

KEYWORD: Financial

DIGEST: Applicant owned a trucking company with six trucks. His bookkeeper embezzled funds she was supposed to pay the IRS for employee withholding taxes and make the monthly payments on the trucks. Applicant mitigated financial security concerns. Clearance is granted.

CASENO: 04-09455.h1

DATE: 01/26/2006

DATE: January 26, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09455

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Peggy Sherill Rollins, Personal Representative

SYNOPSIS

Applicant owned a trucking company with six trucks. His bookkeeper embezzled funds she was supposed to pay the IRS for employee withholding taxes and make the monthly payments on the trucks. Applicant mitigated financial security concerns. 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 22 July 2005 detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on 15 August 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on 27 October 2005. On 7 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 16 December 2005.

FINDINGS OF FACT

Applicant is a 65-year-old employee of a defense contractor. He and his wife drive trucks hauling munitions. They have had security clearances since 1986.

In the 1990s, Applicant and his wife started their own trucking company. It was quite successful so they expanded, purchasing five additional vehicles and hiring several drivers. They also hired a bookkeeper to handle the company's finances while they were on the road. In March 1999, Applicant received a letter from the IRS advising him that he was considerably behind in paying the taxes they were required to withhold from their drivers' pay. When Applicant and his wife looked into the problem, they discovered the bookkeeper had embezzled the money instead of paying it to the IRS. Originally, Applicant owed the IRS over \$5,000, but this was increased substantially as the IRS discovered more delinquencies. Applicant learned that his bookkeeper had also embezzled more than \$36,000 by failing to make the monthly payments on the trucks used to haul the loads of munitions. Apparently the bookkeeper was also embezzling from other small trucking operations in the area for whom she worked. Ex. A.

Applicant and his wife have paid all the levies by the IRS. They tried to make arrangements to pay off the delinquent loans, but were stymied by the bookkeeper who had been stringing the creditors along for months. The creditors did not want to work with Applicant. Applicant believed he had no other choice than to turn the trucks back in to the finance companies. Applicant's total delinquencies on the trucks is more than \$125,000.

A creditor sold one of the trucks, that was only a year old, at a substantial discount and reported the balance Applicant owed as more than \$27,300. Applicant and his wife receive telephone calls from this creditor about once a month, but the creditor is unwilling to work with them to set up a payment plan. He insists on being paid in one lump sum.

Applicant reached agreement with a collection agency for one of the creditors. He has paid \$507 a month for the past three months toward the debt of more than \$22,400.

The same collection agency is handling another of Applicant's truck debts of more than \$91,400 for two of the trucks. SOR ¶ 1.c. It agreed to settle for \$12,284, but demands payment in three installments or more than \$4,000 each, all within 70 days. Applicant is unable to make such substantial payments in such a short time and will have to go back and try to renegotiate with the collection agency.

Another collection agency is seeking more than \$6,000 from Applicant for another of the trucks. The agency will only accept payment in full and Applicant is unable to make such a large payment at this time.

Applicant and his wife have a 44-year-old son who has epilepsy. Although the son worked when he was younger, doctors no longer have much success in controlling the epilepsy, so he is basically unemployable. Applicant and his wife take care of their son's medical bills.

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

In the SOR, DOHA alleged Applicant was indebted to a automotive manufacturer for \$27,392, the balance owed on the resale of a repossessed truck (¶ 1.a); indebted to a finance company for \$21,314, the balance owed on the resale of a repossessed truck (¶ 1.b); indebted to a lending agency for \$91,469 the balance owed on the resale of an auto repossessed for nonpayment (¶ 1.c); indebted to another creditor for \$6,270 that was charged off as a bad debt (¶ 1.d); and he is financially able to resolve these debts, but has failed to do so (¶ 1.e). Applicant admitted each of the allegations, except that in ¶ 1.e. An applicant 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 established potentially disqualifying conditions under Guideline F. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1.) and has been unable to satisfy his debts (DC E2.A6.1.2.3.).

An Applicant may mitigate financial considerations security concerns by establishing the behavior was not recent. MC E2.A6.1.2.1. I recognize that an applicant may not mitigate his delinquent debts because they were incurred some time ago if the debts remain unpaid. *See* ISCR Case No. 01-3695, 2002 DOHA LEXIS 453 at *7 (App. Bd. Oct. 16, 2002). Nevertheless, I believe Applicant is entitled to some credit because, except for the truck debts that became delinquent all

as a result of the bookkeepers embezzlement, Applicant has remained otherwise free of delinquencies. All of his delinquent debts resulted from that one "isolated" incident-the bookkeeper's embezzlement. MC E2.A6.1.3.2. The conditions resulting in the delinquencies were largely beyond the applicant's control (MC E2.A6.1.3.3), and the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve the debts (MC E2.A6.1.3.6). He and his wife have arranged to pay and are paying some. More importantly, they are making a good-faith effort to resolve these debts without going into bankruptcy.

After carefully considering all of the circumstances of this case, including the 20 years of successfully holding a security clearance, the circumstances under which the debts were incurred, and the good-faith efforts of Applicant to resolve these debts, I find for Applicant. Applicant's debts did not result from poor financial choices Applicant and his wife made. Instead, are the direct result of Applicant being a victim of a crime. Applicant and his wife lived within their means. Nevertheless, Applicant understands he is responsible for the debts and is making every effort to resolve them. He fully understands he must continue his efforts to resolve these debts, whether by payment or bankruptcy, if he wishes to retain his security clearance.

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

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