

DATE: August 22, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 04-06732

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

J. Theodore Hammer, Esq., Department Counsel

Kathryn MacKinnon, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant encountered financial problems as a result of a series of low paying jobs. He has 12 delinquent debts with an approximate total of \$10,442. Although he intends to resolve these delinquent accounts, he took minimal action towards resolving any of the delinquent debts even though he became aware of the full extent of his debts in February 2004. He has not made a good faith effort to resolve these debts. His failure to list his delinquent debt on his security clearance application was not deliberate. The personal conduct concern is mitigated. However, he failed to mitigate the security concern arising from his financial situation. Clearance is denied.

STATEMENT OF CASE

On May 2, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct.

Applicant answered the SOR in writing on May 26, 2005. He elected to have a hearing. This case was assigned to me on March 2, 2006. On March 16, 2006, DOHA issued a Notice of Hearing scheduling the hearing on May 15, 2006. The hearing was held as scheduled. At the hearing, the Government offered nine exhibits which were admitted without objection as Government Exhibits (Gov. Ex.) 1 through 9. Applicant testified and submitted seven exhibits which were admitted without objection as Applicant Exhibits (AE) A-G. In addition, the SOR was amended to add ¶ 1.n and ¶¶ 2.a and 2.b were amended by adding "1.n" to each allegation. ⁽²⁾ The record was held open until May 30, 2006, to allow Applicant to submit further documents. Applicant timely submitted six additional documents which were admitted without objection as AE H-M. DOHA received the transcript on May 22, 2006.

FINDINGS OF FACT

Applicant admits to the allegations in SOR ¶¶ 1.a, 1.b, 1.d, 1.h, 1.i, 1.j, 1.l, and 1.m. He denies the allegations in SOR ¶¶ 1.c, 1.e, 1.f, 1.g, 1.k, 1.n, 2.a and 2.b. Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 49-year-old employee of a defense contractor seeking to obtain a security clearance at the SECRET level. (3) He is an engineer technician III. (4) He graduated from high school and has one year of college credit. (5) From January 1, 1978, to December 17, 1980, Applicant served on active duty in the United States Army in a supply unit. He achieved the rank of E-4 and received an Honorable discharge. (6) He is married and has three children, two sons, ages 25 and 20, and one daughter, age 18. (7)

On February 20, 2003, Applicant submitted a security clearance application in conjunction with his employment with a defense contractor. (8) In response to question "38. Your Financial Delinquencies - 180 Days. In the last 7 years, have you been over 180 day(s) delinquent on any debt(s)?" and question "39. Your Financial Delinquencies - 90 Days. Are you currently over 90 days delinquent on any debt(s)?" he answered "Yes" and listed a cellular phone debt in the amount of \$160. (9)

A security background investigation revealed Applicant had 12 delinquent debts with a total approximate balance of \$10,442. (10) The debts consisted of a \$581 account for a musical instrument charged off in May 1999 (¶ 1.a), a \$195 account turned over for collection in June 1999 (¶ 1.b); \$2,815 debt as a result of an automobile repossession in December 2000 (¶ 1.c); a \$2,343 computer account charged off in January 2001 (¶ 1.d); a \$2,376 account turned over for collection in January 2001 (¶ 1.e); a \$748 account turned over for collection in June 2001 (¶ 1.f), a \$664 judgment from a music store entered in August 2001 (¶ 1.g), a \$185 account for emergency room services turned over for collection in October 2002 (¶ 1.h), a \$52 account for radiology services turned over for collection in February 2003 (¶ 1.i), a \$287 account for emergency room services turned over for collection in February 2003 (¶ 1.j), a \$176 cellular phone account turned over for collection in May 2003 (¶ 1.k), a \$20 account turned over for collection in November 2003 (¶ 1.l) and a \$2,263 judgment entered in 1992 (¶ 1.n). (11) The \$2,263 judgment is paid. (12) Applicant's wages were garnished in order to pay this debt. (13) All other debts remain unresolved.

On February 26, 2004, Applicant was interviewed by a Special Agent of the Defense Security Service in conjunction with his background investigation. He indicated that he neglected paying his debts. (14) He stated that he planned to attend a financial seminar through his church in March 2004. He intended to pay off the debts within a year. (15) He provided a personal financial statement which indicated that after expenses, he had approximately \$1,329 left over each month. His personal financial statement did not include his delinquent debt. (16)

Applicant got into financial trouble several years ago as a result of sporadic employment. (17) He drove a truck and did not receive full-time hours and regular income. (18) At hearing, he testified that he and his wife never attended the financial seminar sponsored by his church in March 2004 because it was canceled. (19)

In response to interrogatories, dated September 7, 2004, Applicant indicated that he consolidated all of his debts. His first payment was to be made on October 1, 2004. He would have consolidated earlier but was advised against it since he and his wife were buying house. (20) They purchased a townhouse in 2004. (21) The mortgage on the house is in his wife's name since she has a good credit rating. (22) They paid \$3,500 cash towards the purchase of the home. (23)

In response to interrogatories, dated January 3, 2005, Applicant states he was unable to make payments under his consolidation plan because he did not have the money. At some point in 2004, he left his job with his current employer for what he thought would be a more lucrative position. It did not turn out as planned. He did not get enough work hours. This prevented him from making payments towards his debt consolidation plan. (24) He was unemployed for about two to three months until his current employer rehired him. (25) Applicant claims he pays \$25.00 per month on the computer account alleged in SOR ¶ 1.d. He provided a billing statement but no proof that payments were being made on

a regular basis. [\(26\)](#)

Although Applicant's income varies based on overtime pay, his monthly income without considering overtime is approximately \$2,800. He has a part-time job which brings in about \$760 per month. His wife earns approximately \$1,100 per month. Their total joint monthly income is approximately \$4,660. [\(27\)](#) Their monthly expenses are approximately \$3,535. [\(28\)](#) They have approximately \$1,125 left over after expenses. He has no open credit card accounts. [\(29\)](#)

Since September 2004, Applicant contacted at least four debt consolidation companies. He chose not to consolidate his debts because each company wanted him to include the house as part of the consolidation. He did not want to include his home in the plan. [\(30\)](#) After the hearing, he sent in a written statement claiming that he had an appointment with a loan consolidation company on June 6, 2006, to consolidate his outstanding debt. [\(31\)](#)

Applicant owes federal and state income taxes for tax years 2004 and 2005. He owes approximately \$1,200. He is arranging a payment plan to pay the balance owed. [\(32\)](#)

Applicant did not list all of his delinquent debts on his security clearance application because he was not sure what all of his debts were and he did not read the question carefully. [\(33\)](#) He did not obtain a copy of his credit report while filling out his security clearance application. He did not know how to obtain a credit report. [\(34\)](#)

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." [\(35\)](#) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

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 guidelines at issue in this case are:

Guideline F, Financial Considerations: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. [\(36\)](#)

Guideline E, Personal Conduct: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. [\(37\)](#)

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

"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." [\(38\)](#) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. [\(39\)](#) 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. [\(40\)](#)

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may [\(41\)](#)

disqualify the applicant from being eligible for access to classified information. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts admitted by the applicant or proven by Department Counsel. The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision. ⁽⁴²⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." ⁽⁴³⁾

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. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

Guideline F- Financial Considerations

With respect to Guideline F, the government established its case. Applicant currently has approximately \$10,442 in delinquent debt. His actions indicate that he is either unable or unwilling to pay these accounts. As such, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*); and FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*) apply.

Several conditions could mitigate the security concerns raised by Applicant's financial delinquencies. Neither Financial Considerations Mitigating Conditions (FC MC) E2.A6.1.3.1 (*The behavior was not recent*); or FC MC E2.A6.1.3.2 (*It was an isolated incident*) apply. Applicant has had a history of financial difficulties. He has paid off several judgments through wage garnishment but the majority of the debt remains unpaid.

Applicant encountered financial difficulties as a result of having jobs that did not provide regular hours resulting in sporadic income. In 2003, he had a steady job with his current employer. He left this job in 2004 for a position which he believed paid more. His new employer did not give him enough hours so he did not earn as much. He was unemployed for two to three months until he was rehired by his current employer. FC MC E2.A6.1.3.3 (*The 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)*), applies to his situation, in part, with respect to this period of unemployment. However, he voluntarily left a steady job for another position. He was not laid off. This fact and his inaction towards resolving his delinquent debt gives less weight to this mitigating condition.

FC MC E2.A6.1.3.4 (*The 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*) does not apply because Applicant has taken minimal action towards resolving the majority of his delinquent debts. In February 26, 2004, he indicated that he intended to resolve his delinquent debt within a year. He attempted to consolidate his debts in 2004 but was unable to make the payments although he purchased a new home during this same time period putting forth \$3,500 as a deposit. At the close of the record, he had plans to meet with someone about consolidating his delinquent debt in June 2006. Since he has no repayment plan in effect, it is unlikely his financial problems will be resolved in the near future.

I cannot apply FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) since Applicant has not demonstrated that he has made a good-faith effort to resolve these debts. Although made aware of all of his delinquent debts in February 2004, when he was interviewed by the Defense Security Service, he took little action to resolve these debts despite his expressed intent to do so within a year. He has failed to mitigate the security concerns raised under Guideline F. Guideline F is decided against Applicant.

Guideline E, Personal Conduct

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government when

applying for a security clearance or in other official matters is a security concern. It is deliberate if it is done knowingly and willfully.

In this case, the record evidence fails to establish Applicant deliberately omitted or concealed information about his delinquent debts. Although his answers to questions 38 and 39 were incorrect, he successfully rebutted the allegations that he deliberately provided a false answer. I find credible his explanation that he was not aware of all of his delinquent debt. I find that he did not intend to falsify his security clearance application. Guideline E is decided for Applicant.

I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I find Applicant failed to mitigate the security concerns raised by the financial considerations. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth 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

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m: Against Applicant

Subparagraph 1.n: For Applicant

Paragraph 2., Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

DECISION

In light of all 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.

Erin C. Hogan

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Motion to Amend SOR, dated February 2, 2006; Tr. at 10-11.
3. Tr. at 4-6.
4. Tr. at 36.
5. Tr. at 6.
6. Tr. at 32, 132; Gov Ex 1, questions 11 and 17.
7. Tr. at 103.
8. Gov Ex 1.
9. *Id.* at questions 38 and 39.
10. Gov Ex 3, 4 and 5.
11. *Id.* and Gov Ex 8.
12. AE K-L.
13. Gov Ex 8.
14. Gov Ex 2 at 1.
15. *Id.* at 2.
16. *Id.* at 3.
17. Tr. at 82.
18. Tr. at 85.
19. Tr. at 88.
20. Gov Ex 6.
21. Tr. at 40.
22. Tr. at 128.
23. Tr. at 129.
24. Tr. at 125.
25. Tr. at 129; Gov Ex 7.

26. *Id.*
27. Tr. at 91-92, 96.
28. Tr. at 96-103.
29. Tr. at 108.
30. Tr. at 126.
31. AE M.
32. Tr. at 127-128.
33. Tr. at 115 - 119; Gov Ex 6 at 6.
34. Tr. at 118.
35. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
36. Directive, ¶ E2.A6.1.1.
37. Directive, ¶ E2.A5.1.1.
38. Directive, ¶ E2.2.1.
39. *Id.*
40. *Id.*
41. Directive, ¶ E3.1.14.
42. Directive, ¶ E3.1.15.
43. Directive, ¶ E.2.2.2.