

KEYWORD: Personal Conduct; Financial

DIGEST: Applicant has a history of financial instability and has been financially overextended for

several years. He falsified material facts regarding his financial delinquencies on his security clearance application. His continuing financial problems and his lack of candor about them raise serious security concerns. Clearance is denied.

CASENO: 04-03149.h1

DATE: 05/23/2005

DATE: May 23, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-03149

**DECISION OF ADMINISTRATIVE JUDGE**

**JOAN CATON ANTHONY**

**APPEARANCES**

**FOR GOVERNMENT**

Jason Perry, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

## **SYNOPSIS**

Applicant has a history of financial instability and has been financially overextended for several years. He falsified material facts regarding his financial delinquencies on his security clearance application. His continuing financial problems and his lack of candor about them raise serious security 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 December 30, 2004, 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 answered the SOR in writing on January 24, 2005, and requested his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on April 4, 2005. The FORM contained documents identified as Items 1 through 8. By letter dated April 8, 2005, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the FORM and filed his response by letter dated April 29, 2005. Department Counsel did not object to Applicant's submission. On May 11, 2005, the case was assigned to me for a decision.

## **FINDINGS OF FACT**

The SOR contains twelve allegations of disqualifying conduct charged under Guideline F, Financial Considerations, and two allegations charged under Guideline E, Personal Conduct. In his answer to the SOR, Applicant admitted all fourteen allegations. His admissions are incorporated as findings of fact.

Applicant is a 46-year-old technical writer employed by a defense contractor. Applicant and his wife have been married since July 1979. They are the parents of three adult children, one of whom suffers from mental illness. From 1977 to 1998, Applicant served as an enlisted man in the U.S. Army. He was granted a security clearance in 1977. (Item 4; Item 5.)

In November 2001, Applicant was working for a company that downsized. He was released from his job without prior notice and was unemployed for nine months. His wife was also out of work and caring for their child who suffers from mental illness. (Item 5.)

In August 2002, Applicant was hired by a defense contractor. He completed and certified an application for a security clearance (SF-86) on September 4, 2002. Question 38 on the SF-86 reads: "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 reads: ""Are you currently over 90 days delinquent on any debt(s)?" Applicant answered "no" to Question 39.

Applicant has a history of financial problems. In March 1994, he was granted a discharge in Chapter 7 bankruptcy of over \$25,000 of debt. His credit report for September 2002 listed two accounts past due by 30 days, seven accounts in collection status, and his 1994 discharge in bankruptcy. Five of the seven bad debts occurred between the time of his 1994 discharge in bankruptcy and his November 2001 lay-off from employment. (Item 6.) A credit report dated September 8, 2003 showed two accounts 30 days past due, five accounts 120 days past due, for a liability of \$2,499, and twelve accounts in collection or charge off status. (Item 7.) In his January 24, 2005, Answer to the SOR, Applicant admitted ten unpaid debts totaling approximately \$24,546. Applicant completed a personal financial statement (DIS Form 154) on January 29, 2004 which showed a monthly net remainder of \$88.00 that could be applied to the payment of his delinquent accounts.

On January 29, 2004, Applicant provided a signed, sworn statement to a special agent of the Defense Security Service. He said he did not list his financial delinquencies on his SF-86 because he did not have access to a credit report and didn't want to guess at what he might owe. He admitted omitting pertinent information about his financial liabilities when he responded to questions on the SF-86. He expressed his intention to make payments on his past due accounts as "soon as [his] financial situation improves with some positive events in the upcoming year." (Signed, sworn statement, at 2.) In his response to the FORM, Applicant stated he had paid one delinquent debt of \$55, but had received no receipt of payment from the creditor. He provided additional documentation showing he had tendered three checks, each for \$471.30, in settlement of another delinquent debt in the amount of \$1,687. (Response to FORM, dated April 29, 2005, at 2.) He expressed an intent to pay the other eight delinquencies alleged in the SOR at some unspecified date in the future. (*Id.*, at 2.)

## 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. 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 this 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 owed approximately \$55.00 on a delinquent account that was placed for collection on or about October 2001, and the debt had not been paid as of August 17, 2004 (¶ 1.a.); that he owed approximately \$801.00 to a bank credit card company on a delinquent account that had been charged off in about July 2002, and the debt had not been paid as of August 17, 2004 (¶ 1.b.); that he owed approximately \$634.00 on a delinquent account that had been charged off on or about August 2002, and the debt had not been paid as of August 17, 2004 (¶ 1.c.); that he owed a creditor approximately \$1,687.00 on a delinquent account charged off on or about December 1998, and the debt was not paid as of August 17, 2004 (¶ 1.d.); that he owed approximately \$2,208 on a delinquent account placed in collection on or about September 2002, and the debt had not been paid as of August 17, 2004 (¶ 1.e.); that he owed approximately \$12,736.00 to a creditor on a delinquent account that was charged off on or about August 2002, and the debt had not been paid as of August 17, 2004 (¶ 1.f.); that he owed approximately \$1,333.00 to a creditor on a delinquent account placed for collection on or about September 1999, and the debt had not been paid as of August 17, 2004 (¶ 1.g.); that he owed approximately \$2,261 to a creditor on an account identified as a bad debt, and as of January 29, 2004, the debt had not been paid (¶ 1.h.); that he owed approximately \$2,145 to a creditor on a delinquent account charged off on or about June 1999, and the debt had not been paid as of January 29, 2004 (¶ 1.i.); that he owed approximately \$686.00 to a creditor on an account identified as past due, and the debt had not been paid as of January 29, 2004 (¶ 1.j.); that his personal financial statement, executed on or about January 29, 2004, indicated a monthly net remainder of \$88.00, to pay the debts set forth in the SOR (¶ 1.k.); and that on October 20, 1993, Applicant filed for Chapter 7 bankruptcy protection, reported liabilities of approximately \$25,142.00 and assets of \$1,656.00, and his debts were discharged and the bankruptcy closed on March 23, 1994 (¶ 1.l.) An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

Applicant admitted the financial obligations identified in allegations at ¶¶ 1.a. through 1.l. of the SOR. The Government has established, through the FORM and Applicant's admissions, 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 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 involve long-standing debts which continue to be unsatisfied to this day. Thus, neither mitigating condition E2.A.6.1.3.1. nor mitigating condition E2.A6.1.3.2. applies. If a person's financial delinquencies were largely caused by conditions beyond his control, then mitigating condition E2.A6.1.3.3 might apply. While Applicant was unemployed for nine months in 2001-2002, and he has a child who suffers from mental illness, these circumstances, while unfortunate, do not explain or mitigate his long-standing financial difficulties, many of which predate the loss of his job in 2001. (*See* Item 6.) Thus, mitigating condition E2.A6.1.3.3. does not apply.

The record evidence does not establish that Applicant has sought counseling for his financial problems. While he indicated he would contact his creditors and he reported efforts to pay two of his debts, his efforts appear piecemeal. Applicant has failed to demonstrate he had initiated a good-faith effort to pay his debts or to resolve his financial delinquencies and bring them under control. Thus, neither mitigating condition E2.A6.1.3.4. nor E2.A6.1.3.6. applies to the facts of Applicant's case. Accordingly, the allegations in ¶¶ 1.a. through 1.l. of the SOR are concluded against the Applicant.

## **Guideline E - Personal Conduct**

In the SOR, DOHA alleged Applicant deliberately falsified material facts in his answers on his SF-86 to Question 38 by not revealing he was over 180 days past due on debts alleged in ¶¶ 1.a., 1.d., 1.g., 1.h., and 1.i. (¶ 2.a.) DOHA also alleged in the SOR that Applicant deliberately falsified material facts in his response to Question 39 on the SF-85 by not revealing he was over 90 days delinquent on the debts identified in ¶¶ 1.a. through 1.g. (¶ 2.b.) Applicant admitted all the falsification allegations in the SOR. His 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 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. His refusal to supply correct information on his indebtedness on his SF-86 was not based on advice from legal counsel, and thus MC E2.A5.1.3.6. is inapplicable.

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.

A person's refusal to provide relevant and material information to the Government provides a rational basis for denial or revocation of access to classified information for that person. ISCR Case No. 98-0445 at 3 (App. Bd. April 2, 1999), (quoting *Gayer v. Schlesinger*, 490 F. 2d 740, 754 (D.C. Cir. 1973); *Clifford v. Shultz*, 413 F. 2d 868 (9<sup>th</sup> Cir. 1969), *cert. denied*, 396 U.S. 962 (1969)).

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

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.1.: 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.

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.