

KEYWORD: Financial; Personal Conduct

DIGEST: Security concerns arose during renewal of Applicant's security clearance when it was discovered he owed over \$26,000.00 to various creditors. Additionally, Applicant falsified his security clearance application by deliberately failing to list his delinquent debts. Applicant has failed to mitigate both concerns. Clearance is denied.

CASENO: 03-18803.h1

DATE: 08/31/2005

DATE: August 31, 2005

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 03-18803

**DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT J. TUIDER**

**APPEARANCES**

**FOR GOVERNMENT**

Sabrina Elaine Redd, Esq., Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Security concerns arose during renewal of Applicant's security clearance when it was discovered he owed over \$26,000.00 to various creditors. Additionally, Applicant falsified his security clearance application by deliberately failing to list his delinquent debts. Applicant has failed to mitigate both 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 2, 2004, DOHA issued a Statement of Reasons (SOR) <sup>(U)</sup> 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 November 19, 2004, and elected to have a hearing before an administrative judge.

The case was assigned to another administrative judge on March 9, 2005. On March 10, 2005, he issued a notice of hearing scheduling a hearing for April 6, 2005. Due to caseload considerations, the case was transferred to me on April 1, 2005. The hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The government offered six documents, which were admitted without objection as Government Exhibits (GE) 1 through 6. The Applicant offered six documents, which were admitted without objection as Applicant Exhibits (AE) A through F. DOHA received the transcript on April 19, 2005.

## FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 58-year-old unmarried man. He was married to his first wife from January 1970 to April 1977. That marriage ended in divorce. Two children were born of that marriage - a daughter and a son, both adults and living on their own. Applicant was married to his second wife from July 1977 to February 2003. That marriage also ended in divorce. Applicant has a 26-year-old daughter born of his second marriage, who has Down's syndrome. He also has a stepdaughter from his second marriage, who is an adult living on her own. Applicant pays \$1,000.00 each month permanent alimony and child support to his second wife and his daughter with Down's syndrome.

Applicant is a high school graduate. He served on active duty in the Air Force from January 1966 to December 1969 and from April 1971 to May 1987, and retired with 20 years of cumulative service as a Technical Sergeant, pay grade E-6. Applicant held secret and top secret security clearances for the majority of his Air Force career.

Since retiring from the Air Force, Applicant has held several defense contractor related jobs, all of which were located on the same military base. Since September 2002, Applicant has been employed as a supply technician lead. He seeks a secret security clearance, which is a requirement for his current position. Additionally, Applicant has a second job working as assistant projects manager for a janitorial service on the same military base where he is employed as a supply technician lead.

The SOR alleges Applicant is in arrears on 15 debts, totaling over \$26,000.00. On May 14, 2003, Applicant was interviewed by the Defense Security Service (DSS) regarding these past debts and stated, "I feel that I will be able to manage these debts and have them paid in full on my own."

Applicant further added, "As far as the repayment of the outstanding debts listed above, I do plan on paying them in full over time, but I just do not know exactly how much time it will take at this point." GE 2.

When queried at his hearing about the current status of the debts listed in his SOR, Applicant stated, "To be honest with you, Judge, nothing has changed. Like I said in my statement that I gave a while back, everything came about when I got divorced. And I just - on top of that I lost a job. And that just put me so far behind. And right now I'm at no point - to where I can't see daylight other than trying to file bankruptcy. I've been actually trying to put it off thinking I could do something with it, but I'm at the point now where that's my only out is to go ahead and file bankruptcy and try to do the best I can from there." Tr. 12.

When further queried about the amount Applicant estimated he currently owed to his creditors, he responded, "To be perfectly honest with you, sir, I don't know. I would think what, 26,000 and maybe more than that. I have no idea, sir." Tr. 21.

Applicant attributed his financial problems to his most recent divorce in February 2003 and having been laid off from February 2002 to September 2002 from his job as a supply technician lead. Applicant also owes the Internal Revenue Service "some money" for back taxes, which is not reflected on the SOR. Tr. 22.

Since Applicant's second divorce, he has developed and maintains a relationship with a new girlfriend from the Philippines. He had been sending her family in the Philippines varying amounts of money beginning in May 2002 of \$500.00 per month, which increased to \$1,000.00 per month in October 2002. He stopped sending money to the Philippines in approximately mid-2003. GE 2, Tr. 27-28. Applicant conceded that he "probably" could have remained current on his debts had he used the money sent to his girlfriend's family to pay his creditors. Tr. 28-29.

During Applicant's marriage to his second wife, he paid the family bills and managed the family budget "because she does not read or write English." Tr.26-27.

Applicant had a heart attack in November 2001 and was hospitalized three times after than between December 2001 and March 2002. GE 2. When queried about the status of the medical bills related to the treatment he received for his heart attack, he was unable to provide information regarding their status.

Applicant's Report of Credit, dated December 23, 2002, indicates he had one account 60 days past due, three accounts 120 days past due, and six accounts which had either gone to collections or were charged off. GE 6. Applicant's Report of Credit, dated May 2, 2003, indicates he had one account 60 days past due, two accounts 120 days past due, and 13 accounts which had either gone to collections or were charged off. GE 5.

On December 18, 2002, Applicant completed his security clearance application. Question 38 asked if, in the previous seven years, Applicant had been over 180 days delinquent on any debts. Question 39 asked if he was then over 90 days delinquent on any debts. Applicant answered "no" to both questions. GE 1. In his Answer to SOR, Applicant denied falsifying these responses and stated regarding ¶ 2.a., "I Deny, because at the time I believed that I was making a true statement." Regarding ¶ 2.b., Applicant stated, "I Deny, for the same reason stated above."

Regarding ¶¶ 2.a. and 2.b., Applicant testified, "And it was an honest mistake on my part. I didn't actually try to falsify the thing for that. I just didn't realize what was going on and I just answered no. . . . I wasn't trying to falsify anything, because if I was I would have - if I realized it I would have said yes." Tr. 34.

Applicant has a demonstrated record of being a solid and trusted employee with a good work ethic. This view is held by management, co-workers, and a personal friend. AE A through E.

## POLICIES

The adjudicative guidelines in the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, administrative judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant adjudicative guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an applicant's lack of security worthiness.

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. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

## BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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." Executive Order 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.

Initially, the government must establish, by substantial 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. All that is required is proof of facts and circumstances which 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. Where the facts proven by the government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See Executive Orders 10865 § 2 and 12968 § 3.1(b)*. "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 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

## CONCLUSIONS

### **Guideline F - Financial Considerations**

In the SOR, DOHA alleged Applicant had 15 delinquent debts (¶¶ 1.a. through 1.o.) totaling in excess of \$26,000.00. *The Concern*: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The government established its case under Guideline F by Applicant's admissions and evidence submitted. His inability to satisfy his outstanding financial obligations gives rise to Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. (*A history of not meeting financial obligations*); and FC DC E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*).

Applicant has done little, if anything, to resolve his debts since they were brought to his attention as early as May 2003,

when he was interviewed by the DSS. His sending money to his girlfriend's family in the Philippines in lieu of making minimum monthly payments on his accounts demonstrated where he placed his priorities. At his hearing, he suggested bankruptcy as the most plausible solution for his financial plight. His failure to act and his choice to divert funds instill little confidence that Applicant is working to resolve his debts. Applicant's testimony attributing his financial problems to his second divorce, which was final over two years ago, and having been laid off from February 2002 to September 2002, failed to adequately explain his lapses in financial accountability during the past two years. Given the length of time since Appellant's divorce, his choice to divert funds to his girlfriend's family in lieu of paying his debts, and inaction in resolving his debts, I am unable to apply any of the mitigating conditions under Guideline F. I find against Applicant.

### **Guideline E- Personal Conduct**

In the SOR, DOHA alleged Applicant falsified his security clearance application by deliberately failing to disclose that he had delinquent debts (§§ 2.a. and 2.b.). *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. Directive ¶ E2.A5.1.1.

Applicant denied intentionally falsifying his responses regarding his past due debts. During the hearing, Appellant testified he managed the family finances because his wife did not read or write English. Applicant completed his security clearance application in December 2002 and his divorce from his second wife was final in February 2003. His Reports of Credit show a history of past due accounts. Given Applicant's age, experience, the fact he held a security clearance the majority of his 20-year Air Force career, and his being solely responsible for managing the family finances, I do not find his denial plausible. Applicant's suggestion that he did not believe his accounts were delinquent is clearly rebutted by the facts.

The government requires those entrusted with classified information to be straightforward, honest and diligent in the information they provide. Applicant's behavior not only raises questions about his ability to protect classified information, but also raises a question about his honesty in future cases regarding the integrity of the security-clearance process. None of the mitigating conditions listed in the guidelines apply to Applicant's case. I find against Applicant.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraphs 1.a.-1.o.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraphs 2.a.-2.b.: 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.

**Robert J. Tuider**

**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.