

DATE: July 18, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-13136

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to present sufficient information to explain, extenuate, or mitigate the security concern arising from his history of not meeting financial obligations and inability to satisfy debts. The record evidence is not sufficient to prove that Applicant deliberately provided false answers to two questions about his financial record on a security-clearance application. Clearance is denied.

STATEMENT OF THE CASE

Applicant is challenging the Defense Department's initial decision to deny or revoke his security clearance. Acting under the relevant Executive Order and DoD Directive, ⁽¹⁾ on December 23, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline F for financial considerations and Guideline E for personal conduct (falsification). Applicant replied to the SOR on January 24, 2006, and requested a hearing. The case was assigned to me on April 5, 2006. A notice of hearing was issued scheduling the hearing for May 25, 2006. Applicant appeared without counsel and the hearing took place as scheduled. DOHA received the transcript on June 2, 2006.

The record was kept open for 45 days until July 10, 2006, to allow Applicant to submit additional documentary evidence about his case, as detailed in a letter, dated May 26, 2006. ⁽²⁾ No additional matters were received.

FINDINGS OF FACT

Applicant is a 35-year-old man who requires a security clearance for his employment as a test technician for a large company engaged in defense contracting. His 2005 annual salary was about \$32,000. He's married and has three children. He served as a soldier in the U.S. Army from September 1988 to September 1992 when he was honorably discharged. Beginning in August 1993, Applicant was a student at a community college, and he was awarded an A.S.

degree in electronics in May 1995.

Applicant has a history of not meeting his financial obligations.⁽³⁾ The SOR concerns eight delinquent accounts for a total of more than \$17,000. Each is briefly discussed below.

SOR subparagraph 1.a is a \$149 collection account. The debt has not been paid.⁽⁴⁾

SOR subparagraph 1.b is a \$301 collection account. The debt has not been paid.⁽⁵⁾

SOR subparagraph 1.c is a \$143 collection account. The debt has not been paid.⁽⁶⁾

SOR subparagraph 1.d is a \$1,623 charged-off credit card account. Applicant owes an unknown amount on this debt.⁽⁷⁾

SOR subparagraph 1.e is a \$441 charged-off account. The debt has not been paid.⁽⁸⁾

SOR subparagraph 1.f is a \$7,924 student loan account that has been turned over for collection. Applicant stopped making payments on this account sometime before 2004.⁽⁹⁾

SOR subparagraph 1.g is a \$5,726 student loan account that has been turned over for collection. In April 2006, the IRS intercepted the sum of \$842.31 and it was paid to the creditor.⁽¹⁰⁾

Otherwise, Applicant has made no payments on this account.⁽¹¹⁾

SOR subparagraph 1.h is a \$1,103 collection account. The evidence is insufficient to establish the existence of this account.

Of the seven debts that remain, Applicant has not entered into settlement negotiations to resolve his debts. Likewise, he has not made any sort of agreements to repay his debts.

In April 2006, the IRS notified Applicant he had overpaid for tax year 2005.⁽¹²⁾ It applied the amount of \$939.69 to the balance Applicant owed for tax year 2003.

Applicant incurred the student loans when he attended a four-year university from August 2001 to May 2002. Applicant and his wife are paying on two car loans. They pay \$600 monthly for a 2003 SUV, and they pay \$300 monthly for a 2005 car. As of the hearing date, Applicant had about \$300 in a savings account and \$24 in a checking account. He attributes his financial problems to bad timing and underemployment. Also, he now commutes 180 miles daily for his current job, which generates considerable expense.

On or about June 29, 2004, Applicant completed a security-clearance application.⁽¹³⁾ In signing the application, Applicant certified that his statements were true, complete, and correct to the best of his knowledge and belief and made in good faith, and that he understood that a false statement could be punished under federal law. Question 38 asked if in the last seven years he had been over 180-days delinquent on any debts. Likewise, Question 39 asked if he was currently over 90-days delinquent on any debts. Applicant answered each question in the negative, and he did not disclose the debts alleged in the SOR.

Applicant denies intentionally providing false answers. He explained that he completed the application in a hurried fashion and misunderstood the questions. The government did not present a sworn statement or similar evidence as it typically does to support the falsification allegations, but instead relied on Applicant's omissions from the application and cross-examination of Applicant.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security clearance eligibility,

including disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.⁽¹⁴⁾ Instead, it is a determination that the applicant has not met the strict guidelines the President has established for granting a clearance.

BURDEN OF PROOF

The only purpose of a security-clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽¹⁵⁾ There is no presumption in favor of granting or continuing access to classified information.⁽¹⁶⁾ The government has the burden of presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted.⁽¹⁷⁾ An applicant is responsible for presenting witnesses and other evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.⁽¹⁸⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁹⁾

No one has a right to a security clearance.⁽²⁰⁾ And as noted by the Supreme Court in *Department of Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽²¹⁾ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

CONCLUSIONS

Personal conduct under Guideline E⁽²²⁾ 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.

An omission of relevant and material information is not deliberate if the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or genuinely thought the information did not need to be reported.

Here, based on the record evidence as a whole, the government did not establish its case under Guideline E. The record evidence is insufficient to prove that Applicant gave deliberately false answers in response to Questions 38 and 39. His explanations for his negative answers are credible. Accordingly, Guideline E is decided for Applicant.

Under Guideline F,⁽²³⁾ a security concern typically exists for two different types of situations--significant unpaid debts or unexplained affluence. 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. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information.

Here, based on the record evidence as a whole, the government established its case under Guideline F. Applicant has a history of not meeting financial obligations as well as inability to pay one's just debts.⁽²⁴⁾ Of note is Applicant's lack of action (and perhaps indifferent attitude) concerning his two student loans, which constitutes the clear majority of his delinquent debt. These matters, taken together, raise a security concern under the guideline.

I reviewed the six mitigating conditions under the guideline and conclude none apply. In particular, I conclude that Applicant has not made a good-faith effort⁽²⁵⁾ to repay or otherwise resolve his financial problems. It appears he has made little effort to put his financial house in order.

Further complicating this case is the lack of documentary information about his delinquent accounts and his overall financial condition. Typically, financial transactions generate financial records. The lack of financial records here makes it quite difficult to get a true and accurate picture of Applicant's financial condition. In other words, he failed to present sufficient information to explain, extenuate, or mitigate the security concern arising from his history of not meeting financial obligations and inability to satisfy debts. Accordingly, Guideline F is decided against Applicant.

To conclude, Applicant has not met his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I have considered the whole-person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive.

FORMAL FINDINGS

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

SOR ¶ 1-Guideline F: Against Applicant

Subparagraphs a-g: Against Applicant

Subparagraph h: For Applicant

SOR ¶ 2-Guideline E: For Applicant

Subparagraphs a-b: For 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 or continue a security clearance for Applicant. Clearance is denied.

Michael H. Leonard

Administrative Judge

1. Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended (Directive).
2. Appellate Exhibit I.
3. Exhibits 2 and 3.
4. R. 27-29.
5. R. 29.
6. R. 29-30.
7. R. 30-31.
8. R.31-32.
9. R. 32-33.
10. Exhibit B.
11. R. 33-34.

12. Exhibit A.

13. Exhibit 1.

14. Executive Order 10865, § 7.

15. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

16. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.

17. Directive, Enclosure 3, Item E3.1.14.

18. Directive, Enclosure 3, Item E3.1.15.

19. Directive, Enclosure 3, Item E3.1.15.

20. *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988)("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) ("It is likewise plain that there is no 'right' to a security clearance, so that full-scale due process standards do not apply to cases such as Duane's.") (citations omitted).

21. 484 U.S. at 531.

22. Directive, Enclosure 2, Attachment 5.

23. Directive, Enclosure 2, Attachment 6.

24. Item E2.A6.1.2.1. A history of not meeting financial obligations; and Item E2.A6.1.2. 3. Inability or unwillingness to satisfy debts.

25. Item E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.