

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant failed to mitigate allegations of financial considerations arising from \$43,000.00 in overdue debts and personal conduct by writing 40-60 checks on accounts with insufficient funds during a one-year period. Although Applicant had external causes for the debts, his inability to manage his finances leading to a bankruptcy in 1988 for \$100,000.00, and intent to file another now, fails to mitigate the allegations. Clearance in denied.

CASENO: 04-02622.h1

DATE: 06/27/2005

DATE: June 27, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-02622

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate allegations of financial considerations arising from \$43,000.00 in overdue debts and personal conduct by writing 40-60 checks on accounts with insufficient funds during a one-year period. Although Applicant had external causes for the debts, his inability to manage his finances leading to a bankruptcy in 1988 for \$100,000.00, and intent to file another now, fails to mitigate the allegations. Clearance in denied.

STATEMENT OF CASE

On October 13, 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.

In a sworn written statement dated November 9, 2004, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on March 30, 2005. A complete copy of the file of relevant material (FORM) was provided to the Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted no additional information and the case was assigned to me on May 18, 2005.

FINDINGS OF FACT

Applicant is a 63-year-old employee of a major defense contractor. He is a retired government employee with 34 years of service. He admitted all but two of the allegations concerning financial considerations and admitted the single allegation relating to personal conduct. He offered explanatory information about the allegations. After a complete and thorough review of the information in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant filed for Chapter 7 bankruptcy in 1988 in an approximate amount of \$100,000.00. Between 2000 and 2004 he incurred over \$43,000.00 in 17 different delinquent debts to which he admits. Applicant and his wife have medical problems and at one point he was laid off for a period of time. They also have incurred debts for financial help provided to their children. He acknowledges that he has no ability to pay most of them. He intends to pay some amounts on some of the debts. No proof of payment was offered for the two debts totaling \$1,860.00 that he denied having.

He intends to file for bankruptcy again but has not done so. He regrets the need to do so but sees no alternative in view of his financial situation.

Applicant wrote 40-60 checks on accounts with insufficient funds during a twelve month period in 2002-2003. One of these checks was to the Internal Revenue Service. He wrote the checks in the hope that paychecks would be direct deposited in his account to cover the amounts of the checks.

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 delinquent debts prompted the allegation in the SOR 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) might 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.), and that the conditions resulting in the problems were largely beyond the person's control (E2.A6.1.3.3.) The assertion in his answer that he and his wife had financial difficulties caused by her health and his layoff from employment is insufficient to provide reasons for application of mitigating conditions for the concerns of the government as to Guideline F since no proof was offered.

Also alleged under Guideline E is Applicant's actions in writing 40-50 checks on accounts with insufficient funds during a one year period indicating 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.). Applicant wrote these checks in anticipation that his paychecks would be directly deposited in the accounts to cover the checks but he admits that he knew that there were insufficient funds in the accounts when the checks were written. No mitigating conditions 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.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is not clearly consistent with the national interest to grant clearance to Applicant.

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.: Against 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

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: Against Applicant

Subparagraph 1.n.: Against Applicant

Subparagraph 1.o.: Against Applicant

Subparagraph 1.p.: Against Applicant

Subparagraph 1.q.: Against Applicant

Subparagraph 1.r.: Against Applicant

Subparagraph 1.s.: Against Applicant

Paragraph 2.Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

DECISION

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge