

DATE: June 29, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09783

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of financial delinquencies. He falsified material facts regarding his financial delinquencies on his security clearance application. His continuing financial problems and his lack of candor about them raise serious security concerns. 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 December 8, 2004, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision-security concerns raised under Guideline E (Personal Conduct) and Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on December 30, 2004, and requested his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on April 6, 2005. The FORM contained documents identified as Items 1 through 11. By letter dated April 11, 2005, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the FORM on April 22, 2005, and his response was due May 23, 2005. Applicant did not submit a response to the FORM. On June 22, 2005, the case was assigned to me for a decision.

FINDINGS OF FACT

The SOR contains two allegations of disqualifying conduct charged under Guideline E, Personal Conduct, and four allegations charged under Guideline F, Financial Considerations. In his answer to the SOR, Applicant admitted one allegation and admitted in part and denied in part five allegations. His admissions are incorporated as findings of fact.

Applicant is 45 years old and has worked for his present employer, a defense contractor, since 1987. He was granted a security clearance in 1993. (Item 5.)

Applicant married in 1982, and he and his wife are the parents of three children. Applicant completed a security clearance application (SF-86) in August 2003. His wife filled in the information on the form, and he signed it without checking it for accuracy. He stated: "I did not know it [the SF-86] was falsified, because I did not check it after my wife filled it out." (Item 3, at 1.) Applicant said that when he filed his SF-86, he and his wife were living beyond their means. (Item 3) Applicant's wife became sick in 2003, and he was so worried about the state of her health he didn't think about paying his debts. (Item 3; Item 8.)

Applicant has a history of financial problems and financial instability. In 1991, he petitioned for Chapter 7 bankruptcy. His debts of approximately \$9,142 were discharged by the bankruptcy court on May 17, 1991. (Item 4.) Applicant filed for bankruptcy on the advice of his wife, who told him she thought it was the only way they could relieve themselves of their debts. Applicant stated in December 2004 that he and his wife were planning to obtain a divorce.

In March, 2004, Applicant provided a signed, sworn statement to a special agent of the Defense Security Service. Included with the signed, sworn statement was Applicant's personal financial statement indicating a total net monthly income of \$3,424, total monthly expenses of \$3,366, and a net remainder of \$58. (3) Applicant acknowledged six bad debts totaling approximately \$13,076. One of the bad debts, listed at \$489, had been paid. Applicant had no scheduled payments to reduce amounts owed on the remaining five debts. (Item 8.)

In his answers to Questions 38 and 39 on his SF-86, Applicant denied financial delinquencies of over 180 days in the last seven years and any current financial delinquencies of over 90 days.

Applicant admitted a bad debt of \$170 that was at least 120 days delinquent as of August 2003. (Ex. 6.) Applicant said he intended to pay the account but kept putting it off. (Item 3.) The debt was not paid until June 28, 2004 (Item 9.) He admitted a debt of approximately \$9,731 for an account charged off in approximately August 1998. He said he thought the debt had been discharged in his 1991 bankruptcy, and he didn't find out it had not been discharged until 1999. Then, he didn't "bother to find out what it was until 2003." On December 30, 2004, he said he had started to make arrangements to pay off the debt. (Item 3.) Applicant also admitted a debt of approximately \$150 on an account placed for collection by a cable company in July 2000. He said he was not aware the debt had gone unpaid for four years. (Item 3.) Applicant also admitted not paying a debt of \$1,061, owed to a towing company, that had been placed for collection in about December 2001. He claimed he no longer owed the vehicle when it was towed. (Item 3.) He presented a document purporting to be a notice of transfer and release of liability for an automobile sale dated October 23, 2001. (Item 9) On March 8, 2004, he admitted the towing debt was his in a signed, sworn statement to a special agent of the Defense Investigative Service. (Item 8.)

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 has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal 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 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 establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).*

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002)*; *see Directive ¶ E3.1.15*. 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*.

CONCLUSIONS

Guideline E - Personal Conduct

In the SOR, DOHA alleged Applicant deliberately falsified his answers on his SF-86 to Questions 38 and 39 while knowing he owed a debt of \$170 to a jeweler that was at least 120 days delinquent as of August 2003 and not satisfied until June 28, 2004 (¶ 1.a (1)) and while knowing he owed three creditors, identified in allegations at ¶¶ 2.b., 2.c., and 2.d. of the SOR, for obligations charged off as bad debts or placed for collection in 1998, 2000, and 2001 and which remained unsatisfied as of November 2004 (¶ 1.a.(2)). Applicant denied knowingly falsifying his answers to Questions 38 and 39 and asserted he entrusted the responsibility of preparing his SF-86 to his wife, who falsified his answers. He admitted not checking the accuracy of the answers his wife prepared for him.

An applicant's responsibility to provide truthful and complete responses to questions on his or her SF-86 cannot be delegated to another person. Applicant had been granted a security clearance in 1993, and he was familiar with an applicant's responsibility to answer all questions on his SF-86 truthfully and completely. Truthful answers to Questions 38 and 39 are important because an applicant's financial history is material to a determination of his security worthiness.

With respect to the Guideline E conduct alleged in SOR subparagraphs 1.a.(1) and 1.a.(2), Applicant's argument that it was his wife and not Applicant who falsified his SF-86 is not persuasive. Applicant delegated to his wife his responsibility to provide relevant and material information about his debts and financial obligations in his responses to Questions 38 and 39. His wife provided false answers to Questions 38 and 39, and Applicant did not review his wife's answers for accuracy.

Applicant had a history of financial delinquencies dating back to at least 1991, when he and his wife filed for Chapter 7 bankruptcy, and he was not unfamiliar with the demands of creditors for payment. On August 22, 2003, Applicant signed his SF-86 and attested to the truthfulness, completeness, and correctness of his statements. *See Item 5, at 8*. He concealed information that increased his vulnerability to coercion, exploitation, or duress.

Applicant's conduct thus falls under disqualifying conditions E2.A5.1.2.2. and E2.A5.1.2.4. of the Personal Conduct Guideline. His denial of financial delinquencies of over 180 days in the previous seven years and current delinquencies of over 90 days was pertinent to a determination of his judgment, trustworthiness and reliability. The falsifications were recent and not isolated incidents, and Applicant did not subsequently provide correct information voluntarily. He did not make prompt, good-faith efforts to correct the falsification before being confronted with the facts, and he has not taken positive steps to significantly reduce or eliminate his vulnerability to coercion, exploitation, or duress. Thus, mitigating conditions E2.A5.1.3.1., E2.A5.1.3.2., E2.A5.1.3.3., and E2.A5.1.3.5. do not apply. His deliberate misrepresentations cause serious security concerns. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that an applicant may not properly safeguard classified information. *Directive ¶ E2.A5.1.1*.

With respect to the Guideline E conduct alleged in the SOR, the Government has established its case. Accordingly, the allegations in subparagraphs 1.a.(1) and 1.a. (2) of the SOR are concluded against the Applicant.

Guideline F-Financial Considerations

The Government's concern under Guideline F, Financial Considerations, is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. Applicant has a history of not meeting his financial obligations, and his financial history suggests an inability or unwillingness to satisfy his debts, conditions which raise security concerns under subparagraphs E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F. DOHA's Appeal Board has concluded that "[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." ISCR Case No. 98-0810 at 4 (App. Bd. June 8, 2000).

In the SOR, DOHA alleged that Applicant petitioned for Chapter 7 bankruptcy protection on January 10, 1991 and that his debts of approximately \$9,142 were discharged by the bankruptcy court on May 17, 1991 (¶ 2.a.); that he owed a creditor approximately \$9,731 for an account charged off in approximately 1998 and that, as of November 17, 2004, the debt had not been satisfied (¶ 2.b.); that he owed a creditor approximately \$150 for an account placed for collection in July 2000, and that, as of November 17, 2004, the debt had not been satisfied (¶ 2.c.); and that he owed a towing company approximately \$1,061 on an account placed for collection in about December 2001, and that, as of November 5, 2004, the debt had not been satisfied (¶ 2.d.). An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

In his answer to the SOR, Applicant admitted the account identified in ¶ 2.b. of the SOR. He said the account should have been included in his 1991 bankruptcy, that he didn't learn it was not included until 1999, and that he didn't investigate the matter further until 2003. He admitted the debt identified in ¶ 2.c. of the SOR. He said he did not know it had gone unpaid for four years. He said he had satisfied the debt but was not in good standing with the creditor. He admitted the debt identified in ¶ 2.d. of the SOR and said he was contesting the debt because it was for towing a car he didn't own at the time of the towing. In his signed, sworn statement to a special agent of the Defense Investigative Service, dated March 8, 2004, Applicant admitted the debts identified at ¶¶ 2.b. and 2.d. of the SOR and identified them as bad debts for which he had not scheduled payment. (Item 8, at 2.) In a November 5, 2004 response to interrogatories from DOHA regarding his financial situation, Applicant attached a document identified as notice of transfer and release of liability, dated October 23, 2001, to support his claim he did not owe the debt to the towing company. (Item 9, at 10.) He did not supply evidence to show that the car he sold in October 2001 was the car towed by the towing company which resulted in the debt identified at ¶ 2.d. of the SOR.. The Government has established, through the FORM and Applicant's admissions, a *prima facie* case that Applicant is financially overextended. Applicant provided no persuasive evidence to rebut the financial concerns specified in the SOR and identified as disqualifying conditions under ¶¶ E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F. (4)

We turn to a review of the several conditions that could mitigate the security concerns raised by Applicant's financial delinquencies. Applicant's acknowledged delinquencies involve long-standing debts; some continue to be unsatisfied to this day. Thus, neither mitigating condition E2.A.6.1.3.1. nor mitigating condition E2.A6.1.3.2. applies. If a person's financial delinquencies were largely caused by conditions beyond his control, then mitigating condition E2.A6.1.3.3. might apply. While Applicant's wife fell ill with a serious illness in 2003, this circumstance, while unfortunate, does not explain or mitigate his long-standing financial difficulties which predate 2003. Thus, mitigating condition E2.A6.1.3.3. does not apply.

The record evidence does not establish that Applicant has sought counseling for his financial problems. Additionally, he failed to demonstrate he had initiated a good-faith effort to pay his creditors or to resolve or bring under control his financial delinquencies. Thus, mitigating conditions E2.A6.1.3.4. and E2.A6.1.3.6. do not apply to the facts of Applicant's case. Accordingly, the allegations in ¶¶ 2.a. through 2.d. of the SOR are concluded against the Applicant.

In all adjudications, the protection of our national security is the paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct. Having done so, I conclude Applicant should not be entrusted with a security clearance. In reaching my decision, I have considered the evidence as a whole, including the appropriate factors and guidelines in Department of Defense Directive, 5220.6, as amended.

FORMAL FINDINGS

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

Paragraph 1.: Guideline E: AGAINST APPLICANT

Subparagraph 1.a.(1).: Against Applicant

Subparagraph 1.a.(2).: Against Applicant

Paragraph 2.: Guideline F: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

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

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. Applicant listed real estate assets of \$400,000. His monthly mortgage payment was \$1,851.
4. Disqualifying Condition E2.A6.1.2.1. states that "a history of not meeting financial obligations" can raise a disqualifying security concern. Disqualifying Condition E2.A6.1.2.3. states that an "inability or unwillingness to satisfy debts" can raise a disqualifying security concern.