

DATE: March 26, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-09040

DECISION OF ADMINISTRATIVE JUDGE

EDWARD W. LOUGHRAN

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Leslie McAdoo, Esq.

SYNOPSIS

Applicant is a 31-year-old employee of a defense contractor. In the mid-1990s, Applicant was a young, married, enlisted Marine, living in a high cost area, and just starting a family. This led to financial difficulties, including delinquent debts and a deficiency for a returned leased vehicle. Applicant has paid, settled, or resolved all the debts in issue, and has incurred no additional delinquent debts in more than seven years. Applicant submitted a security clearance application in 2004, which did not list his delinquent debts. Applicant credibly testified that he believed the debts were more than seven years old, and did not have to be listed. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On August 30, 2006, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) 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 September 26, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on December 18, 2006. A notice of hearing was issued on January 16, 2006, scheduling the hearing for February 6, 2006. The hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government offered five exhibits that were marked as Government Exhibits (GE) 1 through 5, and admitted without objection. Applicant testified and offered eight exhibits that were marked Applicant Exhibits (AE) A through H, and admitted without objection. The record was left open to allow Applicant an opportunity to submit additional material. He did so in a timely manner. The documents were marked AE I through Q, and admitted without objection. Applicant's Praecipe-Supplemental Material, letter to Department Counsel, and Department Counsel's letter were marked Hearing Exhibits (HE) I to III. DOHA received the hearing transcript (Tr.) on February 16, 2007.

FINDINGS OF FACT

Applicant is a 31-year-old employee of a defense contractor. He was married from 1994 until he divorced in 2002. Applicant remarried in 2003. Applicant has two daughters from his first marriage, ages eleven and nine. They live with their mother in another state. Applicant pays \$1,025 per month in child support. He and his wife have a two-year-old daughter. [\(2\)](#)

Applicant is a high school graduate. He enlisted in the United States Marine Corps, and served on active duty from 1993 to 2000. He was a Sergeant (E-5) and received an Honorable Discharge. [\(3\)](#) Applicant started encountering financial difficulties in the mid-1990s. He was a young, married Marine, and just starting a family. Applicant was assigned to a high cost area. There was a very long waiting list for family housing, so Applicant lived off-base. Applicant and his wife used credit cards, and lived beyond their means. Applicant's wife handled the bills. Applicant was working long hours, with much travel. He knew they were struggling to keep up, but did not realize the depth of their financial troubles until his wife brought it to his attention. A number of debts went into delinquent status. Applicant went to the Navy and Marine Corps Relief Society for assistance, but received minimal help. [\(4\)](#) He has never received financial counseling. [\(5\)](#)

Applicant was ordered to Okinawa where he served a one-year-unaccompanied tour from

March 1998 to March 1999. [\(6\)](#) Applicant moved his family to their home state while he was overseas. Applicant leased a vehicle in 1996. They also owned another car. Applicant was not authorized to move the leased vehicle to Okinawa, and they could not afford to maintain it while he was overseas. Applicant voluntarily returned the leased vehicle, either shortly before, or after, he went to Okinawa. [\(7\)](#) A voluntarily returned leased vehicle is treated as a repossession, and results in a deficiency balance, as reflected in the SOR, ¶ 1.a. As Applicant struggled financially, he prioritized his bills, and paid the necessities. He let other bills become delinquent, as reflected in the SOR, ¶ 1.b - 1.d. [\(8\)](#)

The debt in SOR ¶ 1.a is for the deficiency owed when Applicant returned his leased vehicle in 1998. Applicant entered into a payment agreement with the creditor in September 2006, to pay \$160 per month until paid. At that time, the creditor listed the balance owed as \$5,765. Appellant made several \$160 payments, and then settled the account to the creditor's satisfaction on January 12, 2007, for an additional payment of approximately \$3,000. [\(9\)](#)

The debts in SOR ¶ 1.b and 1.c, are debts to a collection agency, collecting on behalf of a department store and a credit card. Appellant contacted the collection agency regarding both accounts in about September 2006. The collection agency informed Applicant that the account to the department store, as reflected in SOR ¶ 1.b, was closed, and no longer valid. It was apparently written off. By letter dated September 13, 2006, the collection agency wrote that they were removing the department store account from their records, and would notify the three major credit reporting agencies. [\(10\)](#) In September 2006, the collection agency listed the balance owed for the credit card debt in SOR ¶ 1.b, as \$11,348. Appellant settled the credit card debt with the collection agency on September 25, 2006, for \$5,000, which was the approximate amount owed before the accumulation of finance charges and interest. [\(11\)](#)

Applicant believes the debt in SOR ¶ 1.d in the amount of \$2,397 was for furniture. This debt was paid in full in April 2005. [\(12\)](#)

Applicant submitted a security clearance application, Standard Form 86 (SF-86), on January 14, 2004. He responded "NO" to all the financial questions. Question 35 asked, "In the last 7 years, have you had any property repossessed for any reason?" Question 38 asked, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Question 39 asked, "Are you currently over 90 days delinquent on any debt(s)?" [\(13\)](#)

Applicant credibly testified that he did not list the debts and repossession discussed above because he believed they were more than seven years old at that time. Since Applicant financial difficulties began in the mid-1990s, that was not an unreasonable belief. He did not list the debts as currently more than 90 days delinquent because he interpreted the question as referring to his current debts, and not his older debts. Three of the four debts from the SOR were listed in the credit report dated July 14, 2004. [\(14\)](#) The report lists the last activity for the three debts as 1998 or 1999. The date of last activity is not necessarily the date the debt became delinquent. It is very possible that the last activity on a debt

could have been months or years after it became delinquent. The debt to the collection agency on behalf of a credit card, (SOR ¶ 1.c) was not listed. Adverse matter, including delinquent debts, are normally removed from credit reports after seven years. None of the debts are reported on any of the subsequent credit reports in evidence. ⁽¹⁵⁾ Applicant had difficulty remembering dates at the hearing. The leased vehicle was returned in 1998, or about six years before Applicant filled out the SF-86. That is at least close to being more than seven years old. Voluntarily returning a leased vehicle before the end of the lease is treated by the financing company as a repossession. However, many people are unaware of how it is viewed. After considering all the evidence, and gauging Applicant's credibility, I find Applicant did not intentionally falsify his SF-86, by omitting his financial issues.

SOR ¶ 2.d alleges that Applicant falsified an SF-86 on July 25, 1996, by failing to list a tax lien of \$7,260, executed on June 9, 1995. The SF-86 of July 25, 1996, was never placed in evidence.

Additionally, Applicant testified and submitted evidence that the tax lien in question was levied against his father, who has the same name as Applicant. ⁽¹⁶⁾

Applicant is highly regarded by his employer. His performance evaluations have been excellent. ⁽¹⁷⁾ His supervisor states Applicant is a valuable asset to their company and their clients, and that Applicant is "dedicated, reliable, and trustworthy." ⁽¹⁸⁾ Other character letters on Applicant's behalf praise him as enthusiastic, cordial, self motivated, industrious, responsible, conscientious, intelligent, selfless, with character that is beyond reproach. ⁽¹⁹⁾ If Applicant maintains his security clearance, he will deploy to Iraq in support of a U.S. Marine Corps mission. ⁽²⁰⁾ Applicant's military decorations include two Navy and Marine Corps Commendation Medals, a Navy and Marine Corps Achievement Medal, and other accolades. ⁽²¹⁾

POLICIES

"[N]o one has a 'right' to a security clearance." ⁽²²⁾ 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." ⁽²³⁾ 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." ⁽²⁴⁾ An applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials. ⁽²⁵⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. ⁽²⁶⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. ⁽²⁷⁾

The Directive sets forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in ¶ 6.3 and ¶ E2.2.1., of the Directive.

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

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline F, Financial Considerations

An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*), apply in this case. Applicant accumulated delinquent debts that remained unsatisfied until recently.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC E2.A6.1.3.1 (*The behavior was not recent*), FC MC E2.A6.1.3.2 (*It was an isolated incident*), FC MC 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)*), FC MC E2.A6.1.3.4 (*The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

The SOR lists four delinquent debts. Applicant paid one in September 2005. He settled two debts in September 2006, and January 2007. One debt was so old it was written off by the collection agency, which no longer expects payment from Applicant. While the debts became delinquent several years ago, Applicant only recently resolved them. The four debts do not constitute an isolated incident. FC MC E2.A6.1.3.1 and FC MC E2.A6.1.3.2 do not apply.

Applicant was a young enlisted Marine with a family, and living in a high cost area, when he started running into financial troubles. He also admitted that his family lived beyond their means. Applicant's financial woes were exacerbated by his receipt of unaccompanied orders to Okinawa.

Applicant could not take his leased vehicle to Okinawa, and could not afford to maintain the payments. He voluntarily returned the vehicle, resulting in a deficiency. I do not find this qualifies as conditions that were largely beyond the Applicant's control. It is not surprising that a young military couple in Applicant's situation would struggle financially. These are not the type of events that would trigger the application of FC MC E2.A6.1.3.3, particularly where, as here, Applicant and his wife chose to live beyond their means.

Applicant sought assistance for his financial problems through the Navy and Marine Corps Relief Society, but received minimal help. There is no evidence that Applicant ever received financial counseling. Applicant has successfully resolved all the debts in question. He is not accruing additional delinquent debts and his financial house is in order. I find there are clear indications that the problem is being resolved or is under control. Because he has not received counseling, I am unable to totally apply FC MC E2.A6.1.3.4., but I will consider the partial application under the "whole person." Applicant paid or settled three of the four debts in question. One collection agency was collecting for two debts. He contacted the collection agency, and settled one of the debts. The collection agency told him he was free and clear of the fourth debt, and they did not expect any payments. ⁽²⁸⁾ Under the circumstances, Applicant's actions show reasonableness, prudence, honesty, and adherence to duty or obligation, and constitute a good-faith effort to repay overdue creditors or otherwise resolve debts. FC MC E2.A6.1.3.6 is applicable.

Guideline E, Personal Conduct

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.

Based on all the evidence, I have considered Personal Conduct Disqualifying Condition (PC DC) 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*). I observed Applicant during his testimony, and accessed his demeanor and credibility. I find that although he did not accurately answer certain questions on his SF-86, that he did not intentionally or deliberately attempt to conceal information. No PC DC is applicable.

Whole Person Analysis

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive.

In the mid-1990s, Applicant was a young enlisted Marine with a family, struggling with his finances. He fell behind on his debts and several became delinquent. He was given orders overseas, and returned a leased car before the end of the lease, resulting in a deficiency. Other than his financial issues, by all accounts, Applicant had a very successful career in the Marines. He was honorably discharged as a Sergeant, with numerous awards and accolades. His current company has high praise for him, and plans on deploying him to Iraq if he maintains his clearance. Applicant has paid or settled three of the four debts in the SOR. The remaining debt is so old that not even the collection agency has any interest in collecting it. It has been more than ten years since Applicant's financial problems started. It has been more than seven years since the last debt was defaulted. Applicant has maintained financial stability for a number of years, and is current on all his debts. Applicant has established a sufficient track record to establish that his financial woes of the 1990s are a thing of the past. Applicant's failure to list all his financial issues on his SF-86 was an honest mistake.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on financial considerations and his personal conduct. Under the whole person analysis, the decision would have been the same even in the absence of any specific mitigating condition.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For 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

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Edward W. Loughran

Administrative Judge

1. Pursuant to Exec. Or. 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).

2. Tr. at 66-70; GE 1; AE F.

3. Tr. at 26, 33-34; GE 1; AE K is an Honorable Discharge certificate from the Marine Corps Reserve Support Command dated May 21, 2001. I am satisfied this represents Applicant's discharge from the Marine Corps Reserves, and does not reflect when he left active duty.

4. Tr. at 27; Applicant's response to SOR; GE 2.

5. Tr. at 89.

6. Tr. at 30; AE K (Navy and Marine Corps Achievement Medal dated March 11, 1999). Applicant was unsure of the dates at the hearing. The Navy and Marine Corps Achievement Medal was awarded for service in Okinawa from March 1998 to March 1999.

7. Tr. at 86-88.

8. Tr. at 30-33; Applicant's response to SOR; GE 2.

9. Tr. at 83; Applicant's response to SOR; AE A, H.

10. Tr. at 47-48, 71-72; AE B.

11. Tr. at 49-50, 72-74, 83-85; AE C, I.

12. Tr. at 50-51; Applicant's response to SOR; AE D.

13. GE 1.

14. GE 4.

15. GE 3, 5.

16. Tr. at 57-58; Applicant's response to SOR; AE E.

17. AE P.

18. AE L.

19. AE M-O.

20. Tr. at 80-82; AE L-O.

21. AE K.

22. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

23. *Id.* at 527.

24. Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

25. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

26. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

27. Exec. Or. 10865 § 7.

28. The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of Financial Considerations Mitigating Condition 6, an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that 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.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of Financial Considerations Mitigating Condition 6.

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).