

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has a history of delinquent debts. He took no action to resolve them until he received the SOR. He is financially overextended and likely to remain so for a long time. He falsely answered "no" to two questions on his security clearance application (SF 86) about delinquent debts. Security concerns based on financial considerations and personal conduct are not mitigated. Clearance is denied.

CASENO: 05-04332.h1

DATE: 01/17/2006

DATE: January 17, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-04332

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of delinquent debts. He took no action to resolve them until he received the SOR. He is financially overextended and likely to remain so for a long time. He falsely answered "no" to two questions on his security clearance application (SF 86) about delinquent debts. Security concerns based on financial considerations and personal conduct are not mitigated. Clearance is denied.

STATEMENT OF THE CASE

On July 25, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. This action was taken under Executive Order 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). The SOR alleges security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). Applicant answered the SOR in writing on August 29, 2005, and elected to have the case decided on the written record in lieu of a hearing. Applicant admitted all the allegations in the SOR. Department Counsel submitted the Government's written case on October 7, 2005. A complete copy of the file of relevant material (FORM) was sent to Applicant on October 13, 2005, and he was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on October 21, 2005, and responded on October 27, 2005. The case was assigned to me on November 28, 2005.

FINDINGS OF FACT

Based on the entire record, I make the following findings of fact:

Applicant is a 37-year-old functional analyst for a defense contractor. He has worked for his current employer since May 2003. He served in the U.S. Air Force from April 1988 to September 2001. He held a security clearance in the Air Force. His response to the FORM suggests he currently holds a clearance.

Applicant executed a SF 86 on November 14, 2003. He answered "no" to question 38, asking if he was more than 180 days delinquent on any debt during the last seven years, and to question 39, asking if he was currently more than 90 days delinquent on any debt. His credit report dated July 12, 2005, reflected 10 delinquent debts totaling more than \$43,000. All delinquent debts were charged off or referred to collection agencies and all were more than two years old. In his answer to the SOR, he admitted falsifying his answers to questions 38 and 39, and he offered no explanation or excuse.

Applicant admitted all the delinquent debts but contended the two debts alleged in SOR ¶¶ 1.c. and 1.d. were only one single debt. It cannot be determined from the record whether they are actually a single debt, and Applicant furnished no documentary corroboration of his contention.

After receiving the SOR, Applicant settled one debt for \$2,517 (SOR ¶ 1.e.). He made arrangements to pay \$150 per month on two debts, one of which is alleged in the SOR ¶ 1.d. The remaining debts remain unpaid. He states he intends to keep paying \$300 per month on his delinquent debts until they are all paid. There is no evidence he has sought credit counseling or professional assistance in settling his delinquent debts. His explanation for not beginning to pay his debts earlier was, "I guess I figured my debts would just wait till I was ready to pay them."

In a statement to a security investigator on December 6, 2004, he attributed his financial difficulties to his unsuccessful attempt to start his own business after he left the Air Force. He did not describe the circumstances that caused his business to fail, except to state he was unable to keep up with his payments on credit cards and loans.

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 with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. 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 Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1 through 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (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 applicant'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. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

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.

Initially, the government must establish, by substantial evidence, conditions 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. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* 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). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

Guideline F (Financial Considerations)

Under Guideline F, "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Directive ¶ E2.A6.1.1. A person who fails or refuses to pay long-standing debts or is financially irresponsible may also be irresponsible or careless in his or her duty to protect classified information. Two disqualifying conditions (DC) under this guideline could raise a security concern and may be disqualifying in this case. DC 1 applies where an applicant has a history of not meeting his or her financial obligations. Directive ¶ E2.A6.1.2.1. DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3. Applicant's financial history establishes DC 1 and DC 3.

A security concern based on financial problems can be mitigated by showing the delinquent debts were not recent (MC 1) or an isolated incident (MC 2). Directive ¶ E2.A6.1.3.1., E2.A6.1.3.2. Applicant has multiple delinquent debts that are unresolved. I conclude MC 1 and MC 2 are not established.

Security concerns arising from financial problems can be mitigated by showing they are the result of conditions beyond the person's control (MC 3). A business failure because of conditions beyond an applicant's control could establish MC 3. In this case, however, Applicant has not shown any factors beyond his control that caused his business to fail. The record shows only excessive borrowing. Applicant has the burden of proving a mitigating condition, and the burden of disproving it is never shifted to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). I conclude Applicant has not carried his burden of establishing MC 3.

A security concern arising from financial problems can be mitigated by showing a good-faith effort to resolve debts (MC 6). Directive ¶ E2.A6.1.3.6. The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. Applicant took no significant action to resolve his indebtedness until he received the SOR and realized his security clearance was in jeopardy. As he admits, his attitude before receiving the SOR was, "I guess I figured my debts would just wait till I was ready to pay them." I conclude MC 6 is not established.

It is too soon to tell whether Applicant will adhere to his promise to pay \$300 per month until all his delinquent debts are resolved. He is still financially overextended, with no hope of recovery for many years at his current rate of repayment. After considering the disqualifying conditions and the absence of mitigating conditions, and evaluating the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concern based on

financial considerations.

Guideline E (Personal Conduct)

Under Guideline E, 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. Directive ¶ E2.A5.1.1. A disqualifying condition (DC 2) applies where there has been a deliberate omission or falsification of relevant and material facts from any personal security questionnaire. Directive ¶E2.A5.1.2.2.. Applicant admitted giving false answers to questions 38 and 39 on his SF 86.

Two mitigating conditions (MC) are relevant to this case. MC 2 applies when the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily. Directive ¶ E2.A5.1.3.2. MC 3 applies when the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts. Directive ¶ E2.A5.1.3.3. Neither mitigating condition is established. Applicant's falsification was recent, and there is no evidence Applicant made any effort to correct the falsification until he was questioned by a security investigator.

After considering Applicant's lack of explanation for his falsification and the absence of mitigating conditions, I conclude Applicant has not mitigated the security concern based on falsification of his SF 86.

FORMAL FINDINGS

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

Paragraph 1. Guideline F (Financial Considerations): 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

Paragraph 2. Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against 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 Applicant a security clearance. Clearance is denied.

LeRoy F. Foreman

Administrative Judge

