

DATE: July 7, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-04090

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Esq., Department Counsel

FOR APPLICANT

Ms. Lisa Stevenson, Personal Representative

SYNOPSIS

Applicant failed to mitigate delinquent debts of nearly \$10,000.00 incurred over several years with only sporadic attention to the problem and little ability to pay with the salary of a bus driver on a military base. He has a learning disability and difficulty with reading and verbal skills which caused misunderstanding and failure to report delinquent debts and garnishments on his SF 86. Personal conduct and criminal conduct arising from these omissions are deemed mitigated. Clearance is denied.

STATEMENT OF CASE

On October 28, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On November 15, 2005, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to another judge on January 30, 2006, and assigned to me on March 7, 2006. A notice of hearing was issued on March 15 2006, for a hearing on April 4, 2006, and held that day. The government offered seven exhibits and Applicant offered four into evidence and all were accepted. The transcript was received on April 19, 2006.

FINDINGS OF FACT

Applicant admitted all SOR allegations relating to delinquent debts with explanation for some and denied falsifying his answers regarding them on his applicant for security clearance. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 32-year-old employee of a defense contractor who drives a bus and a van on a military base. He needs a security clearance to be able to drive the bus to certain areas on the base. The SOR alleged delinquent debts totaling almost \$14,000.00. Two creditors and the IRS garnished his salary. Applicant did not list the delinquent debts and the garnishments in his answers to Questions 34, 36, 38, and 39 on his application for security clearance (SF 86).

Only the smallest debt of \$39.00 (SOR 1.d.) has been paid in full. Only one other debt of \$2,638.00 (SOR 1.f.) is being paid at \$40.00 per month. One of the other listed debts (SOR 1.m.) is a duplicate of that debt. While Applicant has contacted some of the other creditors in an attempt to set up payment schedules, nothing has been established with them since all require higher monthly payments than he is able to make. Thus, even accounting for the duplicate allegation and the one that is being paid, over \$10,000.00 remains to be paid where no payments are being made.

Applicant is married and his wife served as his personal representative at the hearing. He has learning disabilities and was enrolled in special programs while in school. He was initially employed on the base in a special program to provide employment for people with learning disabilities. His first job was as a packer of parts for the aircraft on the base.

In addition to the debts alleged in the SOR he acknowledged a debt of \$35,000.00 from student loans debts arising from a year and a half of college in 1983-84. The original debt was \$17,000.00 but now includes interest charges for the intervening years. He enrolled at the college primarily to play football but did not make the team and was not successful academically. This debt is being paid by withholding various amounts each month from his salary.

Applicant has three children by a former wife and pays child support for two of the children who are still minors. Two other children live with him and his wife. One is their child and other one is a step-child from a former marriage of his wife. His wife acknowledges that her own finances are not in good shape but she has separate accounts from her husband.

Applicant's wife is employed by a newspaper and their joint annual income is around \$40,000.00. He also has a part time job with a local school board driving a school bus and is on call as needed. He holds three credit cards and is regularly paying on them every month but does not pay the full amount due so is paying over 20% in interest charges. He has been advised to petition for bankruptcy but has been reluctant to so since he could not continue to hold credit cards. He needs credit cards so that he does not have to pay for every purchase in cash.

Applicant was confused about and did not understand the questions on the SF 86 that he failed to answer correctly. He has difficulty reading because of his learning disability. He was assisted in filling out his SF 86 by a secretary of his employer and believed he had complied with all requirements although she was not someone skilled in interpreting clearance documents.

Applicant has a reputation for trustworthiness and honesty (Exh. D). In addition to driving on the base, he also is assigned to drive VIPs both on and off base in a van and has received numerous awards and recognition for his courtesy and professionalism. He was designated employee of the month on one occasion by his employer.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist 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. The applicant then bears the burden of demonstrating it is clearly consistent with the national interest to grant or continue a security clearance. "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* Executive Order No. 12968 § 3.1(b).

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

Applicant's thirteen delinquent debts prompted the allegation of security concern under Guideline F since an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)

Mitigating Conditions (MC) might include the fact that the conditions that resulted in the behavior were largely beyond the person's control (E2.A6.1.3.3.) and the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.). However, those mitigating conditions do not apply. There is no evidence the debts resulted from conditions beyond his control. He repaid in full only the smallest debt and is paying regularly on only one other of the delinquent debts. He has only a limited ability to pay more. He and his wife are in a financial consulting plan at their church and intend to repay the debts. However, their intentions do not provide an ability to accomplish their goal.

Applicant's failure to report his financial delinquencies at Questions 34, 36, 38, and 39 on his SF 86 raises issues under Guideline E that might indicate questionable judgment, unreliability, and unwillingness to comply with rules and regulations and could indicate that the person may not properly safeguard classified information (E2.A5.1.1.). Specifically, the deliberate omission, concealment, or falsification of relevant and material facts from a personnel security application could raise a security concern and be disqualifying. (E2.A5.1.2.2.) Applicant's failure to report any of the delinquent debts was at best negligent but in view of his learning disability resulting in trouble with verbal and written communications as illustrated by his testimony and presentation at the hearing, I conclude that it was not deliberate as required by the guideline.

Guideline J (Criminal Conduct) is alleged but only as a violation of 18 U.S.C. ¶ 1001 by failing to answer correctly questions 34, 36, 38 and 39 on his SF 86. The allegation could be mitigated by the fact the crime was an isolated incident. (E2.A10.1.3.2.) I conclude Applicant did not have the requisite intent to give rise to a criminal offense.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Applicant impressed me at the hearing as a hard-working person whose many delinquent debts had accumulated to the point that he had lost control of them. He intends to resolve the debts when he has the financial means to do so. Unfortunately, he does not have the ability to do so now and is unlikely to soon be in a position to do so to comply with the security requirements necessary to obtain a security clearance.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude it is premature to grant a security clearance.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

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.: For 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.: For Applicant

Subparagraph 1.n.: Against Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Paragraph 3. Guideline J: FOR APPLICANT

Subparagraph 3.a.: For 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 renew a security clearance for Applicant. Clearance is denied.

Charles D. Ablard

Administrative Judge