

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 43-year-old employee of a defense contractor working as a ship fitter who admitted all of the specific allegations in the SOR relating to four delinquent debts of almost \$15,000 and denied that he was aware of the debts at the time of the filing of his application for a security clearance (SF 86). All four debts had been the subject of either judicial or collection actions by the creditors. An IRS debt for back taxes of \$25,000 was recently resolved. Clearance is denied.

CASENO: 03-17324.h1

DATE: 09/14/2004

DATE: September 14, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-17324

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 43-year-old employee of a defense contractor working as a ship fitter who admitted all of the specific allegations in the SOR relating to four delinquent debts of almost \$15,000 and denied that he was aware of the debts at the time of the filing of his application for a security clearance (SF 86). All four debts had been the subject of either judicial or collection actions by the creditors. An IRS debt for back taxes of \$25,000 was recently resolved. Clearance is denied.

STATEMENT OF CASE

On January 29, 2004, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On March 5, 2004, Applicant, in a sworn written statement, responded to the allegations set forth in the SOR, and requested a hearing. The matter was assigned to me on May 4, 2004. A notice of hearing was issued on May 6, 2004, and a hearing was held on May 19, 2004. The Applicant waived the 15 day notice requirement and testified. The Government introduced eight exhibits and the Applicant introduced one. All were admitted into evidence. The transcript was received on May 25, 2004. One post-hearing exhibit was submitted by the Applicant on August 17, 2004, without objection by the government.

FINDINGS OF FACT

Applicant is a 43-year-old employee of a defense contractor working as a ship fitter who admitted all of the specific allegations in the SOR relating to delinquent debts and denied that he was aware of any of the debts at the time of the filing of his application for a security clearance (SF 86). After a complete review of the evidence in the record and upon due consideration of the record, the following additional findings of fact are made:

Applicant's largest debt for \$25,000.00 to the Internal Revenue Service (IRS) was for back taxes and interest. Applicant was unaware of the tax lien at the time of the filing of the SF 86 and thus took no steps to pay it until receipt of the SOR. It was resolved as of March 2004 through application of tax refunds due the Applicant. (Exh. A). The refunds were because Applicant worked abroad in a tax free environment for several years.

The largest remaining debt for \$11,000.00 is for hospital and medical charges in connection with an assault on Applicant that resulted in extensive treatment and surgery. A judgment was entered against Applicant for the debt in 1997. The second largest remaining debt is for \$2,900.00 to a credit corporation for which a judgment was entered against Applicant in 1999. Applicant denies knowledge of the source of the debt. Two other small debts of \$199.00 and \$62.00 have been in collection since 2001, and have not been paid.

Applicant failed to disclose the delinquent debts, lien, and judgments in response to the applicable questions 36, 37, and 38 on his SF 86 filed May 15, 2001.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (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 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "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* Executive Order No. 12968 § 3.1(b)

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

Applicant's extensive delinquent debts prompted the allegation of violation of Guideline F in that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of inability or unwillingness to satisfy debts. (E2.A6.1.2.3.) Mitigating Conditions (MC) include the fact that the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.) Applicant has provided proof of resolution of the IRS tax debt.

Applicant believed the largest remaining debt for hospital treatment had been resolved through the county where the assault and his treatment occurred since he was an innocent victim of the assault. His assailant was killed in another fight the following year.

While Applicant denies knowledge of the source of the second largest remaining debt, it has been the subject of a

judgment since 1999. He asserts that he has tried to contact the creditor but offered no evidence of having done so. He acknowledges the two small remaining debts and says he intends to pay them although no steps have been taken to do so.

While Applicant agreed to investigate both of the larger debts, he has not provided any additional information during the 30 day period after the hearing that was given to him to do so. In fact, nothing has been submitted on these debts up to the date of this decision. The debts have been the subject of judgments since 1997 and 1999. The post-hearing submission of the Applicant dealt with issues not relevant to this matter.

While Applicant is a trusted and valuable employee, he has not shown the proper actions for resolution of his financial obligations. The delinquent debts have been extant for many years and the subject of judicial and collection actions. Thus, it is difficult, if not impossible, to believe that Applicant was unaware of all of them and could not have taken some action to resolve them as he did with the IRS. He contends that the IRS debt was so overwhelming that, once he became aware of it, he neglected the others until he could resolve it. He used the services of a lawyer to that end. He was given an opportunity to submit additional information on the remaining debts but did not do so.

Also alleged is Applicant's failure to report the delinquent debts on his SF 86 thereby raising issues under Guideline E that might indicate questionable judgment, unreliability, and unwillingness to comply with rules and regulations and could indicate that the person may not properly safeguard classified information (E2.A5.1.1.). Specifically, the deliberate omission, concealment, or falsification of relevant and material facts from a personnel security application could raise a security concern and be disqualifying. (E2.A5.1.2.2.)

Applicant stated that he was unaware of the delinquent debts at issue and did not know of their delinquency until the SOR was issued and that was why he did not report them on his SF 86. In view of the fact that all of the debts were the subject of judicial or collection actions, it is difficult to believe that some notification did not reach him in the years since those actions by creditors were taken and that he would have known about some of them at the time of the filing of the SF 86. No mitigating factors are applicable.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation.

The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that he is not eligible for access to classified information.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

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.: For 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 renew a security clearance for Applicant. Clearance is denied.

Charles D. Ablard

Administrative Judge