

DATE: August 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-00359

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate security concerns about his history of delinquent debts in excess of \$37,000, and about his deliberate falsification of his security clearance application. Clearance is denied.

STATEMENT OF THE CASE

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to give Applicant a security clearance. On September 28, 2005, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline F (financial considerations) and Guideline E (personal conduct). Specifically, the SOR alleged Applicant owed 24 delinquent debts (SOR ¶¶ 1.a - 1.p)⁽²⁾ consisting of collection accounts, charged-off credit cards, a car repossession, and civil judgments totaling about \$37,650. Applicant timely answered the SOR, and requested a hearing.

The case was assigned to me on February 9, 2006, and I convened a hearing on April 4, 2006. The parties appeared as scheduled and the government presented seven exhibits (Gx1 - 7), which were admitted without objection. Applicant testified in his own behalf and introduced ten exhibits (Ax A - J), which were admitted without objection.⁽³⁾ After reviewing Gx2, and during my questioning of Applicant at the hearing, it was apparent he had given a signed, sworn statement to an investigator during his background investigation and that the statement was part of the investigative record in Department Counsel's possession. I directed Department Counsel to produce a copy of that statement and it is admitted in the record as Judicial Exhibit I (Jx I).⁽⁴⁾ DOHA received the transcript (Tr) on April 19, 2006.

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is 59 years old and employed since February 2003 as a security guard at an Army ammunition plant. The terms of his company's contract with the Army require he hold a security clearance. Applicant has an associates degree in criminal justice, and he served from 1965 until 1969 in the U.S. Air Force, primarily in physical security assignments. Two current supervisors praise his work record, willingness to work overtime, and his reliability. He was recently promoted to shift supervisor.

Applicant worked selling cars until July 2002. (5) Between 1991 and 2000, his annual salary averaged about \$43,000, and his income from 1998 until 2000 was above \$50,000 each year. (6) Applicant's wife worked for 17 years in the human resources office of a health care company until she was forced to retire on disability in 1998. Since then, her only income is a monthly payment of \$250. In 2002, the car dealer Applicant worked for was closed without advance notice by the Internal Revenue Service because the owner had failed to pay taxes and because of other allegations of fiscal malfeasance. Applicant then went to work for a friend at a used car lot, but at less than half his previous income. In July 2002, he went to work as a security guard for his current employer, but was laid off a month later. After being unemployed for about six months, Applicant was recalled to work in his current position in February 2003, and has been steadily employed there ever since.

In October 2003, Applicant was diagnosed with renal cancer and underwent surgery to remove one of his kidneys. In 2004, he had a follow up surgery to correct a muscular side-effect of that surgery. Also in 2003, Applicant was diagnosed with heart problems that led to cardiac surgery in early 2004. Later in 2004, but before his second kidney-related surgery, Applicant had surgery to repair a hernia. As of the hearing, Applicant anticipated a fifth surgery.

Applicant's medical problems left him with nearly \$8,300 in delinquent medical bills (SOR ¶¶ 1.a, 1.b, 1.n and 1.o), which were unpaid as of the hearing. (7) Since February 2004, Applicant has been paying \$125 each month on a consolidated bill for medical costs totaling about \$19,000 not covered by his insurance. To date he has paid about \$3,000. (8) He also claims he paid one bill from a furniture store no longer in business (SOR ¶ 1.l); however, he did not corroborate his claim and the delinquency still appears on a 2005 credit report. He also claims, without corroboration, he paid one of the aforementioned medical bills for \$466 (SOR ¶ 1.n).

In 1999, while still earning over \$50,000 a year, Applicant found himself overextended financially. (9) He returned a pick up truck to the dealer who financed it. The vehicle was resold and Applicant was assessed the remaining deficiency of \$16,444 (SOR ¶ 1.e). He has made no payments on this debt. Being financially overextended also resulted in at least ten other debts totaling about \$13,755 (SOR ¶¶ 1.c, 1.d, 1.f - 1.m) that became delinquent when his income was reduced by 50% beginning in 2001.

Since about April 2005, Applicant has been paying \$50 each month on a debt incurred when his last paychecks from the car dealer for whom he worked in 2002 bounced. As he had already written checks against the account, the bank assessed him \$1,001 for the overdraft (SOR ¶ 1.i). The balance on that debt is now about \$443. (10)

In 2004, Applicant and his wife began receiving assets distributed from his wife's late sister's estate. They received \$65,000 from her retirement account, which they used to buy a new house. They rented out their old house at nearly four times the monthly mortgage payment, and Applicant estimates he has significant equity he can use if needed as his old house has less than \$7,000 left on the mortgage, and he owns his new house free and clear. Applicant and his wife also expect to receive nearly \$40,000 from the sale of his sister-in-law's house and have received several works of art he estimates are worth over \$140,000. (11) On September 13, 2004, Applicant was interviewed by government investigators during his background investigation, and he submitted a signed, sworn statement in which he averred he would use the bequest from his sister-in-law's estate to pay off his debts. His statement also included a personal financial statement (PFS) that showed he had about \$1,500 remaining after expenses each month. (12) At hearing, he testified that nothing substantial had changed since he completed the PFS, (13) and he acknowledged he has not used any of the bequest or the equity in his home to pay or otherwise resolve his debts. (14)

When Applicant was first hired by his current employer in July 2002, he submitted a security clearance application (SF 86). He claimed at hearing he answered all of the questions truthfully. Specifically, he claimed he answered "yes" to

questions 37 (unpaid judgments), 38 (debts in excess of 180 days delinquent), and 39 (debts in excess of 90 days past due). Later, after he was recalled from a lay-off status, he was told the original had been lost and he would have to submit another questionnaire. Applicant claims he was rushed into completing the form and that he turned it in to his superiors who then had it electronically submitted.⁽¹⁵⁾ Applicant answered "yes" to question 35 regarding repossessions.⁽¹⁶⁾

At hearing, Applicant initially denied being aware he owed debts in excess of 90 days past due or that some of his creditors had sued him to enforce their claims.⁽¹⁷⁾ However, he subsequently admitted knowing of the debts before he completed the SF 86s, but claimed he was simply unable to pay them.⁽¹⁸⁾

POLICIES AND BURDEN OF PROOF

The Directive sets forth adjudicative guidelines⁽¹⁹⁾ to be considered in evaluating an applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive.⁽²⁰⁾ The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are Guideline E (personal conduct) and Guideline F (financial considerations).

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽²¹⁾ for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, the burden then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.⁽²²⁾ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.⁽²³⁾

CONCLUSIONS

Financial Considerations. The government alleged Applicant should be disqualified because he is delinquent on 12 personal credit accounts (SOR ¶¶ 1.c - 1.m, and 1.p) and 12 medical bills (SOR ¶¶ 1.a, 1.b, 1.n, and 1.o) totaling more than \$37,000. The government presented sufficient information to support the allegations in the SOR. The facts established raise security concerns addressed in the Directive under Guideline F. Specifically, an applicant who is financially overextended through delinquent debt and poor personal financial management may be at risk of engaging in illegal acts to generate funds to resolve their fiscal difficulties.⁽²⁴⁾ These facts further support application of Guideline F disqualifying condition (DC) 1⁽²⁵⁾ and DC 3.⁽²⁶⁾

In response, the Applicant presented information sufficient to warrant application of Guideline F mitigating condition (MC) 3.⁽²⁷⁾ While it is true Applicant financially overextended himself as early as 1999, when he had to return a new truck he could not pay for despite earning a good living, he unexpectedly found himself out of a job in 2002. This event and his later medical problems hindered his ability to pay older debts, and resulted in newer medical bills that have also gone unpaid. However, the benefit Applicant may derive from MC3 is tempered because his financial problems had begun before these unforeseen events occurred. Further, since 2004, he has had sufficient assets, such as the proceeds from his late sister-in-law's estate, the equity in both his houses, and about \$1,500 net after expenses each, with which to resolve most of his delinquencies. Yet despite telling a government investigator he would use these assets and proceeds

to pay his debts, Applicant is paying less than \$200 monthly for some of his medical bills and a bank overdraft. Having considered all available information regarding Applicant's finances, I conclude he has failed to present information sufficient to overcome the government's security concerns in this regard. Guideline F is resolved against the Applicant.

Personal Conduct. The government also alleged it is not clearly consistent with the national interest to grant Applicant's request for a clearance because he deliberately omitted from his SF 86 relevant information about his financial problems by answering "no" to questions 37, 38, and 39 therein (SOR ¶¶ 2.a - 2.c). The record contains sufficient information to support these allegations. The facts thus established raise security concerns about Applicant's personal conduct addressed through Guideline E of the Directive. Specifically, Applicant's conduct in this regard involved questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, and could indicate he may not properly safeguard classified information.⁽²⁸⁾ Available information supports application of Guideline E DC 2.⁽²⁹⁾

Applicant denied he deliberately withheld this information. He has offered that he answered the questionnaire correctly, but his answers were altered when his employer transferred the information to electronic form;⁽³⁰⁾ yet did not explain why his affirmative answer to question 35 remained unaltered. Applicant also averred he did not know what judgments he had and that he intended to re-do the form, but it was submitted before he had a chance to do so.⁽³¹⁾ Applicant further claimed he did not know he had debts more than 90 days past due when he filled out the SF 86.⁽³²⁾ At hearing, Applicant again denied knowing about the judgments filed against him or that he was greater than 90 days past due on any debt, but subsequently acknowledged knowing of these obligations well before he submitted his SF 86.⁽³³⁾

Available information supports a reasonable conclusion that Applicant deliberately tried to mislead the government about the true extent of his financial problems. Such information is directly probative of an applicant's suitability for access to classified information. Further, the record does not support application of any of the Guideline E mitigating conditions (MC). Specifically, MC 3⁽³⁴⁾ does not apply because, even accepting his claim he intended to re-do the SF 86, there is no information showing he made any effort to do so. Insofar as Applicant's response to the SOR and his testimony present inconsistent explanations for his answers to the SF 86 questions at issue, he has failed to present sufficient evidence to overcome doubts about his judgment and trustworthiness. Guideline E is resolved against the Applicant.

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guideline. A fair and commonsense assessment⁽³⁵⁾ of Applicant's financial problems and his responses to questions in the SF 86 about his debts, taken in the context of all of the information before me shows that reasonable doubts persist about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Absent substantial information to mitigate these doubts, which Applicant failed to provide, I cannot conclude he has otherwise overcome the government's case.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline F (Financial): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: Against the Applicant

Subparagraph 1.g: Against the Applicant

Subparagraph 1.h: Against the Applicant

Subparagraph 1.i: Against the Applicant

Subparagraph 1.j: Against the Applicant

Subparagraph 1.k: Against the Applicant

Subparagraph 1.l: Against the Applicant

Subparagraph 1.m: Against the Applicant

Paragraph 2, Guideline E (Personal Conduct): Against the Applicant

Subparagraph 2.a: Against the Applicant

Subparagraph 2.b: Against the Applicant

Subparagraph 2.c: Against the 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 or continue a security clearance for the Applicant. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. SOR ¶ 1.o alleged nine unpaid medical bills.
3. During the hearing, Applicant asserted he had paid or taken other action on several of the debts listed in the SOR. I left the record open until April 14, 2006, to allow him time to submit documentation of his claims (Tr., 91 - 92). No additional information was received and the record closed on receipt of the transcript.
4. Tr., 80 - 83.
5. Gx1.
6. Ax A.
7. Gx3.
8. Ax H.
9. Tr., 63.
10. AxG.
11. Jx I.

12. Id.

13. Tr., 89.

14. Tr., 89 - 90.

15. Tr., 37 - 38.

16. Gx1.

17. Tr., 50.

18. Tr., 52 - 53.

19. Directive, Enclosure 2.

20. Commonly referred to as the "whole person" concept, these factor are as follows:

1. Nature and seriousness of the conduct and surrounding circumstances.
2. Frequency and recency of the conduct.
3. Age of the applicant.
4. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences involved.
5. Absence or presence of rehabilitation.
6. Probability that the circumstances or conduct will continue or recur in the future;

21. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).

22. *See Egan*, 484 U.S. at 528, 531.

23. *See Egan*; Directive E2.2.2.

24. Directive, E2.A6.1.1.

25. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;

26. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;

27. Directive, 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).

28. Directive, E2.A5.1.1.

29. Directive, E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

30. Tr., 37 - 38.

31. Response to SOR ¶ 2.a; Tr.,

32. Response to SOR ¶ 2.c.

33. Tr., 50 - 53.

34. Directive, E2.A5.1.3.3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts.

35. Directive, E2.2.3.