

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has a history of financial delinquencies dating back several years. He deliberately failed to report his financial delinquencies on a security clearance application he executed in August 2004, and he offered no credible explanation for his failure to do so. Clearance is denied.

CASE NO: 05-06360.h1

DATE: 06/27/2006

DATE: June 27, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-06360

**DECISION OF ADMINISTRATIVE JUDGE**

**JOAN CATON ANTHONY**

**APPEARANCES**

**FOR GOVERNMENT**

D. Michael Lyles, Esq., Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant has a history of financial delinquencies dating back several years. He deliberately failed to report his financial delinquencies on a security clearance application he executed in August 2004, and he offered no credible explanation for his failure to do so. 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 December 5, 2005, under the applicable Executive Order<sup>(1)</sup> and Department of Defense Directive,<sup>(2)</sup> DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. Applicant's Answer to the SOR was received by DOHA on January 3, 2006. He requested a hearing before an administrative judge. The case was assigned to me March 29, 2006. On April 24, 2006, 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 called no witnesses and submitted three exhibits for identification and admission to the record. The Government's documents were identified as Exhibits (Ex.) 1 through 3 and were admitted into evidence without objection. Applicant called no witnesses and submitted 3 exhibits for identification and admission to the record. His documents were identified as Exhibits (Ex.) A, B, and C and were admitted into evidence without objection. At the conclusion of the hearing, I left the administrative record open until close of business, May 1, 2006, so that Applicant could, if he wished, submit additional documents. Applicant did not submit any additional information for inclusion in the record. On May 4, 2006, DOHA received the transcript (Tr.) of the proceeding.

## FINDINGS OF FACT

The SOR contains seven allegations of disqualifying conduct under Guideline F, Financial Considerations and two allegations of disqualifying conduct under Guideline E, Personal Conduct. Applicant admitted the seven Guideline F allegations. In his answer to the Guideline E allegations, he admitted answering "no" to Questions 38 and 39 on his security clearance application, but he denied deliberately falsifying his answers. Applicant's admissions are incorporated as findings of fact.

Applicant is 26 years old and a high school graduate. He is employed as a security officer by a government contractor. He is unmarried and the father of a five-year-old child from a relationship that ended in about January 2003. In September 2004, he was diagnosed with hypertension (Ex. 1; Ex. A; Tr. 26-28; 34; 44).

Applicant earns approximately \$20 per hour and works 40 hours per week. His average pay check is approximately \$1,100 every two weeks. (Tr. 35-36) He and the woman he lives with share expenses. Applicant's share of the monthly rent is \$700. He pays \$600 a month in child support. (Tr. 35; 37.) He estimates his other living expenses range between \$425 and \$475 a month. (Tr. 37.)

Applicant has a history of financial delinquencies, most of which date to 2003. He acknowledged responsibility for four collection accounts and two charged-off accounts. Applicant's total indebtedness for the delinquencies alleged in the SOR is approximately \$7,900. (Tr. 36.). In February 2005, Applicant was interviewed by special investigator for the Office of Personnel Management and stated he had insufficient funds to pay his debts but intended to pay them at some future time. (Ex. 2.) At his hearing he admitted he had not developed a budget or a plan to pay his creditors. (Tr. 37.) Applicant has not sought credit counseling. (Tr. 42.) He acknowledged his creditors had been contacting him about his delinquent debts. (Ex. 2.)

Applicant presented a copy of a face of a check he said he sent to a creditor in payment of a debt of \$417.43. Applicant said the debt he paid was the same debt alleged at subparagraph 1.a. of the SOR. Applicant failed to produce credible evidence that the creditor received the check and considered the debt satisfied. (Ex. B.) Applicant also presented a copy of a face of a check for \$252.69, which he said was the settlement amount for the debt alleged at subparagraph 1.f. of the SOR. (Ex. C.) Again, Applicant failed to produce credible evidence that the creditor received the check and considered the debt satisfied. He admitted the other debts alleged in the SOR had not been paid. (Tr. 39-42.)

Applicant completed and signed a security clearance application (SF-86) on August 5, 2004. Question 38 on the SF-86 asks, in pertinent part: "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Applicant answered "no" to Question 38. Question 39 on the SF-86 asks, in pertinent part: "Are you currently over 90 days delinquent on any debt(s)?" Applicant answered "no" to Question 39.

Applicant signed and dated the following certification after he completed his SF-86:

My statements on this form, and any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both (See section 1001 of title 18, United States Code.)

### POLICIES

"[No 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 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." Exec. Or. 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.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. 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. 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. *See Egan*, 484 U.S. at 531. 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. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* 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.

## CONCLUSIONS

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

The Government's concern under Guideline F, Financial Considerations, is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. Applicant has a history of not meeting his financial obligations, and his financial history suggests an inability or unwillingness to satisfy his debts, conditions which raise security concerns under subparagraphs E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F. DOHA's Appeal Board has concluded that "[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." ISCR Case No. 98-0810 at 4 (App. Bd. June 8, 2000).

In the SOR, DOHA alleged that Applicant was indebted to a creditor for a debt of approximately \$419 which had been charged off and which had not been paid as of November 9, 2005 (¶1.a.); that he owed approximately \$2,012 on an account placed for collection, and the debt had not been satisfied as of November 9, 2005 (¶1.b.); that he owed a creditor approximately \$1,429 on an account placed for collection, and the debt had not been satisfied as of November 5, 2005 (¶ 1.c.); that he owed a creditor approximately \$2,424 on an account placed for collection, and, as of November 9, 2005, the debt had not been satisfied (¶ 1.d.); that he owed a creditor approximately \$1,161 on an account placed for collection, and, as of November 9, 2005, the debt had not been satisfied (¶ 1.e); that was indebted to a creditor for a charged-off debt of approximately \$505, and, as of November 9, 2005, the debt had not been satisfied (¶ 1.f.); and that, in November 2005, Applicant indicated he was unable to pay his delinquent debts (¶ 1.g.). An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government has established, through Applicant's admissions and the record evidence, a *prima facie* case that Applicant is financially overextended. Applicant provided no persuasive evidence to rebut the financial concerns specified in the SOR and identified as disqualifying conditions (DC) under ¶¶ E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F.

We turn to a review of the several conditions that could mitigate the security concerns raised by Applicant's financial delinquencies. Applicant's acknowledged delinquencies date to at least 2002 and 2003. His financial delinquencies

involve long-standing debts, and his inability or unwillingness to pay them is recent. Thus, neither mitigating condition (MC) E2.A.6.1.3.1. nor MC E2.A6.1.3.2. applies.

Applicant stated he had been diagnosed with hypertension in 2004, but he failed to present any medical records or receipts to substantiate that his illness contributed to his financial delinquencies. If a person's financial delinquencies were largely caused by conditions beyond his or her control, then MC E2.A6.1.3.3 might apply. The record shows that Applicant's financial problems occurred before his medical diagnosis for hypertension. His illness, while unfortunate, does not explain or mitigate his long-standing financial difficulties and his unwillingness to approach his creditors and arrange payment or settlement. His financial problems do not appear to be the result of conditions beyond his control. Thus, MC E2.A6.1.3.3. does not apply

Applicant has not sought financial counseling and has not presented clear indications that his financial problems are being resolved or are under control. Therefore, MC E2.A6.1.3.4. is inapplicable, and the Guideline F allegations in the SOR are concluded against the Applicant.

## **Guideline E - Personal Conduct**

In the SOR, DOHA alleged Applicant deliberately falsified his answers on his SF-86 to Questions 38 and 39 (¶¶ 2.a. and 2.b.). In his answer to the SOR, Applicant denied the falsifications were deliberate. However, in his statement to the investigator, he said he did not list his debts because he planned to pay them. He also acknowledged he was aware of his debts and had received many communications from his creditors demanding payment. Applicant's deliberate misrepresentations cause serious security concerns. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

An applicant's responsibility to provide truthful and complete responses to questions on his SF-86 cannot be set aside or ignored. An applicant's financial history is material to a determination of his security worthiness. With respect to the Guideline E conduct alleged in SOR subparagraphs 2.a. and 2.b., Applicant falsified his SF-86 by omitting and concealing relevant and material information about his financial delinquencies in response to questions 38 and 39, bringing his conduct under disqualifying condition (DC) E2.A5.1.2.2. He did not make a prompt, good-faith effort to correct the falsification before being confronted with the facts, and thus Mitigating Condition (MC) E2.A5.1.3.3. does not apply. Applicant's falsifications were recent and not isolated incidents, and he did not supply the correct information voluntarily. Thus MC E2.A5.1.3.2. does not apply.

Applicant's deliberate concealment of his financial delinquencies increased his vulnerability to coercion, exploitation, or duress, and thus disqualifying condition E2.A5.1.2.4. applies. He has not taken positive steps to reduce or eliminate his vulnerability to coercion, exploitation, or duress, and thus MC E2.A5.1.3.5. does not apply. With respect to the

Guideline E conduct alleged in the SOR, the Government has established its case. Accordingly, the allegations in subparagraphs 2.a. and 2.b. of the SOR are concluded against the Applicant.

In all adjudications, the protection of our national security is the paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct. Having done so, I conclude Applicant should not be entrusted with a security clearance. In reaching my decision, I have considered the evidence as a whole, including the appropriate factors and guidelines in Department of Defense Directive, 5220.6., as amended.

### **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.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Paragraph 2.: Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 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.

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Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.