

DATE: November 30, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-11287

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of delinquent debts for credit card accounts, a cell phone bill, and federal and state income taxes. He falsely answered "no" to questions about delinquent debts on his security clearance application (SF-86) and twice made false statements to a security investigator about payments on his delinquent state income taxes. Security concerns based on financial considerations and personal conduct are not mitigated. Clearance is denied.

STATEMENT OF THE CASE

On June 3, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny Applicant a security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive). The SOR alleges security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct).

Applicant answered the SOR in writing on June 28, 2005, admitted the allegations, offered explanations, and requested a hearing. The case was assigned to me on August 24, 2005 and heard on October 13, 2005. At the hearing I granted Department Counsel's motion to amend the SOR by increasing the amount of the indebtedness alleged in ¶ 1.a. and adding ¶ 1.h., alleging delinquent federal income taxes for tax year 2003. I kept the record open to permit Applicant to submit additional documentary evidence. I received 18 pages of documents on October 28, 2005, and they are incorporated in the record as Applicant's Exhibit (AX) A. DOHA received the transcript (Tr.) on October 24, 2005.

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I also make the following findings:

Applicant is a 43-year-old security officer for a defense contractor. He was born in India, and was naturalized as a U.S. citizen in May 2002. He has never held a permanent security clearance, but he presently holds an interim clearance. He recently was promoted to a supervisory position. ⁽¹⁾

Applicant is married and has no children. However, in the summer of 1999, Applicant voluntarily took custody of his sister-in-law's son after she became financially unable to take care of him. ⁽²⁾ Applicant also provides financial support to two eight-year-old nieces who do not live with him. ⁽³⁾

Applicant's financial problems began in 2001. His wife lost one of her two part-time jobs and they had unexpected car repair expenses, causing Applicant to fall behind on credit card payments and to be unable to pay the entire amount due on his federal and state income taxes. ⁽⁴⁾

Applicant executed an SF-86 on July 11, 2003. ⁽⁵⁾ He answered "no" to questions 38 and 39, pertaining to debts more than 180 days delinquent during the last seven years and current debts more than 90 days delinquent. These answers were false because he was more than 180 days delinquent on several credit card debts and his federal and state income taxes. ⁽⁶⁾

On March 10, 2004, Applicant orally told a security investigator he had arranged to pay his delinquent state taxes in monthly installments of \$150 and had been making monthly payments as agreed since July or August 2003. On March 17, 2004, Applicant reduced this oral statement to writing. ⁽⁷⁾ His oral and written statements were false because Applicant had made only two payments: \$65 in November 2003 and \$100 in February 2004. On April 28, 2004, after being told by an investigator his delinquent state taxes had been turned over to a collection agency, Applicant executed another written statement admitting his earlier statements about his delinquent state taxes were false. ⁽⁸⁾ At the hearing, he testified he concealed his financial problems because he was afraid of losing his security clearance and his job. ⁽⁹⁾

In July 2005, Applicant negotiated a new payment plan to resolve his delinquent state taxes by making monthly payments of \$188.32. ⁽¹⁰⁾ In addition to his full-time job as a security officer, he now works 20-30 hours per week at a second job as a driver for a local bus company. ⁽¹¹⁾ He has not sought or received financial counseling. ⁽¹²⁾ He testified he and his wife have a net monthly remainder of about \$600 after making all the payments listed in the table below and paying monthly living expenses.

The following table summarizes the evidence regarding the delinquent debts alleged in the SOR:

Debt	Amount	Status on Date of Hearing	Record Citation
Credit Card (SOR ¶ 1.a.)	\$5,430	Paying \$329 per month	Answer to SOR; Tr. 36
Credit Card (SOR ¶ 1.b.)	\$1,393	Paying \$194 per month.	Answer to SOR; Tr. 36
Credit Card (SOR ¶ 1.c.)	\$994	Not rebutted. Applicant testified he paid it but produced no documentation.	Tr. 38
Cell Phone (SOR ¶ 1.d.)	\$699	Unpaid.	GX 4, p. 1; Tr. 40
State Income Taxes (SOR ¶ 1.e.)	\$799	Paying \$188 per month.	AX A, pp. 4-5
Federal Income Taxes	\$13,864	Paying \$400 per month.	Answer to SOR

(SOR ¶¶ 1.f., 1.g.,
1.h.)

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 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), as amended and modified. 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.

The Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and 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.

In evaluating an applicant's conduct, 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 or recurrence. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[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." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

Guideline F: Financial Considerations

Under Guideline F, "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Directive ¶ E2.A6.1.1. A person who fails or refuses to pay long-standing debts or is financially irresponsible may also be irresponsible or careless in his or her duty to protect classified information. Two disqualifying conditions (DC) under Guideline F could raise a security concern and may be disqualifying in this case. DC 1 applies where an applicant has a history of not meeting his or her financial obligations. Directive ¶ E2.A6.1.2.1. DC 2 applies when there is evidence of deceptive or illegal financial practices such as income tax evasion. Directive ¶ E2.A6.1.2.2. DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3. Applicant's financial history establishes DC 1 and DC 3. DC 2 is not established because the record shows Applicant

filed his returns as required but was unable to pay the entire amount due.

A security concern based on financial problems can be mitigated by showing the delinquent debts were not recent (MC 1) or an isolated incident (MC 2). Directive ¶¶ E2.A6.1.3.1., E2.A6.1.3.2. Applicant has multiple delinquent debts that are not yet fully resolved. I conclude MC 1 and MC 2 are not established.

Security concerns arising from financial problems can be mitigated by showing they are the result of conditions beyond the person's control (MC 3). Applicant's wife's loss of employment and the unexpected car repairs were conditions beyond Applicant's control. His decisions to voluntarily take custody of his sister-in-law's son and financially support two nieces, while commendable humanitarian acts, do not constitute conditions beyond his control.

A mitigating condition (MC 4) applies when an applicant "has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control." Directive ¶ E2.A6.1.3.4. MC 4 is not established because Applicant has not sought financial counseling.

A security concern arising from financial problems can be mitigated by showing a good-faith effort to resolve debts (MC 6). Directive ¶ E2.A6.1.3.6. The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance.

Applicant has made considerable progress in resolving many of his delinquent debts. He began making monthly payments on some delinquent credit card accounts and his delinquent federal taxes before applying for a security clearance. However, he did not take action to resolve his delinquent state taxes until he applied for a clearance, and his most recent arrangement for resolving his delinquent state taxes was negotiated after he received the SOR. He has not resolved a credit card debt and a delinquent cell phone bill, even though it appears he has a monthly net remainder sufficient to do so. I conclude MC 6 is established for two credit card accounts (SOR ¶¶ 1.a., 1.b.) and his delinquent federal taxes (¶¶ 1.f., 1.g., 1.h.), but it is not established for a third credit card account (¶ 1.c.), his cell phone bill, (¶ 1.d.), and his delinquent state taxes (¶ 1.e.).

After weighing the disqualifying and mitigating conditions and evaluating the evidence in the context of the whole person, I conclude the security concern based on financial considerations is not mitigated.

Guideline E: Personal Conduct

Under Guideline E, 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. Directive ¶ E2.A5.1.1. Two disqualifying conditions (DC) apply to this case. DC 2 applies when an applicant has deliberately omitted or falsified relevant and material facts in a personal security questionnaire. Directive ¶ E2.A5.1.2.2. DC 3 applies when an applicant deliberately provides false or misleading information concerning relevant and material matters to an investigator or security official in connection with a personnel security or trustworthiness determination. Directive ¶ E2.A5.1.2.3. Applicant admitted falsifying his answers to questions 38 and 39 on his SF-86. He also admitted lying to a security investigator regarding his payment of delinquent state taxes. I conclude DC 2 and DC 3 are established.

Two mitigating conditions (MC) are relevant to this case. MC 2 applies when the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily. Directive ¶ E2.A5.1.3.2. MC 3 applies when the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts. Directive ¶ E2.A5.1.3.3. I conclude neither condition is established because Applicant did not make any effort to provide correct information until he was confronted with his credit reports and told his delinquent state taxes had been turned over to a collection agency.

After weighing the disqualifying and mitigating conditions and evaluating the evidence in the context of the whole person, I conclude the security concern based on Applicant's falsification of his SF-86 and false statements to a security investigator are not mitigated.

FORMAL FINDINGS

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

Paragraph 1. Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For Applicant

Paragraph 2. Guideline E (Personal Conduct): 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 the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

LeRoy F. Foreman

Administrative Judge

1. Tr. 33.
2. Tr. 49.
3. Tr. 51.
4. GX 2 at pp. 1-2.
5. Government Exhibit (GX) 1.
6. GX 2 at pp. 2-3, GX 5.
7. GX 2.
8. GX 3.

9. Tr. 65.

10. AX A at pp. 4-5

11. Tr. 34-35.

12. Tr. 45.