

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has more than \$24,000 in delinquent debt that he failed to list on his security clearance application. He failed to mitigate security concerns raised by his financial situation and his personal conduct in falsifying his security clearance application. Clearance is denied.

CASENO: 04-11562.h1

DATE: 02/28/2006

DATE: February 28, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-11562

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has more than \$24,000 in delinquent debt that he failed to list on his security clearance application. He failed to mitigate security concerns raised by his financial situation and his personal conduct in falsifying his security clearance application. 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. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on 1 July 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 18 July 2005 and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on 21 November 2005. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on 7 December 2005 and failed to respond within the allotted 30-day time period. The case was assigned to me on 3 February 2006.

FINDINGS OF FACT

Applicant is a 51-year-old equipment service technician for a defense contractor. He is married and has one adult child.

Applicant has six charged-off debts totaling more than \$6,4250, three debts totaling more than \$13,423 in collection status; a debt of \$3,813 from 1999 for the balance due after the resale of an automobile that had been repossessed, and one debt for \$648 that is past due almost two years. Answer. Before applying any of his income to the debts listed in SOR ¶ 1, Applicant's expenses exceed his monthly income by approximately \$700. Item 5 at 4.

Applicant completed a security clearance application on 27 May 2003 by certifying that all of his statements therein were "true, complete, and correct" to the best of his knowledge and belief, and acknowledging that a knowing and willful false statement could be punished by a fine and/or imprisonment. Item 4 at 7. Question 35 asked if, in the previous seven years, Applicant had any property repossessed for any reason. Question 38 asked, if in the previous seven years, Applicant had any debts that were delinquent more than 180 days. Question 39 asked if Applicant was then delinquent more than 90 days on any debt. Applicant answer "no" to questions 35 and 39. In answer to question 38, he listed one debt for \$1,400 that had been delinquent, but was satisfied in July 2000. He failed to list any of the debts alleged in ¶ 1 of the SOR.

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). 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 that 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 seven charged-off debts totaling more than \$6,450 (¶¶ 1.a, 1.c, 1.e-1g, 1.i); three debts totaling more than \$13,423 in collection status (¶¶ 1.d, 1.h, 1.j); one debt for more than \$3,800 from a deficiency resulting from the resale of an automobile that had been repossessed (¶ 1.b); one debt for \$648 that is past due almost two years (¶ 1.k); and his expenses exceed his monthly income before applying any of the income to the delinquent debts (¶ 1.1). In his answer, Applicant admitted each of the allegations. 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 established each of the allegations in the SOR. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1.) and is unable or unwilling to satisfy his debts (DC E2.A6.1.2.3.). An applicant may mitigate security concerns raised by his poor financial condition by establishing the delinquent debts resulted from conditions that were largely beyond his control (MC E2.A6.1.3.3); he has received counseling and there are clear indications the problem is being resolved (MC E2.A6.1.3.4), or he has initiated a good-faith effort to repay overdue creditors or otherwise resolve his debts (MC E2.A6.1.3.6). Applicant failed to establish any of the mitigating conditions. He suggests that "extenuating circumstances in 1999 due to job losses and pregnancy of my daughter, and job losses in which she moved back home, caused undue financial strain, which caused the delinquencies." Item 3 at 2. But there is no evidence of the extent of those difficulties, the additional costs he was required to bear, or what if anything he has done to resolve these problems. Applicant failed to present any evidence that he has sought financial counseling for his problems or that he has made any effort to resolve the debts. Of course, if his monthly expenses exceed his income, it is not surprising that he has been unable to pay off these debts. I find against Applicant on ¶ 1.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant deliberately falsified information on his SCA by failing to report a vehicle repossession (¶ 2.a), debts in the previous seven years that were delinquent more than 180 days (¶ 2.b), and debts that were then delinquent more than 90 days (¶ 2.c). Applicant neither admitted nor denied the allegations. 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 (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 evidence established that the SCA did not contain the information of his repossessed vehicle or his delinquent debts. Applicant asserts he entered all the debts in his SCA when he filled out the questionnaire and that he did not intend to deceive anyone. Applicant does not suggest he did not complete the SCA (Item 4) or that the signature contained on page 7 of the SCA is not his. Without any corroboration or a chance to assess Applicant's credibility, it would be unreasonable to believe Applicant did not complete the SCA. None of the mitigating conditions listed under the guideline apply. After carefully reviewing the evidence, the disqualifying and mitigating conditions, and the adjudicative process factors, I find against Applicant on ¶ 2.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a-1.1): Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a-2.c: Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

James A. Young
Administrative Judge