

DATE: August 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-03119

ECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of failing to meet his financial obligations and being unwilling or unable to pay his delinquent debts. Although he paid several outstanding obligations after the initiation of this security investigation, several substantial debts remain unresolved. More significantly, Applicant falsified his security clearance application by failing to report his delinquent debts. Applicant failed to mitigate the security concerns arising from his financial difficulties and from his falsifications. Clearance is denied.

STATEMENT OF THE CASE

On March 8, 2003, Applicant submitted an application for a security clearance. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive"). On September 13, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under the Directive, specifically Guideline F, Financial Considerations, and Guideline E, Personal Conduct.

Applicant answered the SOR in writing on November 29, 2005. He elected to have the matter decided without a hearing.

Department Counsel submitted the government's case in a File of Relevant Material (FORM) dated May 9, 2006. On May 19, 2006, Department Counsel provided a complete copy of the FORM to Applicant, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. Applicant did not submit any matters in response on or before June 24, 2006. The case was assigned to me on July 25, 2006.

FINDINGS OF FACT

Applicant admitted the factual allegations in ¶ 1 of the SOR, with explanations, and denied the allegations in ¶ 2. (Item 3 at 1-2.) 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 was born in May 1951. (Item 4 at 1.) He enlisted in the U.S. Air Force in about 1970, and was awarded a Secret clearance in 1971. (Item 3 at 9; Item 4 at 7.) He married in 1975. (Item 4 at 3.) Applicant held a security clearance and served on active duty for about 22 years; he was honorably retired in the grade of E-6 in 1992. (Item 3 at 9; Item 4 at 4.)

Applicant's daughter purchased an automobile; Applicant co-signed the loan agreement to enable her to complete the purchase. (Item 6 at 2.) She did not make the required payments, and the automobile credit company repossessed the vehicle in August 1997. (Item 6 at 2; Item 7 at 6.) The automobile credit company sued Applicant in county court. In October 2000, they obtained a judgment against Applicant in the amount of approximately \$10,600.00. (Item 11.)

Between 1993 and 2000, he worked as a mechanic for a metals fabrication corporation. (Item 4 at 2.) In March 2000, Applicant assumed his present position as a generator technician for a defense contractor, working on a military installation. (Item 4 at 2.)

Applicant's dog killed a neighbor's dog, and the neighbor sued Applicant. In June 2001, the court awarded the neighbor \$800.00 in damages. (Item 6 at 3.) According to Applicant, his homeowner's insurance company paid the judgment.

In March 2002, Applicant fell ill. (Item 6 at 1.) He required surgery, missed work for two months, and received no pay. (*Id.*) Applicant's wife worked, but did not earn enough to cover all their obligations.

In March 2003, Applicant completed an SF 86, Security Clearance Application. Question 35 inquired whether he had any property repossessed within the preceding 7 years for any reason. Applicant answered, "No." Question 37 asked whether any judgments had been entered against him within the preceding 7 years that had not been paid. Applicant answered affirmatively, and reported the \$800.00 judgment entered in June 2001. He did not list the judgment obtained by the automobile credit company in October 2000. In response to Question 38, Applicant denied that he had been over 180 days delinquent on any debts within the preceding 7 years. He also denied that he was then over 90 days delinquent on any debts at that time, in answer to Question 39.

In April 2003, Applicant became ill and had surgery. (Item 6 at 1.) He missed work for 2 months. According to Applicant, he failed to file his claim for Workmen's Compensation in time, and therefore did not receive any pay during this period, causing additional financial hardship. (*Id.*)

In August 2003, Applicant's wife injured her back, making her unable to work. (Item 6 at 1.) She received Workmen's Compensation benefits, although they were less than her normal salary. (*Id.*)

In January 2004, a security investigator interviewed Applicant. On January 14, 2004, Applicant signed a statement discussing his outstanding debts. (Item 6.) He denied intentionally omitting or concealing adverse information on his security clearance application. He claimed his wife handled the family finances and he was not aware of the delinquencies. (Item 6 at 3-4.) He indicated his intent to resolve the debts in the near future, either by paying them completely or entering into a repayment plan.

In January 2005, Applicant obtained additional financing on his home and used the proceeds to pay some of the delinquent debts. The mortgage company paid off the debts to, *inter alia*, the creditors listed in ¶¶ 1.c, 1.d, and 1.f of the SOR. (Item 3 at 6, 7, and 8.)

On September 15, 2005, DOHA issued the SOR. (Item 1.) In his Answer to the SOR, Applicant provided copies of his receipts for payment of the debts listed in ¶¶ 1.c, 1.d, and 1.f of the SOR. (Item 3 at 4.) He indicated the automobile credit company did not accept his settlement offer on the judgment (SOR, ¶ 1.a) but would accept partial payments; however, he did not indicate whether he had made or intended to make such payments. He stated he paid the debt listed in ¶ 1.e, but did not have a receipt. (Item 3 at 4.) Applicant claimed the creditor holding the debt listed in ¶ 1.g was unable to find the account, therefore he could not complete payment. Finally, he asserted he made arrangements with the

creditor listed in ¶ 1.h of the SOR to pay the debt, but did not provide the terms of the arrangements, or indicate whether he had made any payments.

Presently, Applicant is 55 years old and married. His adult daughter lives with him and his wife and pays \$500.00 per month in rent. (Item 6 at 4.) Applicant's net military retirement pay is \$975.00 per month. He also pays \$800.00 per month for the childcare expenses for his grandchildren. (Item 6 at 4.)

POLICIES

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out standards and procedures for safeguarding classified information within the executive branch. The Secretary of Defense promulgated the Directive, establishing guidelines for the grant of security clearances.

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 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.)

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.

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

The security concern under Guideline F, Financial Considerations, is that "An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." (Directive ¶ E2.A6.1.1.)

Paragraph E2.A6.1.2.1 of the Directive provides that it may be disqualifying if the evidence reveals "[a] history of not meeting financial obligations." Similarly, ¶ E2.A6.1.2.3 provides that an "[i]nability or unwillingness to satisfy debts"

may be disqualifying. Applicant failed to pay several debts, including a substantial judgment entered in 2000. He has been aware of the government's security concerns arising from several outstanding debts since at least January 2004, but he is still unable to pay these debts or provide proof they are resolved. I conclude the available evidence raises these potentially disqualifying conditions.

Paragraphs 1.c, 1.d, and 1.f of the SOR allege Applicant is delinquent on certain accounts. The evidence shows he arranged to pay these debts after his interview with the security investigator. Because these bills have been paid, they no longer raise a security concern under Guideline F.

Security concerns arising from an applicant's financial difficulties can be mitigated. Under the Directive, ¶ E2.A6.1.3.1, it may be mitigating where "the behavior was not recent." The behavior in question is Applicant's failure to pay or otherwise resolve the delinquent debts. He has been unable to pay or resolve a some outstanding debts for several years. Applicant has not presented evidence sufficient to raise this mitigating condition.

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 evidence shows there were numerous debts arising at different times; therefore, I cannot find that this was an isolated incident.

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)." There is sufficient evidence indicating Applicant's financial problems arose as a result of conditions largely beyond his control. Applicant was seriously ill on two occasions, resulting in a loss of income for two separate periods. His wife also injured her back, making her unable to work and reducing the family's income. The largest debt arose when his daughter defaulted on the payments on her car loan, for which Applicant was responsible as a co-signer. I conclude the available evidence raises this mitigating condition.

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. Applicant did not provide any evidence that he sought or received counseling for his financial problems. This potentially mitigating condition is not raised.

Paragraph E2.A6.1.3.6 of the Directive states it may be mitigating where, "[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." As noted above, Applicant provided proof of his payment of the debts listed in ¶¶ 1.c, 1.d, and 1.f of the SOR. With regard to ¶¶ 1.b, 1.e, 1.g, and 1.h of the SOR, Applicant indicated he has paid-or arranged to pay-these debts, but has not provided any documentation or details about these arrangements. As noted above, Applicant has the burden of demonstrating that it is in the best interests of national security to grant him a clearance. In the absence of other evidence that these debts are resolved, I am not persuaded that he has made a good-faith effort to resolve these debts.

Guideline E, Personal Conduct

The security concern raised under Guideline E, Personal Conduct, is that "[c]onduct 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.)

Under ¶ E2.A5.1.2.2 of the Directive, "[t]he deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire" may be disqualifying. The SOR alleges four instances of falsification related to Applicant's financial circumstances.

Paragraph 2.a of the SOR alleges Applicant deliberately falsified material facts on the Security Clearance Application dated March 8, 2003, when he answered "No" to Question 35 : "In the last 7 years, have you had any property repossessed for any reason?" Applicant generally denied the allegations in ¶ 2 of the SOR, but did not specifically address this allegation. The information in the record is very limited. It appears his daughter bought a car, and he co-signed the loan. There is no indication whether his name was on the title of the car. His daughter did not make the required payments, and the automobile credit company repossessed the vehicle in August 1997. The question

specifically asked about property belonging to Applicant-the evidence does not show that the vehicle in question belonged to Applicant. I find the available evidence does not support the allegation that Applicant knowingly falsified his response to Question 35.

Paragraph ¶ 2.b of the SOR alleges Applicant wrongfully concealed the unpaid judgment in the amount of \$10,600.00 the automobile credit company obtained against him in October 2000. In his answer to the SOR, he asserted he was not aware of the judgment in question until about one year before receiving the SOR. The information in the file does not provide any proof that Applicant was ever served with the lawsuit, that he responded to the action, or that notice of the judgment was ever served upon him. I note Applicant did report another judgment of which he was aware, suggesting a willingness to provide such information to the government. Considering the limited information available, I find the evidence does not support the allegation that Applicant knowingly falsified his response to Question 37.

Paragraphs ¶¶ 2.c and 2.d of the SOR allege Applicant falsified his responses to Questions 38 and 39, respectively, when he denied that he had ever been more than 180 days delinquent on a debt within the preceding 7 years, and that he was not then over 90 days delinquent on any debts. A credit bureau report obtained on March 11, 2003 (3 days after Applicant submitted his application), revealed one debt that was more than 90 days overdue, and five debts that were so delinquent they were charged off. In his answer to the SOR, Applicant denied any intent to falsify his application, asserting that his wife always handled their finances and that he was not aware of these delinquencies. However, in an earlier statement (Item 6 at 1), Applicant noted that he was out of work without pay for two months beginning March 2002, and had to rely on credit to pay his bills. At the time he submitted the application, he was 90 days late on his mortgage payment. Considering his history of financial difficulties, the nature of the debts, and the amount of the obligations, I find Applicant was not unaware of his numerous delinquent debts at the time he submitted his security clearance application. I conclude the evidence raises this potentially disqualifying condition.

Under the Directive, an applicant may mitigate security concerns arising from questionable personal conduct. (Directive, ¶ E2.A5.1.3.) Paragraph E2.A5.1.3.2 of the Directive arises where "the falsification was an isolated incident, was not recent, and the individual subsequently provided correct information voluntarily." The available evidence indicates only one instance of falsification, occurring in 2003. Applicant has been forthcoming about his debts and other matters relating to his security clearance processing since that time. I conclude this potentially mitigating condition must be considered in this case.

Under ¶ E2.A5.1.3.3 of the Directive, it may be mitigating where, "[t]he individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts." Applicant has not met his burden of proving that he made good-faith efforts to correct the falsification before being confronted. I find this potentially mitigating condition does not apply. I also considered carefully the other potentially mitigating conditions and conclude they do not apply.

The "Whole Person" Concept

I carefully considered the disqualifying and mitigating conditions in this case, in light of the "whole person" concept. Applicant is a mature individual who served the government of the United States as an active-duty member of the armed forces, and successfully held a security clearance, for 22 years. (Directive, ¶ E2.2.1.4.) He has a history of failing to fulfill his financial obligations, and an inability or unwillingness to pay his delinquent debts. It is important to consider the circumstances surrounding the conduct. (Directive, ¶¶ E2.2.1.1, E2.2.1.2.) The debts did not arise from gambling, substance abuse, or other conduct that would increase security concerns. It is mitigating that periods of illness and unexpected loss of income for Applicant and his wife contributed to his financial difficulties. The largest debt arose because he co-signed a loan for his daughter, who then defaulted on her car payments. Applicant has paid many of his outstanding obligations since his debts first became a security issue, but has not provided proof that all his debts are paid or resolved, or that he has a plan to do so. (Directive, ¶ E2.2.1.9.) More troubling, however, was Applicant's falsification of his security clearance application, wherein he concealed his financial difficulties. (Directive, ¶¶ E2.2.1.1, E2.2.1.5, E2.2.1.7.) Such conduct ordinarily diminishes an applicant's trustworthiness, reliability and dependability. Considering all the facts and circumstances, considering Applicant's continuing financial difficulties, his failure to present evidence of a plan to resolve these delinquent debts, and the serious concerns arising from his false statements on his security clearance application, I find Applicant failed to mitigate the security concerns arising from his history of financial problems and his personal conduct.

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: Against Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: 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