

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant accumulated delinquent debt established by credit bureau reports when he lost a second job. He stated he would or had paid some of the debts. He did not present any information to verify his payments of the debts. On his security clearance application, he deliberately failed to disclose all of the judgments against him, and debts in the last seven years that were more than 180 days past due, and the current debts more than 90 days past due. Clearance is denied.

CASENO: 04-05588.h1

DATE: 02/09/2006

DATE: February 9, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-05588

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant accumulated delinquent debt established by credit bureau reports when he lost a second job. He stated he would or had paid some of the debts. He did not present any information to verify his payments of the debts. On his security clearance application, he deliberately failed to disclose all of the judgments against him, and debts in the last seven years that were more than 180 days past due, and the current debts more than 90 days past due. Clearance is denied.

STATEMENT OF THE CASE

On May 18, 2005, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on May 24, 2005. The SOR alleges security concerns under Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on September 16, 2005. He admitted six and denied four of the allegations under Guideline F, and denied the three allegations under Guideline E. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on October 3, 2005. Applicant received a complete file of relevant material (FORM) on October 17, 2005, and was provided the opportunity to file objections and submit material

to refute, extenuate, or mitigate the disqualifying conditions. His response was due November 16, 2005. As of November 29, 2005, he had not responded, and the case was assigned to me on November 30, 2005.

FINDINGS OF FACT

After a thorough review of the pleadings and the exhibits, I reach the following essential findings of fact.

Applicant is 35 years old and has worked as a general maintenance worker for a defense contractor for over eight years. He is married with one child. Applicant submitted a security clearance application, and a subsequent investigation revealed delinquent debts and judgments not listed on his application.⁽¹⁾ Credit bureau reports show Applicant had ten delinquent accounts from six creditors, a car repossession not satisfied, and three judgments not satisfied.⁽²⁾ Applicant was employed full-time and had a second job. The company employing him on the second job went out of business in approximately 1996, so he lost this income. His wife eventually found employment, so there was some improvement in their finances. However, there were still unpaid debts.⁽³⁾

Delinquent debt 1 is the balance of over \$10,000.00 from a car repossession in 1996 for which the automobile finance company received a judgment against Applicant. Applicant admits he owes this debt, and it is not settled.⁽⁴⁾

Delinquent debt 2 is a judgement for \$743.46 in unpaid personal property taxes.⁽⁵⁾ Applicant claimed he paid this judgment by wage garnishment.⁽⁶⁾ He presented no information to verify the judgment was settled.

Delinquent debt 3 is to a finance company for a judgment on an unpaid loan of \$257.42. Applicant disputes this debt since he believes he paid it off in 1995/1996. He was to inquire about this debt.⁽⁷⁾ Applicant presented no information concerning his inquiry or to verify the debt was settled.

Delinquent debt 4 is to a collection agency for \$152.00 for a medical bill. Applicant claims he was unaware of this debt, but believes it was for a physical that was paid by his medical insurance. He was to inquire about this account.⁽⁸⁾ He presented no information concerning his inquiry or that the account was settled.

Delinquent debt 5 is for \$1,031.20 to a collection agency for a finance company for a loan. Applicant was unsure of the debt but was to inquire of the collection agency and the creditor about the debt.⁽⁹⁾ Applicant presented no information or evidence concerning the result of any inquiries about the debt.

Delinquent debt 6 for \$50.00 to a collection agency for a hospital medical bill. Applicant did not know about this debt and was to make an inquiry.⁽¹⁰⁾ Applicant stated this debt was paid but presented no information or evidence to verify payment.⁽¹¹⁾

Delinquent debt 7 is an additional personal property tax of \$150.00 that had not been paid. Applicant was to pay this tax in June 2003.⁽¹²⁾ Applicant stated the debt was paid in full but presented no information or evidence to verify payment of the debt.⁽¹³⁾

Delinquent debt 8 is for \$520.00 for a credit card that was over 120 days past due as of March 16, 2005. Applicant has not provided any information concerning payment on this account and its current status.

Delinquent debt 9 is a judgment of \$1,606.00 to a furniture store. Applicant noted he is making monthly payment of \$154.00 towards this debt.⁽¹⁴⁾ He presented no information or evidence concerning the status of this debt or any payments he made. He does not list any payments being made on his latest answers concerning his debts.⁽¹⁵⁾

Delinquent debt 10 is \$209.00 to a collection agency for a television satellite company. Applicant presented no information concerning this debt.

Applicant only listed one judgment in response to question 37 on his security clearance application asking if in the last seven years there were any judgments against him not paid. In fact, there were three judgments not paid. Applicant responded "NO" to question 38 asking if, in the last seven years, he had ever been over 180 days delinquent on any debts. In fact at the time, he was over 180 days delinquent on at least three debts. Applicant responded "NO" to question 39 asking if he was currently over 90 days delinquent on any debts. In fact at the time, he was delinquent over 90 days on three debts.

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."⁽¹⁶⁾ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.⁽¹⁷⁾

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

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. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽¹⁸⁾ An administrative judge should consider: (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 applicant'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 of recurrence.⁽¹⁹⁾

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 necessarily a determination as to the loyalty of the applicant.⁽²⁰⁾ 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 present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.⁽²¹⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁽²²⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽²³⁾ "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability."⁽²⁴⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽²⁵⁾

Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline F - Financial Considerations: A security concern exists for an individual who is financially irresponsible. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Guideline E - Personal Conduct: A security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions section below.

CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

The government has established its case under Guideline F. Applicant's delinquent debts established by credit bureau reports and partly admitted by Applicant, brings the matter within Financial Considerations Disqualifying Conditions E2.A6.1.2.1 (*a history of not meeting financial obligations*), and E2.A6.1.2.3 (*an inability or unwillingness to satisfy debts*). Applicant accumulated delinquent debts because he lost income from a second job. Applicant's credit and financial history shows he has not met his financial obligations or is unwilling or unable to satisfy his debts even after his wife found employment. I conclude the above disqualifying conditions have been established.

I have considered Financial Consideration Mitigating Conditions E2.A6.1.3.1 (*The behavior was not recent*); E2.A6.1.3.2 (*It was an isolated incident*); E2.A6.1.3.3 (*The conditions that resulted in the behavior were largely beyond the person's control*), and E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). There is no information Applicant is not paying his current debts since 2002. While the debts he has not paid were accumulated from 1996 to 2002, they remain unpaid today so the debts are recent. The debts range

from judgments for car loans and personal property taxes, credit card debts, personal loan debts, medical bills, and furniture bills. The debts are not isolated. Applicant states he was unable to pay his debts because he lost his second job. Applicant presented no information concerning his attempts to pay his debts using his income from his primary employment. Also his wife is working now and there is no information from Applicant that her income is being used to satisfy past due obligations. The conditions Applicant claimed were beyond his control have not been demonstrated to have affected his ability to pay his debts. Applicant has presented no information or documents to reflect payment of any of his debts. I conclude Applicant has not mitigated the security concerns for financial considerations.

Applicant's answers on the security clearance application listing only one unpaid judgment, and "NO" to the questions concerning debts past due over 180 days and 90 days brings the matter under Personal Conduct Disqualifying Condition E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from the personal security questionnaire, personal history statement, or similar form used to conduct investigations . . . determine security clearance eligibility or trustworthiness*). At the time he completed the security clearance application, Applicant knew he had three judgments against him that he had not paid. He also knew he was more than 180 days past due on some debts in the last seven years and was currently more than 90 days past due on debts. He was no longer working his second job and he knew he had been unable to keep up with his debts. While Applicant stated he has paid some of the debts, he presented no information that the debts were paid and not past due at the time he completed the application. I find Applicant deliberately failed to provide correct information in response to questions 37, 38, and 39 on the security clearance application.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is eligible for access to classified information.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

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

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: 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 security to grant or continue a security clearance for Applicant. Clearance is denied.

Thomas M. Crean

Administrative Judge

1. Item 4 (Security clearance application, dated Apr. 14, 2003).

2. Item 6 (Credit bureau report, dated Apr. 26, 2003); Item 7 (Equifax credit report, dated Jul. 14, 2004); Item 8 (Equifax credit report, dated Aug. 30, 2005).
3. Item 5 (Applicant's statement, dated Sep. 23, 2003) at 1.
4. Item 5 (Applicant's statement, dated Sep. 23, 2003); Item 9 (Interrogatories, dated Jul. 20, 2004)
5. Item 10 (Judgment, dated Nov. 21, 1996).
6. *Supra*, note 3.
7. *Id.*
8. Item 5 (Applicant's statement, dated Sep. 23, 2003) at 3.
9. *Supra*, note 3.
10. *Supra*, note 7.
11. Item 9 (Interrogatories, dated Jul. 20, 2004) at 3.
12. *Supra*, note 7, at 2.
13. *Supra*, note 10.
14. *Supra*, note 7, at 4.
15. *See supra*, note 10.
16. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
17. Directive ¶ E2.2.1.
18. *Id.*
19. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
20. *See* Exec. Or. 10865 § 7.
21. Directive ¶ E3.1.14.
22. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
23. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
24. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
25. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.