual'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 or recurrence (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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. 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. ay 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an

evaluation of the facts of this case:

Guideline F: Financial Considerations: *The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.* E2.A6.1.1

Guideline E: Personal Conduct: *The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.* E2.A5.1.1

CONCLUSIONS

Regarding the Guideline F Financial Considerations security concerns, the Government established the Applicant's delinquent debts by substantial evidence. Disqualifying Conditions (DC) 1 (A history of not meeting financial obligations E2.A6.1.2.1), DC 2 (Deceptive or illegal financial practices such as income tax evasion E2.A6.1.2.2), and DC 3 (Inability or unwillingness to satisfy debts E2.A6.1.2.3) apply. Applicant's debts range from \$44,000 before settlement on some tax debts with the IRS while continuing to owe other taxes to the IRS, to a medical bill for \$40, none of the alleged delinquent debts did he pay in a timely fashion. His procrastination for payment of debts is repeatedly demonstrated by his actions as recently as immediately prior to the hearing when he tried to obtain proof that he paid three debts, but for which payments he does not have proof. Furthermore, his Article 15 received while a military officer for soliciting funds from enlisted subordinates, and borrowing money from two friends who had to sue him to recover the money, shows he has a pattern of financial irresponsibility and engaging in illegal acts to generate income.

Applicant is a financial procrastinator with sufficient income to repay his debts, especially having a military retirement income the entire period in question. Applicant's attempts to excuse his failure to pay his debts by his post-service periods of unemployment and his divorces are not persuasive. His tax debts remain unpaid, and he has a pattern of not filing tax returns or paying his taxes. With his current income he could have resolved the total tax debt before now, so there is no good-faith effort shown to pay those delinquent debts, especially since the IRS had to garnish his retirement for at least a year. The delinquent debts in paragraphs 1.b., 1.c., 1.f. through 1.j. were either not paid until just before the hearing, or remain delinquent with no proof from Applicant that he paid them, or Applicant procrastinated so long in paying that debt that he now claims he cannot contact the creditor, for example, the major retailer alleged in paragraph 1.i. Applicant has not exerted good-faith efforts to pay his delinquent debts, though he has had years to do so. There are no Mitigating Conditions (MC) applicable here Therefore, I conclude this guideline against Applicant.

Regarding the Personal Conduct Guideline E security concern of Applicant's failure to specifically list in response to SCA Question 40 the three lawsuits to which he was a party in the 1990s, DC 2 (The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, or similar form used to determine security clearance eligibility or trustworthiness E2.A5.1.2.2) applies. Applicant was the best person to know about these three lawsuits because he was a plaintiff or defendant in each one.

There are no MC applicable on these facts. Applicant failed to disclose on the SCA three civil lawsuits in which he was intimately involved, including an appeal of one in which he was the plaintiff against a former employer. He offers no persuasive reason why he did not list these actions. His general answer in Question 43 attempts to cover his lack of candor on any financial problems, but cannot extend to the civil actions contemplated in Question 40. Therefore, I conclude this guideline against Applicant.

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: For Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.I: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.a.1: Against Applicant

Subparagraph 2.a.2: Against Applicant

Subparagraph 2.a.3: 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.

Philip S. Howe

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).