

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant incurred numerous delinquent debts. Several debts were accounts he was disputing. Some of the debts related to property inherited from his father's estate. Other debts were accounts which were entangled in his divorce settlement. Other accounts he overlooked. He is capable of paying these debts and has resolved all delinquent accounts. He has made a good-faith effort to repay overdue creditors or otherwise resolve debts. Applicant's failure to list his delinquent accounts was not deliberate. Clearance is granted.

CASE NO: 04-11668.h1

DATE: 04/19/2006

DATE: April 19, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-11668

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

Nichole Noel Esq., Department Counsel

FOR APPLICANT

Leslie McAdoo-Brobson, Esq.

SYNOPSIS

Applicant incurred numerous delinquent debts. Several debts were accounts he was disputing. Some of the debts related to property inherited from his father's estate. Other debts were accounts which were entangled in his divorce settlement. Other accounts he overlooked. He is capable of paying these debts and has resolved all delinquent accounts. He has made a good-faith effort to repay overdue creditors or otherwise resolve debts. Applicant's failure to list his delinquent accounts was not deliberate. Clearance is granted.

STATEMENT OF THE CASE

On July 28, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct.

In a sworn statement dated August 19, 2005, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on January 30, 2006. A notice of hearing was issued on February 10, 2006, scheduling the hearing for March 14, 2006. The hearing was conducted on that date. The government submitted eight exhibits that were marked as Government Exhibits (Gov Ex) 1-8. The exhibits were admitted into the record without objection. Applicant testified on his own behalf, and submitted 18 exhibits that were marked as Applicant's Exhibits (AE) B-S. AE A was not admitted since it was cumulative with Gov Ex 5. AE exhibits B-S were admitted without objection. DOHA received the hearing transcript (Tr.) on March 23, 2006.

FINDINGS OF FACT

In his SOR response, Applicant admits to the allegation in subparagraph 1.a but denies all the remaining allegations.

Applicant's admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is employed as the Director of Contracts and Compliance with a Department of Defense contractor who is seeking a security clearance. He is 53 years old and has been married three times. He separated from his third wife in August 1999. (Gov Ex 1 at 3) He and his third wife agreed to a divorce settlement in approximately 2005. (Tr.at 99.) The date the divorce was final is not in the record. He had a son from a previous relationship who passed away in 1986 or 1988. (Tr. at 105.) He has a 16 year old daughter. (Tr. at 104.)

Applicant's background investigation revealed Applicant had eighteen delinquent accounts with a total approximate balance of \$18,936. (See Gov Ex 3, 6 and 7.) The accounts included a federal tax lien for \$6,254 (SOR ¶ 1.a), a charged off child support account \$17 (SOR ¶ 1.b), a \$50 collection account for phone service (SOR ¶ 1.c), a \$70 collection account pertaining to a chiropractor bill (SOR ¶ 1.d), \$1,089 charged off credit card account (SOR ¶ 1.e), a \$776.00 collection account pertaining to telephone service (SOR ¶ 1.f); a \$113 collection account pertaining to a dental bill (SOR ¶ 1.g); a \$212 collection account for storage space (SOR ¶ 1.h); a \$25 collection account for medical (SOR ¶ 25); a \$118 collection account for lawn services (SOR ¶ 1.j); a \$9 collection account for water service (SOR ¶ 1.k); a \$1,358 collection account for a health club (SOR ¶ 1.m); four collection accounts related to medical bills of \$186, \$50, \$122, and \$100 (SOR ¶ 1.n, 1.o, 1.p and 1.q) and a \$6,090 account for past due child support. (SOR ¶ 1.r).

Applicant was unaware of some of the accounts alleged in ¶¶ 1.c, 1.i and 1.k. He disputed the accounts listed in ¶s 1.d, 1.g and 1.j but decided to pay the creditors due to the issues with his security clearance. The accounts listed in ¶s 1.e, 1.f and 1.h were being negotiated in his divorce settlement. The tax lien alleged in ¶ 1.a was from property he inherited from his father's estate. He paid the tax lien on July 3, 2006. (Gov Ex 5.)

Applicant is capable of paying these delinquent debts based on his income and assets. He has a net monthly income of \$7,697. His monthly expenses are \$1,716. His monthly payments towards debts and other obligations are \$4,304. He has a net remainder of \$1,677 each month. (Tr. at 31-32; Gov Ex 3 at 7.) His total assets are worth approximately \$853,000.00. (Gov Ex 3 at 7)

The current status of the delinquent debt is:

SOR Paragraph	Debt	Status	Record
1.a	\$6,254 IRS debt, father's estate	Paid in full	Tr. at 33-34; Gov 5
1.b	\$17.00 charged off account	Paid in full	Tr. at 35-38; AE B
1.c	\$50 collection account	Paid in full	Tr. at 39-40; AE C
1.d	\$70.00 collection account	Paid in full	Tr. at 40-42; AE D
1.e	\$1,089 charged off account	Paid in full	Tr. at 42-45; AE E

1.f	\$776 collection account	Paid in full	Tr at 46-47; AE F
1.g	\$113 collection account	Paid in full.	Tr. at 48-49; AE G
1.h	\$212 collection account	Paid in full	Tr. at 49; AE H
1.i	\$25 collection account, medical	Paid in full	Tr. at 50-53; AE I
1.j	\$118 collection account	Paid in full	Tr. at 53-54; AE J
1.k	\$9 collection account	Paid in full	Tr. at 54; AE K
1.l	\$1,954 collection account	Same as 1.e	Tr. at 42-46; AE E
1.m	\$1,358 collection account	Paid in full	Tr. at 55-56; AE L
1.n	\$186 collection account, medical	Paid in full	Tr. at 56-59; AE M
1.o	\$50 collection account, medical	Paid in full	Tr. at 56-59; AE M
1.p	\$122 collection account, medical	Paid in full	Tr. at 61; AE N
1.q	\$100 collection account, medical	Paid in full	Tr. at 56-59; AE M
1.r	\$6,090 collection account, child support	Paid in full	Tr. at 63-65; AE O

Applicant has resolved all delinquent debts. The child support debt alleged in ¶1.r was related to back child support for his son. His son was born out of wedlock and there was an extended period of time before paternity was established. The arrearage accumulated during the paternity proceedings. Once Applicant's paternity was established, he made timely payments on the child support. The arrearage was included as part of the monthly payment. (Tr. at 63-65.) He has paid the child support obligation. (AE O.)

On October 21, 1978, Applicant and his father were driving in his father's car. His father owned his own business and carried a revolver for protection. The police stopped them and searched the car. The revolver was found and he and his father were arrested. They were charged with a violation of the Uniform Firearm Act; Receiving Stolen Property; Possession of an Instrument of a Crime and Offensive Weapon. (Gov Ex 2.) Charges against the Applicant were dropped after the police discovered the gun belonged to his father. (Gov Ex 2 at 1-2.)

Question 22 of the security clearance application reads: "Your Police Record - Firearms/Explosives Offenses. For this item, report information regardless of whether the record in your case has been 'sealed' or otherwise stricken from the court record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607. Have you ever been charged with or convicted of a firearms or explosives offense?" Applicant answered "No" to this question. (Gov Ex 1, #22.) He forgot about this arrest when filling out his security clearance application.(Gov Ex 3 at 2.)

Applicant answered "No" to question "36. Your Financial Record - Tax Lien. In the last 7 years, have you had a lien placed against your property for failing to pay taxes or other debts?" He did not list the tax lien alleged in subparagraph 1.a which was filed in April 1996. (Gov Ex 4.) He did not recall the tax lien when he filled out his security clearance application in June 2002. (Tr. at 92.) He paid off the lien on July 3, 2006. (Gov Ex 5.)

Applicant did not list a civil judgment on behalf of the City of Philadelphia in response to question "37. Your Financial

Record -Unpaid Judgments. In the last 7 years, have you had any judgments against you that have not been paid?" The judgment was a result of Applicant neglecting to file a tax form related to property that he had inherited from his father. He was not aware that he had to file the tax form at the time. Applicant did not list the judgment in response to question 37 due to oversight. He did not have the records available to him when he filled out his security clearance application. (Tr. at 89-91.)

In response to question "38. Your Financial Delinquencies - 180 Days. In the last 7 years, have you ever been over 180 days delinquent on any debt(s)?" Applicant answered "No." He did not list the debts listed in ¶s 1.b through 1.h. He did not list these debts due to oversight. He also answered "No" in response to question "39. Your Financial Delinquencies - 90 Days. Are you currently 90 days delinquent on any debt(s)?" He did not list the debts in ¶s 1.b through 1.k. He did not list these accounts due to oversight. (Tr. at 102.)

Applicant states he gave his best effort in filling out the security clearance application and did not intend to falsify his security clearance application. (Tr. at 93, 102.) He answered the questions on his security clearance application from memory. In hindsight, he indicates he probably should have pulled his credit report before completing his security clearance application. (Tr. at 26 - 27.) At the time he filled out his security clearance application, he knew there were some issues with the inheritance he received from his father and debts involved in the divorce but did not believe that he had any delinquent accounts. (Tr. at 27-28.) He did not think to list his child support payments since he was making steady payments on child support each month. Part of the payment each month went towards child support arrearages. He believed that he was current on his child support. (Tr. at 87.)

Applicant served honorably in the United States Marine Corps for over eight years. (AE P; AE Q.) He has a bachelors degree in accounting, a Master of Science in Contract Management; a Masters of Business in Administrative Finance and a Masters in Program Management. (AE R.) He has been in the contracts career field since 1978. (*Id.*) He received favorable reviews from his employer in 2003 and 2004. (AE S.)

POLICIES

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." (*Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline F, Financial Considerations: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (Directive ¶ E2.A6.1.1.)

Guideline E, Personal Conduct: 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.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." (Directive, ¶ E2.2.1.) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (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 individual'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. (*Id.*)

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, ¶ E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (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).) "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." (Directive, ¶ E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, § 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F - Financial Considerations.

Financial Considerations

Applicant had several delinquent debts. By the time the SOR was issued, he had approximately 16 delinquent accounts with a total approximate balance of \$10,385. (I excluded the debt alleged in ¶ 1.a since it was paid in 1996. I excluded the debt alleged in ¶ 1.1 since it is a duplicate of the debt alleged in ¶ 1.e.) Under Guideline F, Disqualifying Conditions (FC DC) E2.A6.1.2.1: (*A history of not meeting financial obligations*) and FC DC 3 E2.A6.1.2.3: (*Inability or unwillingness to satisfy debts*) apply to Applicant's case. He has incurred several delinquent debts since 1996. The majority of debts went delinquent in the 2000 to 2002. He has a history of not meeting all of his financial obligations. His income is sufficient to meet his financial obligations. The record evidence indicates that for a while he was unwilling to satisfy several delinquent debts.

The security concern under Guideline F can be mitigated. I find the following Financial Considerations Mitigating Conditions (FC MC) apply:

FC MC E2.A6.1.3.3 (*The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation)*) applies, in part. Applicant's finances became disorganized, in part, as a result of his separation and subsequent divorce from his third wife. Until the parties reached a divorce agreement, there appears to have been some confusion as to who was responsible for paying certain debts. Once an agreement was reached, Applicant eventually paid off the debts which he was deemed responsible for in the divorce settlement.

FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies. Applicant has paid off all of his delinquent accounts. He had the income to pay off the debts. His problem appears to more of an issue of disorganization as opposed to inability to pay or living beyond his means. Of the sixteen delinquent accounts, seven accounts were less than \$100 and five accounts were less than \$250.00. He has learned from his security clearance background investigation experience.

Applicant has mitigated the financial considerations concerns. I find for the Applicant under Guideline F.

Personal Conduct

Although Applicant did not list a tax lien, a judgment, and other delinquent debts on his security clearance application, I find that he had no intent to falsify his security clearance application. I find credible his explanation that he did not recall the delinquent debts at the time he filled out the security clearance application. He did not recall the tax lien since he had paid it off in July 1996.

The judgment was related to property he inherited from his father. It is reasonable to conclude that he may not have thought of this as his debt. During his separation from his third wife and subsequent divorce, it appears that Applicant was not aware of the extent of his delinquent debts. As mentioned previously, his financial issues were the result of disorganization. One can reasonably conclude that he simply did not realize he had delinquent debts at the time of filling out his security clearance application. The Government has not proved that Applicant intended to falsify his security clearance application. I find for the Applicant under Guideline E.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

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.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: For Applicant

Subparagraph 1.k: For Applicant

Subparagraph 1.l: For Applicant

Subparagraph 1.m: For Applicant

Subparagraph 1.n: For Applicant

Subparagraph 1.o: For Applicant

Subparagraph 1.p: For Applicant

Subparagraph 1.q: For Applicant

Subparagraph 1.r: For Applicant

Paragraph 2. Guideline E 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.

ERIN C. HOGAN

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).