

DATE: July 31, 2006

In re:

SSN: -----

Applicant for Trustworthiness Determination

P Case No. 05-04413

DECISION OF ADMINISTRATIVE JUDGE

SHARI DAM

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 38 years old and works for a federal contractor. From 2002 to 2005, he accumulated about \$17,000 of delinquent debt as a result of his child's medical condition, his wife's unemployment, and work related travel expenses. When he completed his application for access to sensitive information, he did not disclose the delinquent debts. To-date, he paid one of the debts, and is resolving the others. Applicant mitigated the trustworthiness concerns raised by his financial problems and personal conduct. His eligibility for assignment to a sensitive position is granted.

STATEMENT OF THE CASE

On March 29, 2004, Applicant submitted a public trust position application (SF-85P). The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Regulation 5200.2-R, *Personnel Security Program*, (Jan. 1987), as amended (the "Regulation"), and Department of Defense Directive 5220.6, *Defense Industrial Security Personnel Review Program* (Jan. 2, 1992), as amended (the "Directive"). On September 26, 2005, DOHA issued a Statement of Reasons (SOR), alleging trustworthiness concerns under Guideline F (financial considerations) and Guideline E (personal conduct) of the Directive.

In a sworn statement, dated October 24, 2005, Applicant responded to the SOR allegations and requested a hearing. On April 21, 2006, the case was assigned to me. A Notice of Hearing was issued on ay 22, 2006, setting the case for hearing on June 15, 2006. At the hearing the Government introduced exhibits (GX) 1-6 into evidence without objection. Applicant testified in his case-in-chief and introduced exhibits (AX) A-C into evidence without objection. The record was left open until June 29, 2006, to give Applicant an opportunity to submit additional information. On June 30, 2006, Applicant submitted an additional exhibit to Department Counsel, who forwarded the document to me without objection. I marked the exhibit AX D, and admitted it into evidence. DOHA received the hearing transcript (Tr.) on June 26, 2006. On July 6, 2006, Department Counsel submitted an additional exhibit that I marked as GX 7, and admitted without objection.

FINDINGS OF FACT

Based on the entire record, including Applicant's admissions in his answer to the SOR and at the hearing, I make the following additional findings of fact:

Applicant is 38 years old, married, and has two children. He was in the U.S. Army from 1989 to 1992 when he was honorably discharged. While in the Army, he worked as an electrician and held a secret security clearance. After leaving military service, he worked for a federal contractor for a couple years and then a private contractor. From June 2002 to the present, he has worked for federal contractors. In March 2003, he submitted a public trust application.

In June 2004, Applicant met with a government investigator to discuss his financial problems and credit report. In a written statement, Applicant indicated his financial difficulties arose after his daughter was born with a paralysis of her left side. Both he and his wife were employed up to his daughter's birth; however, afterward his wife stopped working to care for their child. (GX 2 at 1) About four months later, he took a job with a private company that required an extensive amount of travel. Although he was allotted a monthly travel stipend, his employer did not always pay it on time, causing his car loan payments to be late. (Tr. 29) As a result of his child's extensive medical bills, the loss of his wife's income, and additional travel expenses, he began to accrue debts that he could not pay. Subsequently, he entered into a debt consolidation plan, but later terminated it because of the high fees charged by the company administering the plan. (Tr. 40) In 2004, he contacted a mortgage company for advice about handling his credit problems in order to apply for a mortgage. (Tr. 42) He considered filing for bankruptcy in February 2005, but decided against it. (Tr. 42) After making calls to some of his creditors, he started paying off one creditor at a time. (Tr. 40) Presently, the debts span a period of time from 2002 to 2005. (GX 4 & 5)

Paragraph 1 of the SOR alleged that Applicant owes approximately \$17,553 in delinquent debt, consisting of a defaulted car loan, utility bills, and credit card bills. He admitted responsibility for all debts, except those alleged in ¶¶ 1.e and 1.g, totaling \$4,858, which he disputed. He paid the debt in ¶ 1.b for \$783 (AX B), and is in the process of paying those in ¶¶ 1.a, 1.c, 1.d, 1.h, and 1.j, totaling \$4,525 (AX A & D). He has not resolved ¶¶ 1.f and 1.i, consisting of a credit card debt of \$353, and a repossessed car for \$7,134. He intends to resolve those after paying off the other debts.

Presently, Applicant earns \$84,000 annually. His net monthly income is \$5,300 and expenses are \$4,956, leaving a net remainder of \$344 of income to apply to delinquent debt. In August 2006, his wife will return to work, helping to stabilize their income and pay their bills. He admitted he should have resolved some of the debts earlier, but did not because he was working two or three jobs at the time the debts were accruing. (Tr. 22) His wife currently handles the finances and has established a budget. (Tr. 54) He likes his job and believes his financial picture is improving. (Tr. 22)

When Applicant completed his SF-85P in March 2004, he certified his answers were true, complete and correct to the best of his knowledge. In response to Question 22.b Your Financial Record (*Are you now over 180 days delinquent on any loan or financial obligation? Include loans or obligations funded by the Federal Government*), he answered "No," and failed to list the debts alleged in SOR ¶ 1.a through ¶ 1.f. He admitted he did not list the debts because at the time he completed the application, he was in a hurry and did not carefully read the question. He had no intention of falsifying the information. (Tr. 31) I find his explanation credible.

POLICIES

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995), the President provided that eligibility for access to classified information shall be granted only to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information."

To be eligible for assignment to sensitive duties, an applicant must meet the security guideline contained in DoD 5200.2-R. "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties

is clearly consistent with the interests of national security." DoD 5200.2-R, ¶ C6.1.1.1. Appendix 8 of the Regulation sets forth personnel security guidelines as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are the following:

Guideline F - Financial Considerations - A trustworthiness concern may arise when an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Guideline E - Personal Conduct: A trustworthiness concern may arise when an individual's conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Section E.2. of Enclosure of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct of the applicant, an administrative judge should consider: (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.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not just the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. Directive, Enclosure 2, ¶ E2.2.2. The decision to deny an individual a security clearance request is not necessarily a judgment of the applicant's loyalty. Executive Order 10865, § 7. Instead, it is a determination that the applicant has not met the strict guidelines established by the Department of Defense 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. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). The Directive presumes a rational connection between past proven conduct under any disqualifying condition and an applicant's present security suitability. ISCR Case No. 95-0611 at 3 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the position of the government. 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." *Id.*

CONCLUSIONS

I considered all of the evidence and the appropriate legal standards, including the "whole person" concept, and concluded the following with respect to the allegations set forth in the SOR:

Guideline F - Financial Considerations

The Government's evidence and Applicant's admissions established a potential case for disqualification under this guideline. Two disqualifying conditions apply: (1) Financial Consideration Disqualifying Condition (FC DC) 1 (*A history of not meeting financial obligations*), and FC DC 3

(Inability or unwillingness to satisfy debts). From 2002 to approximately 2005, Applicant accumulated approximately \$17,000 of delinquent debt that he was unable to manage or pay, as noted by his testimony and credit reports.

The Government having raised a trustworthiness concern, the burden shifted to Applicant to mitigate or rebut the allegations. After reviewing all of the mitigating conditions, I concluded Financial Consideration Mitigating Condition 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)*) applies. Applicant provided evidence that his delinquent debts accumulated after his daughter was born with a medical condition, causing his wife to stop working, and as a consequence of significant travel expenses related to his employment. These were factors outside of his control.

As that mitigating condition standing alone is insufficient to overcome the Government's present concern, I also considered FC MC 6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant paid one debt, and is in the process of paying five other debts. He disputed two of them, and intends to resolve the remaining two after he pays off the other ones. While his current repayment schedule is not a formalized plan, he is making progress, and has made a commitment and good faith effort to resolve his delinquent debts.

In addition to the enumerated disqualifying and mitigating conditions, I considered Applicant's credibility and demeanor while testifying, his years in the military service, his candid explanations of his problems and a previous attempt to resolve it through a debt consolidation program, the absence of financial problems until the birth of his daughter, the resolution of some debts, his wife's management of their finances, and her return to work. I also considered his decision not to file bankruptcy to eliminate his debts, and his expressed commitment to continue resolving and paying the delinquent debts, along with his current income. Given his awareness of the potential effect a failure to resolve these delinquent debts could have on his present employment, his financial problems are unlikely to recur in the future.

After weighing the disqualifying and mitigating factors, and evaluating the evidence in the context of the whole person, I concluded Applicant mitigated the security concerns raised by his financial considerations. Accordingly, all allegations contained in the SOR under Guideline F are decided for him.

Guideline E: Personal Conduct

The Government alleged that Applicant falsified his SF-85P by failing to disclose his delinquent debts, which constituted a disqualification under Personal Conduct Disqualifying Condition (PC DC) 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 determines security clearance eligibility or trustworthiness, or award fiduciary responsibilities*). Although Applicant admitted he failed to disclose the information, he denied any intent to falsify his application.

When a falsification allegation is controverted or denied, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

Applicant's explanation that he failed to disclose the debts because he was in a hurry and did not pay attention while completing the application, is credible. Hence, the allegation contained in SOR ¶ 2.a is concluded in his favor. Accordingly, Guideline E is decided for him.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph1: Guideline F (Financial Considerations) FOR APPLICANT

Subparagraphs 1.a through 1.j: For Applicant

Paragraph 2: Guideline E (Personal Conduct) FOR APPLICANT

Subparagraph 2.a: For Applicant

DECISION

In light of the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. His application for eligibility is granted.

Shari Dam

Administrative Judge