

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 40-year-old employee of a defense contractor. Applicant began his own business but encountered financial difficulties, resulting in many bad debts, dishonored checks, multiple adverse judgments, liens for unpaid taxes, and garnishment. Applicant also amassed substantial debts for treatment of a serious medical condition and his family's health care. On his security clearance application, Applicant failed to report several unpaid judgments against him and failed to disclose debts that were over 90 and 180 days delinquent. Since starting work for the defense contractor, Applicant resolved many of his delinquent debts through payment plans and a refinancing of his mortgage, however many of his debts remain unpaid. Applicant has not mitigated the security concerns arising from his financial difficulties or false statements. Clearance is denied.

CASENO: 03-18711.h1

DATE: 01/06/2005

DATE: January 6, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-18711

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 40-year-old employee of a defense contractor. Applicant began his own business but encountered financial difficulties, resulting in many bad debts, dishonored checks, multiple adverse judgments, liens for unpaid taxes, and garnishment. Applicant also amassed substantial debts for treatment of a serious medical condition and his family's health care. On his security clearance application, Applicant failed to report several unpaid judgments against him and failed to disclose debts that were over 90 and 180 days delinquent. Since starting work for the defense contractor, Applicant resolved many of his delinquent debts through payment plans and a refinancing of his mortgage, however many of his debts remain unpaid. Applicant has not mitigated the security concerns arising from his financial difficulties or false statements. Clearance is denied.

STATEMENT OF THE CASE

On February 5, 2002, Applicant submitted a security clearance application. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 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 (the "Directive"). On March 2, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, of the Directive.

Applicant answered the SOR in writing on April 2, 2004. He originally opted for a decision without a hearing. *Id.* On July 9, 2004, Applicant elected to have a hearing before an administrative judge.

The case was assigned to me on August 11, 2004. With the concurrence of the parties, I conducted the hearing on September 22, 2004. The government presented seven exhibits. Applicant presented two exhibits and testified on his

own behalf. At the Applicant's request, I left the record open until October 6, 2004, so that he could submit additional documents. Applicant later submitted the additional exhibits C through J, inclusive, which were admitted without objection. DOHA received the transcript (Tr.) on October 6, 2004.

FINDINGS OF FACT

Applicant admitted all the factual allegations in the SOR, with explanations. Answer to SOR, dated April 2, 2004, at 1-4. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 40 years old. Ex. 2 at 1. He is married, with two children. *Id.* at 2-3.

Applicant is a professional painter. He got his journeyman status when he was 19 years old. Tr. at 28. He worked as a painter for a prominent studio and at a major theme park for several years, then moved with his family to his present location in 1995. Tr. at 93-94. He worked for a local contractor for several years. Ex. 2 at 2.

In about 1996, Appellant opened his own business as a painting contractor. *Id.* Ex. 2 at 2;

Tr. at 93-94. Applicant found the weather in his area of the country made it extremely difficult to maintain steady work as a painting contractor. Tr. at 24. Applicant also had disagreements with customers over the work performed; several of these disputes ripened into lawsuits and two resulted in judgments against Applicant. Answer to SOR, ¶ 1.r; Ex.6 at 1. As his business struggled, Applicant was unable to pay his state taxes, resulting in delinquencies and a garnishment of his wages. Answer to SOR, ¶¶ 1.a, 1.x; Tr. at 43. Several of Applicant's checks were dishonored. Applicant also fell behind in payments for telephone services (SOR, ¶¶ 1.c, 1.d, 1.e), automobile repair services (SOR, ¶ 1.f), and loans (SOR, ¶¶ 1.i, 1.n).

Because his business was struggling, Applicant did not have medical insurance for himself or his family. Tr. at 26. Between 1997 and 2002, Applicant experienced two episodes where his heartbeat rose to dangerously high levels for extended periods, requiring expensive medical treatment. Tr. at 26-28, 95. Applicant was unable to pay these bills when they became due. Additionally, he did not have insurance to pay for medical care for his family when needed, resulting in other delinquent debts. Answer to SOR, ¶¶ 1.g, 1.h, 1.j, 1.k, 1.l. After time, the creditors sued Applicant for the payments due. Applicant was served with the complaints and the creditors obtained judgments by default. Ex. 6; Answer to SOR, ¶¶ 1.o, 1.p, 1.s, 1.t, 1.u, 1.v, 1.w.

Beginning in early 2002, Applicant began working for a defense contractor planning and estimating painting projects on Navy ships. Tr. at 30, 94. The position requires a security clearance. Applicant completed an SF 86, Security Clearance Application, on February 5, 2002. Ex. 1 at 1. He worked with the office manager for the defense contractor to enter Applicant's responses into a computer. Tr. at 82. Applicant found it awkward and embarrassing to provide some of the information to the office manager. Tr. at 82-83.

Question 37 on the SF 86 inquired whether Appellant had any unpaid judgments against him within the previous seven years. Applicant answered, "yes," but listed only one judgment in the amount of \$400.00. Ex. 1 at 6; Tr. at 82. Applicant indicated that was the only judgment that came to mind. Tr. at 84-85. Applicant did not list the other existing judgments against him. Answer to SOR, ¶¶ 1.o, 1.r, 1.s, 1.y, 1.w; Tr. at 86-88.

Question 38 on the SF 86 inquired whether Applicant had been over 180 days delinquent on any debts with the previous seven years. Ex. 1 at 6. Applicant listed one account for more than \$6,000.00. He did not list other delinquent debts or the tax liens against him.

Question 39 on the SF 86 inquired whether Applicant was then over 90 days delinquent on any debts. Ex. 1 at 7. Applicant answered, "No." He did not list any of his numerous delinquent debts. Tr. at 100-01.

After Appellant began working for the defense contractor, the regular salary and benefits made it possible for Applicant to address his delinquent debts. Tr. at 30. The state garnished his salary for payment of state taxes. Answer to SOR, ¶ 1.a. Applicant testified this debt was satisfied, but did not provide documentary proof. Tr. at 43.

In December 2003, Applicant refinanced his home at a greater amount. Answer to SOR, Atch A. He used about \$30,000.00 to pay his property tax liens (SOR, ¶ 1.x) and most of the outstanding judgments (SOR, ¶¶ 1.o, 1.p, 1.q, 1.r, 1.s, 1.t, 1.u, 1.v). Applicant asserts that he intended to generate enough funds to pay off all his delinquent debts, but an error by the settlement company misstated the pay-off amount for his existing mortgage, leaving him with less funds than planned. Tr. at 40; Ex. F. Applicant indicated that, having resolved many of his debts and having paid on his refinanced mortgage faithfully for one year, he will qualify for another refinancing at a lower interest rate and without substantial fees, making it possible to pay off his remaining debts. Tr. at 118.

Applicant also entered into payment plans with creditors to pay off outstanding debts. Applicant and his wife arranged with one creditor (SOR, ¶ 1.b) to pay off a balance due in regular payments of \$293.69 per month. Answer to SOR, Atch C. That debt was resolved. Ex. E at 1. In April 2004, Applicant entered into an agreement with a collection agency to pay off several delinquent debts (SOR, ¶¶ 1.h, 1.i) through regular monthly payments of \$140.00. Answer to SOR, Atch B. Applicant testified that those debts were satisfied. Tr. at 68-69.

At the hearing, Applicant produced a letter and a newspaper article attesting to his character. Exs. A, B. He also testified about the reasons for his financial difficulties and the steps he has taken to resolve the debts. He provided evidence that he paid the debts listed in the SOR, ¶¶ 1.j, 1.o, 1.p, 1.q, 1.r, 1.s, 1.t, 1.u, 1.v, and 1.x. He testified that he paid the following debts, but did not provide documentary proof of payment: 1.f, 1.g, and 1.w. Applicant provided evidence of settlement arrangements, but did not provide proof of final payment for the following debts: 1.a, 1.b, 1.h, and 1.l. Applicant stated that, because he was addressing other obligations, he had not yet made arrangements to pay the following debts: 1.c, 1.d, 1.e, 1.i, 1.k, 1.m, and 1.n.

POLICIES

In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only 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." 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 a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

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

Guideline F, Financial Considerations. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive, ¶ E2.A6.1.1.

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

"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." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (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 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. *Id.*

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. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. 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 (App. Bd. Dec. 19, 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.

CONCLUSIONS

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

Guideline F, Financial Considerations

Paragraph E2.A6.1.2.1 of the Directive provides that it may be a disqualifying condition if the evidence reveals "[a] history of not meeting financial obligations." Similarly, ¶ E2.A6.1.2.3 indicates that an "[i]nability or unwillingness to satisfy debts" may be disqualifying. Applicant admitted being unable to pay his debts due to his struggling business and his medical difficulties, and he acknowledged that the debts remained unpaid for many years. I find Applicant has shown both a history of failing to meet his financial obligations and an inability to satisfy his debts. I conclude both these potentially disqualifying conditions apply.

The security concerns arising from Applicant's financial difficulties can be mitigated under certain circumstances. Under

the Directive, ¶ E2.A6.1.3.1, it may be mitigating where "the behavior was not recent." The greatest part of Applicant's delinquent debts arose between 1998 and 2002. However, Applicant's inability to pay or otherwise resolve many of his delinquent debts continued until the date of the hearing. I conclude this mitigating condition does not apply.

Paragraph E2.A6.1.3.2 of the Directive provides that it may be mitigating where the financial difficulty "was an isolated incident." The available information indicates Applicant's delinquent debts arose over several years because of a variety of reasons. I conclude this mitigating condition does not apply.

Under ¶ E2.A6.1.3.3, it may be mitigating where, "[t]he conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)." Applicant testified that one reason for his delinquent debts was his difficulty in starting his own business and making it sufficiently profitable. Given the risk associated with starting a business, I am not persuaded that an unsuccessful business venture is "largely beyond [a] person's control," similar to a loss of employment or a business downturn. Therefore, I find this mitigating condition does not apply to Applicant's general debts. Applicant also experienced two episodes of a medical emergency, resulting in substantial medical bills. It is understandable that unexpected medical emergencies can result in financial strain for a period of time, therefore this mitigating condition applies to medical expenses related to Appellant's illness.

Proof that "[t]he person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control," may be mitigating, under ¶ E2.A6.1.3.4 of the Directive. There is no evidence Applicant ever sought or received any financial counseling. I find this mitigating condition does not apply.

Finally, it may be mitigating where "[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Directive, ¶ E2.A6.1.3.6. Applicant paid off many of his delinquent debts, through repayment plans, involuntary garnishment, and refinancing his home. I conclude this mitigating condition applies, in part. However, Applicant has not resolved or addressed many of his delinquent debts, thus they remain a security concern.

It is also important to consider all the evidence in light of the "whole person" concept. Applicant is a mature adult. He has experience handling his financial affairs, although he claims his wife handled most of the matters for the family. He has worked for a defense contractor for about 4 years without incident. Some debts arose from a medical condition beyond his control, however many of Applicant's delinquent debts arose from his inability to make his new enterprise sufficiently profitable.

I considered the potentially disqualifying and mitigating circumstances in light of the "whole person" concept. I conclude Applicant has failed to mitigate the security concerns arising from his history of failing to meet his financial obligations and his inability to pay his debts.

Guideline E, Personal Conduct

Under the Directive, conduct demonstrating a lack of candor or dishonesty may raise security concerns. Specifically, ¶ E2.A5.1.2.2 provides that "the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . . used to conduct investigations . . . [or] determine security clearance eligibility or trustworthiness . . ." may be disqualifying. In response to question 37 on the SF 86, Applicant reported only one unpaid judgment against him in the amount of \$400.00. In fact, he had many outstanding judgments against him at the time—at least two from cases where he had gone through a trial and received an adverse ruling and judgments over \$1,000.00. In response to question 38, Applicant reported only one debt over 180 days delinquent within the previous seven years. He also denied having any debts then over 90 days delinquent in response to question 39. Considering the extent of his financial difficulties, his numerous bad checks, the multiple lawsuits and judgments against him, and his medical bills, I find Applicant knew that he had many other delinquent debts and deliberately concealed the information. I conclude Applicant deliberately provided false information regarding material and relevant facts on his security clearance application. The evidence presented in this case raises concerns about Applicant's judgment, trustworthiness, reliability, candor, and honesty. This disqualifying condition applies.

Under the Directive, the security concerns arising from personal conduct may be mitigated under certain circumstances. Directive, ¶ E2.A5.1.3. I considered carefully each of the potentially mitigating conditions and conclude none of them apply. I also considered the "whole person" concept. I conclude Applicant has failed to mitigate the security concerns arising from his falsification of material facts on his security clearance application.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For 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: For Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: For Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: For Applicant

Subparagraph 1.m: Against Applicant

Subparagraph 1.n: Against Applicant

Subparagraph 1.o: For Applicant

Subparagraph 1.p: For Applicant

Subparagraph 1.q: For Applicant

Subparagraph 1.r: For Applicant

Subparagraph 1.s: For Applicant

Subparagraph 1.t: For Applicant

Subparagraph 1.u: For Applicant

Subparagraph 1.v: For Applicant

Subparagraph 1.w: Against Applicant

Subparagraph 1.x: 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 continue a security clearance for Applicant. Clearance is denied.

Michael J. Breslin

Administrative Judge