

KEYWORD: Financial; Personal Conduct

DIGEST: The IRS filed a tax lien against Applicant after his tax preparer failed to report withdrawals from Applicant's 401(k) plan. Applicant reached agreement with the IRS on a payment plan and has faithfully paid the installments for over a year. Applicant showed the other alleged debts were either the responsibility of his ex-wife or an insurance company. Applicant deliberately omitted a delinquent debt from his security clearance application on the advice of the assistant facility security officer. Clearance is granted.

CASENO: 04-09328.h1

DATE: 01/30/2006

DATE: January 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09328

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Peggy L. Moore, Esq.

SYNOPSIS

The IRS filed a tax lien against Applicant after his tax preparer failed to report withdrawals from Applicant's 401(k) plan. Applicant reached agreement with the IRS on a payment plan and has faithfully paid the installments for over a year. Applicant showed the other alleged debts were either the responsibility of his ex-wife or an insurance company. Applicant deliberately omitted a delinquent debt from his security clearance application on the advice of the assistant facility security officer. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. In accordance with Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on 20 May 2005 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 16 June 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on 27 October 2005. On 8 December 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 19 December 2005.

FINDINGS OF FACT

Applicant is a 53-year-old director of support services for a defense contractor. He was married to his third wife from November 1995 until February 2000. He cares for his five-year-old daughter. He currently earns \$59,000 a year from the defense contractor and an additional \$9,000 a year from a university where he is an adjunct professor and instructor.

Applicant separated from his third wife in March 1998. He was unemployed from April 1999 to January 2000. To meet his living expenses, support his five-year-old daughter, and assist his teenage daughter and ill mother, Applicant withdrew \$75,000 from his 401(k) plan, thus incurring a 10 percent penalty. The certified public accountant who computed Applicant's tax liability did not include the 10 percent penalty on Applicant's tax return. This caused Applicant to underpay his 1999 federal income taxes. In January 2002, the IRS sent a notice to his address of record that Applicant had a tax deficiency of more than \$8,000. In July 2004, Applicant and the IRS agreed he would pay \$325 each month for 60 months. He has been making the payments.

In the SOR, DOHA alleged Applicant had two other debts totaling less than \$700 that had been charged off and three other debts totaling more than \$4,600 that were in collection status. Applicant denies these debts. He recognizes the medical debt alleged in ¶ 1.f, but claims it should have been paid by his insurance company. The other debts he claims are not his, but they may be his ex-wife's. Applicant is current on all of his debts. His most recent credit report contains no adverse information. Ex. G.

When Applicant was hired by the defense contractor, he was advised he would have to complete a security clearance application (SCA). Applicant ordered a credit report to review before he completed the questions concerning his financial situation. The credit report (Ex. F) showed one debt of \$2,792 in collection status. Question 39 of the SCA asked if Applicant was then delinquent more than 90 days on any debt. Applicant asked the assistant facility security officer (AFSO) whether he should list the debt on his credit report because it was not his. The AFSO testified that she "suggested" he answer "no." Tr. 50. Applicant followed her suggestion. Applicant promptly and fully provided the correct information when interviewed by a security investigator.

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 has an IRS tax lien against him for more than \$12,000 (¶ 1.a); two charged off accounts totaling more than \$680 (¶¶ 1.b, 1.e); and three accounts in collection status totaling more than \$4,600 (¶¶ 1.c, 1.d, and 1.f). Applicant denied all the allegations, with explanation, except for ¶ 1.a, which he admitted in part and denied in part. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

It is a potentially disqualifying condition for an applicant to have a history of not meeting his financial obligations (DC E2.A6.1.2.1) or to be unable or unwilling to satisfy his debts (DC E2.A6.1.2.3). After carefully reviewing all the evidence, I am convinced Applicant has a tax lien (¶ 1.a) and a delinquent medical debt (¶ 1.f). The evidence is insufficient to conclude the other debts are Applicants. The medical debt no longer appears on his credit report. It appears it was the responsibility of his health insurer to pay. The IRS lien was occasioned by a faulty tax preparer. Applicant has consulted the IRS and they have agreed on a payment plan. Applicant is making his monthly payments to the IRS and is otherwise solvent and financially stable. Under the circumstances, I find for Applicant.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant deliberately falsified his SCA by failing to disclose he was delinquent more than 90 days on a collection account for \$2,792. ¶ 2.a. In his Answer, Applicant denied the allegation, with explanation. 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 deliberate omission of relevant and material facts from any SCA is a security concern and may be disqualifying. DC E2.A5.1.2.2. Information is material if it would affect a final agency decision or, if incorrect, would impede a thorough and complete investigation of an applicant's background. ISCR Case No. 01-06870, 2002 WL 32114535 at *6 (App. Bd. Sep. 13, 2002). An applicant's financial situation is a matter that could affect a final agency decision on whether to grant the applicant a clearance and his failure to disclose it would impede a thorough investigation of the applicant's background.

The deliberate omission of relevant and material facts from an SCA may be disqualifying. DC E2.A5.1.2.2. Applicant deliberately omitted information about his debts from his SCA, but it was on the advice of the AFSO, a person authorized to advise him on the completion of the SCA. An applicant may mitigate such a security concern by proving the omission was caused or significantly contributed to by improper or inadequate advice of authorized personnel and the omitted information was promptly and fully provided. MC E2.A5.1.3.4. Applicant promptly and fully provided the information when he was interviewed by a security investigator. After considering all the facts and circumstances of this case, as well as the disqualifying and mitigating conditions, and the adjudicative process factors, I find for Applicant on ¶ 2.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

James A. Young

Administrative Judge