

DATE: June 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-08995

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

Fahryn E. Hoffman, Esq., Department Counsel

Kathryn MacKinnon, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred four delinquent debts with a total approximate balance of \$12,493. A medical condition placed him on disability for a few months and forced to him to leave his part-time job. This made it difficult for him to pay his debts. After attempting to resolve his accounts through credit counseling, he filed for Chapter 7 bankruptcy. His delinquent debts have been discharged. He lives within his means. His failure to list his delinquent debts on his security clearance application was not deliberate. Clearance is granted.

STATEMENT OF CASE

On November 25, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct.

In a sworn statement dated January 27, 2006, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on March 29, 2006. A notice of hearing was issued on ay 9, 2006, scheduling the hearing for May 25, 2006. The hearing was conducted on that date. The government submitted Government Exhibits (Gov Ex) 1-5 which were admitted into the record without objection. Applicant testified on his own behalf, and submitted Applicant Exhibit (AE) A. The record was held open until June 14, 2006. Applicant submitted an additional 30-page document which was marked as AE B and admitted without objection. Department Counsel submitted an additional exhibit which was marked as Gov Ex 6. DOHA received the hearing transcript (Tr.) on June 5, 2006.

FINDINGS OF FACT

In his SOR response, Applicant admits to the allegations in SOR ¶¶ 1.a through 1.d but denies the allegations in SOR ¶¶ 2.a and 2.b. Although he admits he did not list his delinquent debt on his security clearance application, he states that the omission was unintentional. Therefore, I conclude Applicant denied the allegations in SOR ¶¶ 2.a and 2.b. Applicant's admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is employed as a shipping clerk with a Department of Defense contractor and seeks a security clearance.⁽²⁾ He has been with his current employer five years.⁽³⁾ He is 50 years old and has a General Equivalency Diploma (GED).⁽⁴⁾ He is single and has no children.⁽⁵⁾

He served on active duty in the United States Army from February 1969 to August 1972. He served in Vietnam for one year as a crew chief of a helicopter gunship assigned to a Special Forces unit.⁽⁶⁾ He separated from the Army with an Honorable Discharge as a Private First Class. He served on active duty in the United States Navy from November 1973 to May 1976. He was a cargo crew safety officer and later a catapult safety officer on an aircraft carrier.⁽⁷⁾ He was discharged honorably as a Seaman.⁽⁸⁾

On February 26, 2004, Applicant filled out a security clearance application, Standard Form 86 (SF 86).⁽⁹⁾ He answered "No" to question "38. Your Financial Delinquencies - 180 Days. In the last 7 years, have you been over 180 days delinquent on any debt(s)?" He also answered "No" to question "39. Your Financial Delinquencies - 90 days. Are you currently 90 days delinquent on any debt(s)?"

Applicant's background investigation revealed Applicant has four delinquent accounts with a total approximate balance of \$12,493.⁽¹⁰⁾ The accounts included a \$531 credit card debt that was charged off in October 2003 (SOR ¶ 1.a); a \$10,177 credit card debt turned over for collection in July 2005 (SOR ¶ 1.b); a \$1,731 credit card account placed for collection in February 2004 (SOR ¶ 1.c); and a \$54 credit card account that was charged off in September 2004 (SOR ¶ 1.d).

On April 25, 2005, Applicant was interviewed pursuant to his background investigation. He was shown a credit report and admits that all the delinquent accounts are his.⁽¹¹⁾ The debts became delinquent when he fell behind in his payments. He states he was totally irresponsible and it was his fault.⁽¹²⁾ He thinks he paid off the \$54 credit card account (SOR ¶ 1.d) but is not sure.⁽¹³⁾

In March 2004, Applicant began to suffer from health problems.⁽¹⁴⁾ On February 7, 2005, he underwent surgery and was unable to work until April 25, 2005.⁽¹⁵⁾ During this period, he received 80 percent of his paycheck from his full-time job but had to quit his part-time job. The loss of his part-time job resulted in the loss of an extra \$400 a month in income.⁽¹⁶⁾ Health problems have kept him from returning to his part-time job.⁽¹⁷⁾

Applicant attempted to resolve his debts through Consumer Credit Counseling. They advised him to file for Chapter 7 Bankruptcy. On October 10, 2005, he filed for bankruptcy. He listed total assets of \$10,772 and total liabilities of \$29,419. He reaffirmed the loan on his truck and continues to make payments. On January 18, 2006, his debts were discharged.⁽¹⁸⁾ All of the debts alleged in the SOR were included in his bankruptcy. Several of the debts were turned over to different creditors at the time the bankruptcy was filed.⁽¹⁹⁾

Applicant lives modestly. He rents an apartment in a house. He cancelled his cable subscription to save money.⁽²⁰⁾ His main expenses are his rent and his truck which he expects to have paid off in a year.⁽²¹⁾ He shops at yard sales.⁽²²⁾ He no longer has any credit cards and has no new delinquent accounts.⁽²³⁾ He intends to remain debt free by spending more wisely and staying away from credit cards.⁽²⁴⁾

Applicant did not list his delinquent debts on his February 2, 2004, security clearance application but did not intentionally withhold information. He has trouble remembering at times and did not have his dates right.⁽²⁵⁾

In March 2006, Applicant received a raise.⁽²⁶⁾ His most recent performance report states that he exceeds objectives. His supervisor noted Applicant has "a solid work ethic and steps up to volunteer anytime anyone needs additional support. He goes out of his way to help everyone who needs assistance. He is a team player with a very good I am here to help [attitude]."⁽²⁷⁾

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."⁽²⁸⁾ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive 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:

Guideline F, Financial Considerations: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.⁽²⁹⁾

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 a person may not properly safeguard classified information.⁽³⁰⁾

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 is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance."⁽³¹⁾ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽³²⁾ An administrative judge should consider the following factors: (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 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 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.⁽³³⁾

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.⁽³⁴⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts admitted by the applicant or proven by Department Counsel. The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision.⁽³⁵⁾ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.⁽³⁶⁾

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F - Financial Considerations.

Financial Considerations

Applicant has had difficulty paying his bills. By the time the SOR was issued he had approximately four delinquent accounts on his credit report with a total approximate balance of \$12,493. Under Guideline F, Disqualifying Conditions (FC DC) E2.A6.1.2.1, "A history of not meeting financial obligations," and FC DC 3 E2.A6.1.2.3, "Inability or unwillingness to satisfy debts," apply to Applicant's case. He experienced difficulty meeting his financial obligations beginning in 2003.

I find the following Financial Considerations Mitigating Conditions (FC MC) apply. 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)," applies. Applicant encountered financial difficulties as a result of an unexpected medical condition which put him on disability for at least three months. His medical condition also forced him to quit his part-time job. The loss of his part-time job made it more difficult for him to pay his debts.

FC MC E2.A6.1.3.4, "The individual 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," apply. Applicant attempted to pay off his debts through consumer credit counseling. He was advised to file for Chapter 7 bankruptcy. His debts have been discharged. He has taken steps to save money. He cancelled his cable subscription. He has no credit card accounts. He lives within his means. Applicant has mitigated the financial considerations concerns. I find for the Applicant under Guideline F.

Personal Conduct

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance or in other official matters is a security concern. It is deliberate if it is done knowingly and willfully.

In this case, the record evidence fails to establish Applicant deliberately omitted or concealed information about his delinquent debts. Although his answers to questions 38 and 39 were incorrect, Applicant successfully rebutted the allegations that he deliberately provided a false answer. At the hearing he testified he has a faulty memory. I find his testimony credible that he forgot about these debts. Guideline E is decided for Applicant.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, common sense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

In reaching my decision, I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. Applicant is a valued employee. While he takes full responsibility for his delinquent debts, his financial situation was aggravated by his medical condition. He sought the assistance of a credit counseling agency and decided to file for bankruptcy based on their advice. He has taken steps to avoid getting into financial difficulties in the future. Therefore, I am persuaded by the totality of the evidence in this case that it is clearly consistent with the national interest to grant Applicant a security clearance.

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:

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

DECISION

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

Erin C. Hogan

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Gov Ex 1.
3. Tr. at 17.
4. Tr. at 4.
5. Tr. at 20.
6. Tr. at 65-66.
7. Tr. at 66-67.
8. Tr. at 22, 24, Gov Ex 1 at 11.
9. Gov Ex 1.
10. Gov Ex 4, 5.
11. Gov Ex 2.
12. Tr. at 26-32.
13. Tr. at 31.
14. Tr. at 33-34.
15. Tr. at 16; AE B at 19-27.
16. Tr. at 18, 36.

17. Tr. at 18, 34.
18. AE A.
19. AE A; AE B at 10-12; Gov Ex 6.
20. Tr. at 51.
21. Tr. at 52.
22. Tr. at 54.
23. Tr. at 55.
24. Tr. at 56.
25. Tr. at 61.
26. AE B at 2-3.
27. AE B at 4.
28. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
29. Directive, ¶ E2.A6.1.1.
30. Directive, ¶ E2.A5.1.1.
31. Directive, ¶ E2.2.1.
32. *Id.*
33. *Id.*
34. Directive, ¶ E3.1.14.
35. Directive, ¶ E3.1.15.
36. Directive, ¶ E.2.2.2.