

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has more than \$10,000 in delinquent debt. He has neither paid the debts nor made plans to do so. He deliberately omitted these debts from two security clearance applications. Clearance is denied.

CASE NO: 05-04201.h1

DATE: 04/20/2006

DATE: April 20, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-04201

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez Jr., Esq., Department Counsel

FOR APPLICANT

Roger A. Montoya, Esq.

SYNOPSIS

Applicant has more than \$10,000 in delinquent debt. He has neither paid the debts nor made plans to do so. He deliberately omitted these debts from two security clearance applications. 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. In accordance with Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on 12 October 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 25 October 2005 and 16 November 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on 14 February 2006. On 15 March 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. DOHA received the hearing transcript (Tr.) on 24 March 2006.

FINDINGS OF FACT

Applicant is a 49-year-old aviation avionics technician for a defense contractor. Ex. 2 at 1; Tr. 25. He lives with his wife and three children. He first obtained a security clearance in 1992.

In the SOR, DOHA alleged Applicant had 10 debts totaling more than \$4,800 that had been placed for collection (¶¶ 1.a-1.f, 1.h, 1.j-1.l); had one debt for more than \$300 that was charged off (¶ 1.g); and is delinquent on a debt of more than \$4,500, the balance due after resale of his automobile that had been repossessed for nonpayment (¶ 1.i). At the

hearing, Applicant opined that all of the debts, were his, with the possible exception that one (unspecified) may be his son's debt. Although he consulted with an attorney who offered to establish a payment plan, Applicant did not hire him. Applicant has not made any payments on these debts nor has he any firm plans to do so.

Applicant submitted a security clearance application on 8 January 2003 that was electronically submitted on 10 January 2003. Ex. 1. Question 38 asked if, in the previous seven years, Applicant had been delinquent more than 180 days on any debts. Question 39 asked if Applicant was then delinquent more than 90 days on any debt. Applicant answered "no" to both questions.

Applicant completed another security clearance application (SCA) dated 1 March 2004, but signed on 2 March and 8 June 2004, by certifying that his statements therein were "true, complete, and correct" to the best of his knowledge and belief and by acknowledging that a knowing and willful false statement could be punished by fine and/or imprisonment under 18 U.S.C. § 1001. Ex. 2 at 10. In answer to question 38, Applicant admitted one delinquent debt to a mobile phone service for \$300. He continued to deny that any debts were then delinquent more than 90 days.

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 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 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 had 10 debts totaling more than \$4,800 that had been placed for collection (§§ 1.a-1.f, 1.h, 1.j-1.l); had one debt for more than \$300 that was charged off (§ 1.g); and is delinquent on a debt of more than \$4,500, the balance due after resale of his automobile that had been repossessed for nonpayment (§ 1.i). In his 25 October 2005 Answer, Applicant denied all of the allegations, except § 1.g. In his amended Answer of 16 November 2005, Applicant denied the allegations in § 1.g, as well as §§ 1.a, 1.i, 1.k, 1.l, and admitted the others. 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 by substantial evidence 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). Applicant failed to produce any persuasive evidence from which I could apply any of the mitigating conditions listed under Guideline F. I conclude Applicant did not initiate good-faith efforts to pay his overdue creditors or resolve his debts. There is no indication he has either the ability or willingness to pay these debts. I find against him on § 1.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant falsified material facts on questions 38 (§ 2.a) and 39 (§ 2.b) on a January 2003 SCA, and questions 38 (§ 2.c) and 39 (§ 2.d) on a June 2004 SCA. Applicant denied each of the allegations in both his 25 October and 16 November 2005 Answers. 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 Government's evidence established that Applicant failed to accurately answer questions 38 and 39 on both of his SCAs. Applicant contends he did not intentionally lie, but was merely unaware of his debts. After listening to his testimony and carefully observing his demeanor, I am convinced he knowingly and willfully falsified both SCAs.

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 at *6 (App. Bd. Sep. 13, 2002). An applicant's financial history 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. I have considered the mitigating conditions listed under Guideline E and conclude none apply. After considering all of the evidence, the disqualifying and mitigating conditions, as well as 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.l: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a-2.d: 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