

DATE: June 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 04-12834

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 30 years old, married, and has three children. He works for a defense contractor. Since 1998 he has had financial difficulties of his own making, spending more money than he makes. He filed Chapter 7 bankruptcy in 2005. He deliberately failed to disclose his financial difficulties on his 2002 security clearance application and admitted so. He did not mitigate the financial considerations, personal conduct, and criminal conduct 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 August 23, 2005, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on September 30, 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on January 10, 2006. On January 26, 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. The Government moved to strike subparagraph 1.q. from the SOR. Applicant had no objection, and I granted the motion. DOHA received the hearing transcript (Tr.) on February 8, 2006.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 30 years old, married with two children, and a third child for whom he pays child support. He works as a personal computer technician for a defense contractor. He received several performance awards from his employer. He

served seven years in the Air Force and received an honorable discharge upon separation. He received a thank you from a general officer in 1998 for voluntary work in moving government offices. (Tr. 42-44, 79, 86; Exhibits 1, E-G, I-V)

Since at least 1998 Applicant has had financial difficulties, including spending more than he earned, borrowing money and not repaying it, and borrowing other money to repay other debts without repaying that latest loan. A manager advised him in 2001 to file Chapter 7 bankruptcy because of the magnitude of his delinquent debts. Applicant took no such action until April 2005 when he filed Chapter 7 bankruptcy showing \$8,000 in assets and \$87,000 in debt. He and his wife were granted a discharge in bankruptcy in September 2005. Not all his delinquent debts were included in the bankruptcy action, and he currently owes \$14,000 in delinquent debt, including child support. This child support obligation and his student loans can not be discharged in bankruptcy. Applicant's current net monthly income is \$5,446, out of which he pays his monthly bills, puts \$200 into a savings account of each child since October 2005, pays \$400 monthly on his student loans, and does not know where the other \$800 net income monthly goes, except he does not save it and apparently spends it. He sends his children to a private school (\$400 monthly tuition) and day care (\$152 weekly). His car payment is \$480 monthly with a 17% interest rate. Applicant consulted once with a financial counselor in June 2005. (Tr. 45-47, 61-71, 73, 88; Exhibits 4, 5, A-D)

While in the Air Force, Applicant received non-judicial punishment (Article 15) for using his government travel credit card for personal expenses and uses, making a false official statement to a senior noncommissioned officer that his finances were in order when in fact his government credit card had over \$1,000 in charges on it and repayment was 60 days past due, and failing to repay the \$1,390 until February 2001. Applicant received 40 days of extra duty for these violations. Applicant used the government credit card to send \$1,200 to his mother, who was ill with breast cancer. He had been sending her \$400 monthly from his Air Force income, but by 2000 his debts were so large he could not spare the money, so he used the government credit card. Then he could not repay it in the required time. He finally repaid it by borrowing money from a friend, and then repaying that friend. (Tr. 48-53, 73; Exhibits 2, 3, H)

Applicant completed his security clearance application (SCA) on September 19, 2002. On that SCA he answered Question 37 (Unpaid judgments in the past seven years) in the negative, meaning he had none. In fact he had a judgment against him by a creditor for \$9,829 as alleged in subparagraph 1.p of the SOR, and claimed he was paying the creditor at that time \$560 monthly. He answered Question 38 (Financial delinquencies over 180 days past due in the past seven years) in the negative. Finally, he answered Question 39 (Any current financial delinquencies over 90 days past due) in the negative. Applicant in 2002 had the 23 delinquencies alleged in Paragraph 1 of the SOR totaling about \$48,000 in debt. Applicant knew he had these delinquent debts because he was advised in 2001 to file bankruptcy to get them off his financial record. He admitted he deliberately failed to disclose these debts and the judgment on his SCA to protect his job. (Tr. 53-57, 73, 77, 78; Exhibit 1)

Applicant has 23 delinquent debts, some of which he discharged in bankruptcy and others remain delinquent. The 23 debts alleged in the SOR and their current status are as follows:

ALLEGATION	CURRENT STATUS	EVIDENCE
1.a. cell phone provider, \$282, owed since 1999.	Discharged in bankruptcy.	Tr. 24; Exhibit 5
1.b. loan company for money used to repay other debts, \$3,788.	Discharged in bankruptcy, but Applicant's statement to the Government investigator in 2003 stated he was to repay it by May 2004.	Tr. 25; Exhibits 2, 5, 6
1.c. credit card debt, \$82.	Applicant claims he paid it before filing bankruptcy, but has no proof of payment.	Tr. 26; Exhibits 4-6
1.d. child support of \$9,991.	Makes allotment of \$255 per pay period, including \$70 for arrearage.	Tr. 27, 28; Exhibits 2, 4-8, D
1.e. credit card debt of \$388.	Discharged in bankruptcy.	Tr. 28; Exhibits 4-6
1.f. repayment of military	Says discharged in bankruptcy, but Applicant told the investigator in 2003	Tr. 29;

overpay of \$554.	he would repay it by January 2004 but did not repay it. ay not be able to discharge in bankruptcy.	Exhibits 2, 4-6
l.g. lending institution for \$1,205.	Applicant is not certain about the basis for this debt, but included it in his bankruptcy.	Tr. 30; Exhibits 4-6, 8
l.h. auto loan for \$8,672.	Applicant surrendered the car several years ago, and included the debt in his bankruptcy.	Tr. 30, 31; Exhibits 4-6, 8
l.i. a line of credit from 1999, \$102.	Applicant included it in his bankruptcy, although he does not recognize the debt and had promised to pay it in his 2003 statement.	Tr. 31; Exhibits 2, 4, 5
l.j. loan to pay other bills, \$760, creditor charged it off in 1998.	Applicant claims creditor cannot find records of this loan and debt, but he included it in his bankruptcy.	Tr. 32, Exhibits 2, 6
l.k. furniture debt from 2002 for \$760.	Now owned by a collector, but Applicant included it in his bankruptcy.	Tr. 32, 33; Exhibits 6-8
l.l. medical bills for \$924.	Discharged in bankruptcy	Tr. 33, 34; Exhibit 4
l.m. cell phone bill for \$228.	Applicant claims he paid it, but he included it in his bankruptcy.	Tr. 34, 59; Exhibits 5, 6
l.n. car insurance premium for \$151 from 2001.	Discharged in bankruptcy.	Tr. 35; Exhibit 4
l.o. medical bills for \$108.	Discharged in bankruptcy.	Tr. 35, 60; Exhibits 4-6
l.p. unpaid loan to repay school debts, judgment obtained for \$9,829.	Discharged in bankruptcy.	Tr. 36, 37; Exhibits 2, 4-8
l.r. car loan unpaid, judgment obtained for \$4,432.	Discharged in bankruptcy.	Tr. 37, 61; Exhibits 4, 5
l.s. \$1,550 for department store purchases.	Not in bankruptcy, no effort to repay made.	Tr. 38; Exhibit 2
l.t. tuition loan \$953 delinquent since 2002.	Not in bankruptcy, and made no effort to repay.	Tr. 38, 39
l.u. loan for personal use, \$132, delinquent since 1998.	Applicant claims he repaid it, but has no proof, and does not remember the loan too well, and it is not included in his bankruptcy.	Tr. 39, 40; Exhibits 2, 7
l.v. cell phone bill for \$584 owed since 2002.	Applicant claims he paid it, but has no proof, and it was not included in his bankruptcy. His 2003 statement was that he planned to contact the creditor but did not do so.	Tr. 41, 58; Exhibits 2, 7
l.w. debt from 2002 for \$953.	Applicant claims not to remember this debt, and it was not included in his bankruptcy.	Tr. 41
l.x. bank credit card debt for \$2,472 from 2002.	Applicant made no contact with creditor. No repayment made.	Tr. 42; Exhibit 7

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 the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with 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.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

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. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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. 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). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline F: Financial Considerations: *The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.* E2.A6.1.1

Guideline E: Personal Conduct: *The Concern: 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.* E2.A5.1.1

Guideline J: Criminal Conduct: *The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.* E2.A10.1.1

CONCLUSIONS

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR. The conclusions I make are based on the Directive, applicable guidelines, and the evidence in the record.

Regarding the financial considerations guideline, the Disqualifying Conditions (DC) 1 (A history of not meeting financial obligations E2.A6.1.2.1) and DC 3 (Inability or unwillingness to satisfy debts E2.A6.1.2.3) apply. Since 1998 Applicant has had financial difficulties of his own making. He spent more than he earned, borrowed from financial institutions and friends to repay other debts, and even took \$1,200 in cash advances from his government credit card to pay his mother's expenses while she was ill, but then did not repay it in a timely manner. Then he lied about the status of the debt to his military superior. Applicant continues to owe today about \$14,000 in delinquent debts, including \$9,991 in child support. Although he is making arrearage payments on his child support, he has made no effort to repay other creditors that he did not include in his 2005 Chapter 7 bankruptcy, and made statements in his 2003 statement to the Government investigator that he would contact or repay certain debts, which action he never accomplished. There are no Mitigating Conditions (MC) applicable here. He filed Chapter 7 bankruptcy two years after his interview with the Government investigator, and took no action to repay any debts. Applicant has a continuing problem with money, for example, not knowing where \$800 a month goes after he pays his bills and puts money in his children's savings accounts. I conclude this financial considerations security concern against Applicant.

Regarding the personal conduct security concerns, DC 2 (The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, or similar form used to determine security clearance eligibility or trustworthiness E2.A5.1.2.2) applies. Applicant admitted he failed to disclose his judgment for a debt on which he was making some payments at the time he completed the SCA. He also failed to disclose all or any of his delinquent debts that he had. He knew what his financial condition was in 2002 when he completed the SCA, in part because of the duration and magnitude of his debts, and that a manager advised him in 2001 to file bankruptcy for the quantity of his debts. Applicant admitted he falsified his answers to Questions 37, 38, and 39 on the SCA to protect his job. There are no MC that can be applied to this situation, and I conclude this security concern against Applicant.

Finally, the criminal conduct security concern arises from Applicant's 2001 Article 15 for taking money from his government credit card for personal purposes and making a false statement to his military superior about it and deliberately falsifying the answers to his SCA in 2002 as discussed previously. DC 1 (Allegations or admissions of criminal conduct, regardless of whether the person was formally charged. E2.A10.1.2.1) and DC 2 (A single serious crime or multiple lesser offenses. E2.A10.1.2.2) apply. The false answers on the SCA are a violation of 18 U.S.C. § 1001 because he made a knowing and willful false statement to a government agency, the Department of Defense, about material facts. There are no MC to apply to these facts. Applicant has a problem with telling the truth regarding his finances and delinquent debts, and the Government justifiably has doubts about his judgment, reliability, and trustworthiness. I conclude this criminal conduct security concern against Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m: Against Applicant

Subparagraph 1.n: Against Applicant

Subparagraph 1.o: Against Applicant

Subparagraph 1.p: Against Applicant

Subparagraph 1.q: Withdrawn

Subparagraph 1.r: Against Applicant

Subparagraph 1.s: Against Applicant

Subparagraph 1.t: Against Applicant

Subparagraph 1.u: Against Applicant

Subparagraph 1.v: Against Applicant

Subparagraph 1.w: Against Applicant

Subparagraph 1.x: Against Applicant

Subparagraph 1.y: Against Applicant

Subparagraph 1.z: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Subparagraph 3.b: 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.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 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).