

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant failed to mitigate security concerns raised by his more than \$13,000 of delinquent debt. He mitigated security concerns raised by his personal conduct. Clearance is denied.

CASENO: 04-04940.h1

DATE: 10/31/2005

DATE: October 31, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-04940

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate security concerns raised by his more than \$13,000 of delinquent debt. He mitigated security concerns raised by his personal conduct. 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 14 December 2004, DOHA issued a Statement of Reasons⁽¹⁾ (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 29 December 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 27 June 2005. On 15 August 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 23 August 2005.

FINDINGS OF FACT

Applicant is a 28-year-old security guard for a defense contractor. He is married and has two children, ages 9 and 5. He also works part-time for a parcel delivery service. His wife has been ill.

Applicant was raised by his grandfather who owned a roofing business and ran an illegal gambling business on the side. Applicant worked for his grandfather while he was growing up. He helped out with the roofing work and assisted in the

gambling business by providing snacks and beer to the players. Applicant did not receive payment on a regular basis. At times he got the hourly rate for his work, at other times, he got nothing-other than the food, clothing, and shelter his grandfather provided in raising him.

Applicant has worked in the past for other security companies. Applicant worked for Security Company 1, but quit because the company often failed to pay him what he was due. Ex. 2 at 3.

In February 1999, while working for Security Company 2, Applicant was assigned to an apartment complex. He received a complaint of loud music. When he asked the tenant to turn down the music, the tenant became irate and chased Applicant from the building. During the chase, Applicant believed his pursuer had caught hold of his shirt, so he drew his weapon and shot the tenant. The tenant died from his wounds. The Grand Jury returned a "No Bill." Applicant quit the job because he was having a difficult time adjusting after killing the tenant.

Applicant worked for Security Company 3 between August 1999 and August 2000. While so employed, he received several reprimands for various reasons. Applicant misused a company computer, failed to turn in an incident report, accepted a gift contrary to company rules, entertained a woman in the office while posting a sign saying he was on patrol, failed to notify the watch commander he was not going to be at work, and reported for duty without a complete uniform. Ex. 4. He was terminated from employment. Answer at 2.

In the SOR, DOHA alleges Applicant has two delinquent debts totaling more than \$13,000. One is a bad debt that resulted from Applicant voluntarily giving up a motor vehicle on which he could no longer make the payments because he was unemployed. The car was auctioned off and he owes the balance of more than \$11,200. Tr. 17-18. The other involved a credit card debt that was turned over to a collection agency. Applicant has not paid either of these debts or made arrangements to resolve them.

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 authorized the Secretary of Defense or his designee to grant

applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline F-Financial Considerations

In the SOR, DOHA alleged Applicant was indebted on an account placed for collection of more than \$11,200 (¶ 1.a); another account placed for collection for more than \$1,800 (¶ 1.b); he failed to pay income taxes on money earned in 1999 working for his grandfather's roofing business (¶ 2.c); and helped his grandfather run a gambling business (¶ 2.d). Applicant admits each of the allegations. 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's evidence and Applicant's admissions constitute evidence of potentially disqualifying conditions under Guideline F. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1) and is unable or unwilling to satisfy his debts (DC E2.A6.1.2.3). Applicant has two substantial debts that remain unpaid, and he does not have a plan to resolve them. As the evidence established potentially disqualifying conditions, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. Applicant asserts that some of his financial difficulty resulted from conditions beyond his control-being laid off from work and having surgery. MC E2.A6.1.3.3. But he quit one job and was terminated from another. He has provided better living facilities for his family in lieu of resolving his debts. Tr. 46. These are self-imposed problems, not conditions beyond his control. I find against Applicant on ¶¶ 1.a and 1.b.

The other allegations of not paying taxes on money given to him by his grandfather for helping at his roofing business and that he assisted in the grandfather's illegal gambling business are established by the evidence. This activity is

potentially disqualifying as illegal financial practices. DC E2.A6.1.2.2. But to disqualify Applicant one would have to take the activity out of context. Applicant was raised by his grandfather and while living at home helped his grandfather in both the roofing and gambling business. Applicant's grandfather did give Applicant money, but not regularly. Under all the circumstances, I do not believe Applicant was trying to deceive the IRS, participate in fraud or illegal gambling activities. I find for Applicant on ¶¶ 1.b and 1.c.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant was prohibited from driving for a previous employer because of his driving record (¶ 2.a); was terminated from employment by the same employer in August 2000 (¶ 2.b); in January 1999 quit his employment without giving the required two-weeks' notice (¶ 2.c); while investigating a noise complaint as an armed security guard, he killed an unarmed man who was chasing him (¶ 2.d); failed to pay taxes on income received while working for his grandfather and helped his grandfather run a gambling establishment (¶ 2.e). Applicant admitted the conduct alleged in ¶¶ 2.b, 2.c, and 2.d; denies the conduct alleged in ¶ 2.a; and did not answer the allegations in ¶ 2.e. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Governments evidence and Applicant's admissions constitute evidence of potentially disqualifying conditions under Guideline E. Applicant's associates have provided reliable, unfavorable information about him. DC E2.A5.1.2.1. Applicant has a history of rule violations. DC E2.A5.1.2.5. He has been terminated from employment because of his rule violations. As the evidence established potentially disqualifying conditions, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15.

None of the mitigating conditions listed under Guideline E apply. Nevertheless, I find for Applicant on ¶ 2 under the adjudicative process factors. Directive ¶ 6.3. Applicant has matured over the past few years and appears to be doing well for both of his current employers. He is raising his two children almost by himself because of his wife's illness. The shooting alleged in ¶ 2.d appears to be justified by his fear for his safety. His termination from employment with Security Company 2 appears to be related to his inability to quickly adjust after killing the tenant in his previous job. As discussed above, I do not perceive Applicant's conduct, in working for the grandfather who raised him, at the roofing business and gambling establishment to be disqualifying. Nor do I believe his failure to pay income taxes on the money provided by his grandfather to be disqualifying under the circumstances of this case. Applicant convinced me such conduct is in the past and will not be repeated.

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: For Applicant

Subparagraph 1.d: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: For Applicant

Subparagraph 2.e: For Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

James A. Young

Administrative Judge

1. As required by 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 (Directive).