

DATE: December 28, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-12374

DECISION OF ADMINISTRATIVE JUDGE

CHRISTOPHER GRAHAM

APPEARANCES

FOR GOVERNMENT

Caroline Jeffreys, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 74-year-old supply clerk for a defense contractor. He has a history of financial problems. He filed a Chapter 13 bankruptcy petition in 1996, and was discharged in 2000. In 1999, he commenced accumulating delinquent debts, some of which still remain unpaid. He has nearly \$25,000 in state and federal income tax liens, he has a \$14,000 child support arrearage, yet his financial statement shows a monthly surplus of about \$1,500. He falsified four questions on a security clearance application involving his financial situation. He failed to mitigate the security concerns under Guideline F (financial considerations) and Guideline E (personal conduct.) 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. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1960), as amended, DOHA issued a Statement of Reasons (SOR) on May 25, 2006, 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 July 10, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on September 26, 2006. Notice of Hearing was issued on October 19, 2006. With Applicant's permission, the hearing date was changed to November 7, 2006, and an Amended Notice was mailed on November 1, 2006. I convened the hearing as re-scheduled, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The government offered eleven exhibits, marked as exhibits 1-11. I kept the record open until November 27, 2006, to allow Applicant to submit any documentation. Applicant's Exhibit A was received by department counsel on November 14, 2006, and the government offered no objection by memorandum dated November 27, 2006. Applicant's Exhibit A was admitted into evidence. DOHA received the hearing transcript (Tr.) on November 28, 2006.

FINDINGS OF FACT

Applicant admitted all allegations contained in the SOR. SOR subparagraph 1.a. was withdrawn at the hearing because

it is a duplicate of subparagraph 1.b. The admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 74-year-old supply clerk of a defense contractor. ⁽¹⁾ He is married to his third wife. ⁽²⁾ He has eight grown children. He completed two years of college. He served 23 years in the United States Army, from 1953 to 1976, attaining the rank of sergeant first class, and receiving an honorable discharge. ⁽³⁾ He received the Bronze Star for service in Vietnam. Upon retirement from the Army, applicant worked for the Department of Defense in a civilian job until he retired in 1997. From 1953 and 1997, he held a SECRET security clearance. ⁽⁴⁾

Financial Considerations

Applicant has a long history of financial problems. He has state and federal income tax liens and he is \$14,000 in arrears in alimony payments. ⁽⁵⁾ He encountered financial problems during a contentious marriage, involving debts for cars, a home, and a large loan that was used for personal pleasure. He wanted to get his life turned around and get out of debt so he filed a Chapter 13 bankruptcy petition in 1996. ⁽⁶⁾ He successfully completed the payment plan in four and one half years. ⁽⁷⁾ Some of the delinquent debt listed in the SOR commenced to accumulate in 1999. ⁽⁸⁾ As of April 25, 2006, the following debts were unpaid:

- 1.b. \$1,504 for an unpaid judgment; ⁽⁹⁾
- 1.c. \$545 for an unpaid judgment; ⁽¹⁰⁾
- 1.d. \$5,952 for a state income tax lien; ⁽¹¹⁾
- 1.e. \$9,950 for a federal income tax lien; ⁽¹²⁾ Or
- 1.f. \$1,455 for an account placed for collection; ⁽¹³⁾
- 1.g. \$1,052 for an account placed for collection; ⁽¹⁴⁾
- 1.h. \$259 for an account charged off; ⁽¹⁵⁾
- 1.i. \$851 for an account placed for collection; ⁽¹⁶⁾
- 1.j. \$222 for an account placed for collection; ⁽¹⁷⁾
- 1.k. \$175 for an account charged off; ⁽¹⁸⁾
- 1.l. \$358 for an account placed for collection; ⁽¹⁹⁾
- 1.m. \$1,046 for an account charged off; ⁽²⁰⁾
- 1.n. \$14,000 child support arrearage. ⁽²¹⁾

Applicant sought advice from a credit counselor, but he established no repayment plan. ⁽²²⁾ He made an offer-in-compromise to the IRS and the state tax agency to settle the tax liens, but the taxing authorities have not yet accepted them. ⁽²³⁾ He made no payment on the other debts, ⁽²⁴⁾ except the first of three settlement payments on a delinquent credit card debt (SOR subparagraph 1.g.) ⁽²⁵⁾ and he paid that two weeks **after** the hearing. [Emphasis added.] A financial statement Applicant provided investigators shows a surplus of approximately \$1,500 per month after debts and ⁽²⁶⁾ ⁽²⁷⁾

expenses. A July 2006 budget shows a surplus of \$832 per month.

Personal Conduct

In answering the questions on his security clearance application, Applicant falsified material facts in his reply to the following question:

36. Your Financial Record - Tax Lien in the Last 7 Years. Have you had a lien placed against your property for failing to pay taxes or other debts?

He answered "No," and failed to disclose that he had both state and federal income tax liens.

He also falsified material facts in his reply to the following question:

37. Your Financial Record - Unpaid Judgments In the last 7 years, have you had any judgments against you that have not been paid?

He answered "No," failing to list the two judgments set forth in SOR subparagraphs 1.b. and 1.c.

Similarly, Applicant falsified material facts in his reply to the following question:

38. Your Financial Delinquencies - 180 Days In the last 7 years, have you been over 180 days delinquent on any debt(s)?

He answered "No," failing to disclose that he had been over 180 days delinquent on debts, as set forth in SOR subparagraphs 1.f. through 1.m.

And fourth, he falsified material facts when he answered "No" to the following question:

39. Your Financial Delinquencies - 90 Days Are you currently over 90 days delinquent on any debt(s)?

He failed to disclose that he was then over 90 days delinquent on debts, as set forth in SOR subparagraphs 1.f. through 1.m.

In questioning about his false answers, the following exchange took place:

Q. Do you recall why you answered no?

A. No, I don't know. One of the things that happened there I was a really trying to get the job because I wanted to have another job and to be able to pay some of these things. And in filling that form 86, out there was a lot of things that I couldn't remember at the time. That's not necessarily a valid excuse, it may not be a valid excuse, but I did not recall those things, a lot of those things that I missed. There was some that I missed. But I didn't have a chance to go back and to re-correct those things. [Emphasis added.]

Q. And did you ever ask them about filing an amendment to your form?

A. No, I did not sir. I did not ask for an amendment. I was unaware that I could. [\(28\)](#)

POLICIES

"No one has a 'right' to a security clearance." [\(29\)](#) 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." [\(30\)](#) 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." [\(31\)](#) Each security clearance decision "must be a fair and impartial common sense determination based upon

consideration of all the relevant and material information and the pertinent criteria and adjudication policy." (32)

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." (33)

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: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. (34) 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

The government established its case under Guideline F. Financial Considerations Disqualifying Conditions (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*) are applicable. The available information demonstrates Applicant has a history of not meeting his financial obligations. He has been delinquent in payments on several accounts, finally resulting in his filing a Chapter 13 bankruptcy petition, but even after paying that successfully, he still has allowed debt to accumulate.

Various conditions can mitigate the security concerns arising from financial difficulties. The Directive sets out Financial Considerations Mitigating Condition (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)*). Applicant's 1996 bankruptcy was partially the result of a divorce. But even after he had successfully paid the debts and was discharged, he has continued to have delinquent debts, that commenced accruing shortly after he filed the Chapter 13 bankruptcy. Delinquent taxes and alimony are not dischargeable in bankruptcy. He has signed one settlement agreement for the debt listed in SOR subparagraph 1.g., making the first of three installments two weeks **after** the hearing. [Emphasis added.] This mitigating condition is not applicable.

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*) does not apply as there is no evidence that Applicant has his finances under control.

FC MC E2.A6.1.3.6. (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve bad debts*) is not applicable. Applicant has made one payment of three on a credit card settlement. He made an offer-in-compromise to settle his tax liens, but the taxing authorities have not yet accepted them. No other delinquent debts were paid. He has an alimony arrearage of \$14,000. Yet his financial statements show anywhere from \$832 to \$1,500 per month surplus. Either the financial statements are false or Applicant is spending his money rather than paying creditors. Therefore, I cannot find that he has resolved his indebtedness, and I conclude Guideline F against Applicant.

Personal Conduct

The government established its case under Guideline E. 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*) applies. Applicant admitted falsifying four questions on his security clearance application, because he wanted to get a job.

None of the mitigating conditions are applicable. I conclude Guideline E against Applicant.

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 eligible for a security clearance."⁽³⁵⁾

"Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination."⁽³⁶⁾

In evaluating Applicant's case, in addition to the disqualifying and mitigating conditions, I also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests.⁽³⁷⁾ I considered his age (74), his education which includes two years of college, his employment, his Army service and a decorated combat veteran of Vietnam, and what might motivate him to be less than truthful. Applicant supplied false answers on a security clearance application. This is problematic because candor with the government about a person's negatives is the crux of a trustworthiness determination. In theory, if a person discloses the adverse information about himself, then he may be trusted with confidential or classified information. Applicant's reason for withholding the negative financial data was that "I wanted the job." He lied to enhance his chances of obtaining a security clearance. He has allowed delinquent debts to accumulate and remain unpaid for as long as seven years, yet his financial statements show a surplus. This raises questions about his reliability and judgment. The totality of the record raises reasonable and persistent doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. I conclude it is not clearly consistent with the national interest to grant or continue Applicant's security clearance.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Withdrawn

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

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m: Against Applicant

Subparagraph 1.n: Against Applicant

Subparagraph 1.o: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 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.

Christopher Graham

Administrative Judge

1. Government Exhibit 1 (Security Clearance Application (SF 86), dated July 15, 2004) at 1-2; Tr. at 12, 16.
2. Tr. at 13.
3. *Id.* at 14.
4. *Id.* at 15.
5. *Id.* at 36-37, 43.
6. *Id.* at 31.
7. *Id.* at 14.
8. Government Exhibit 4 (Credit Bureau Report, dated November 3, 2006) at 1-3.
9. Government Exhibit 6 (Credit Report dated April 25, 2006) at 1-3.
10. *Id.*
11. *Id.*
12. *Id.*; Tr. at 37, where Applicant testified that the federal lien is almost \$19,000.
13. Government Exhibit 6, *supra*, note 7, at 1-3.
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*

19. *Id.*
20. *Id.*
21. *Id.*; Tr. at 43.
22. Tr. at 47.
23. *Id.* at 37.
24. *Id.* at 47.
25. Applicant's Exhibit A (Settlement Agreement, dated November 9, 2006, and Copy of Money Order for First Payment, dated November 22, 2006) at 1-2.
26. Government Exhibit 10 (Personal Financial Statement, dated November 10, 2004) at 1.
27. Applicant's Answer to the SOR, dated July 10, 2006, at 4.
28. Tr. at 22-23.
29. ⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
30. ⁰*Id.* at 527.
31. ⁰Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).
32. ⁰Directive ¶ 6.2.
33. ⁰ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
34. ⁰*See* Exec. Or. 10865 § 7.
35. Directive ¶ E.2.2.1.
36. *Id.*
37. *Id.*