

DATE: February 27, 2007

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-15918

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Daniel C. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's history of not meeting financial obligations has been mitigated by: (1) filing his 1999 tax return to obtain an accurate tabulation of how much tax he owed; (2) beginning to repay several of his unlisted debts almost 18 months before he received the Statement of Reasons; and, (3) reducing his listed debt obligation by more than 50%. Though Applicant omitted material information from his security form in May 2004, I find he did not do so deliberately. Clearance is granted.

STATEMENT OF THE CASE

On May 18, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6, dated January 2, 1992, as reissued through Change 4 thereto, dated April 20, 1999, issued a Statement of Reasons (SOR) to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. Applicant furnished an Answer to the SOR on June 3, 2006. He requested a hearing before an Administrative Judge.

The case was assigned to me on June 16, 2006. On November 14, 2006, this case was set for hearing on December 4, 2006. The government submitted six exhibits (GE 1-6), and Applicant submitted two exhibits (AE A-B).⁽¹⁾ Testimony was taken from Applicant. The transcript was received on December 12, 2006. Additional documentation regarding SOR 1.a. and 1.b. that was furnished by Applicant on January 3, 2007, has been admitted in evidence as AE C.

FINDINGS OF FACT

The SOR alleges financial considerations (Guideline F) and personal conduct (Guideline E). Applicant admitted the financial allegations but denied deliberately concealing information from his security clearance application (SCA) in

May 2004. Applicant is 35 years old and employed as a technician with a defense contractor. He seeks a secret security clearance.

Financial Considerations. Applicant and a business partner were stock brokers in the spring of 2000. They traded stocks, options and futures. Suddenly, the partner announced he was going to dissolve the professional relationship. The partner withdrew most of the money from the partnership account that was used to pay Applicant's salary, resulting in Applicant not being able to pay his bills. Without sufficient income, Applicant's credit cards and other personal obligations began falling delinquent in 2000.

The state tax lien (SOR. 1.a.) resulted from Applicant not filing a 1999 income tax form. After reviewing Applicant's earlier returns and estimating his income was \$74,466.00 for the 1999 tax year, the state executed a lien against him for the estimated amount (Tr. 40). When Applicant's accountant filed the delinquent return, the lien amount was reduced to about \$7,850.00, before repayments reduced the lien to \$7,448.79, as set forth in AE A1. Applicant's payment ledger indicates he began making regular payments on the lien in August 2005, and the current debt stands at about \$3,423.00 (AE A1).

An undermined amount of the delinquent debt in SOR 1.b. (partnership account) was caused by overdraft fees for returned checks (Tr. 47). AE A2 reflects a payment ledger to the collection agency for SOR 1.b. The amount of the judgment (filed in August 2001) in July 2004 was approximately \$1,329.00. Regular payments to the collection agency have reduced the amount to approximately 1,291.00 (AE C), as of November 2006.

Applicant began repaying the telephone debt (SOR 1.c.) in April 2006, and currently has the debt down from its original amount of \$454.00 to \$304.00 (AE A3, AE C).

The cable bill identified in SOR 1.d. (\$685.00) represents two delinquent accounts. In March 2006, Applicant began repaying the past due obligation in \$25.00 increments, and the balance as of September 2006 is approximately \$448.00.

SOR 1.e. is a credit card charged off in December 2000. Regular payments were started in October 2005 and the debt was satisfied in August 2006 (GE 4, AE B, AE A5).

The account in SOR 1.f. was charged off as a bad debt in December 2003. AE B reflects historical notes that the debt has a zero balance as of April 2006.

The account balance (SOR 1.g.) in November 2003 was approximately \$559.00. Seven payments of ten to fifteen dollars have reduced the past due amount (November 2006) to approximately \$479.00 (AE A6).

SOR 1.h. was an account opened in 1999 and charged off in February 2004. There is no documentation reflecting this debt has been addressed.

SOR 1.i. is a utility bill that was transferred for collection in February 2001. Applicant began repaying the collection agency in January 2006 and has reduced the debt to about \$24.00 (AE A7, AE C).

SOR 1.j. was a credit card account that became delinquent in October 2000. The account was sold to a collection agency. Applicant began making regular payments on the debt in September 2005 and satisfied the debt in May 2006 (AE A8).

The SOR lists 10 overdue debts totaling approximately \$13,054.00. Regular payments to the listed creditors and/or collection agencies have reduced Applicant's indebtedness to about \$6,400.00. Aside from the accounts listed in the SOR, Applicant has paid \$2,345.00 to resolve five unlisted creditors in 2004 and 2005 (GE 4; Tr. 32, 49-52). Though the financial proof-of-payment information has been generated by Applicant using his computer and printer, there are sufficient indicia of reliability in credit bureau reports, specifically GE 4, AE B and AE C, to find Applicant's payment information entirely credible and worthy of belief.

Personal Conduct. Applicant signed his SCA on May 27, 2004. In response to question 37 (SOR 2.a., judgments that have not been paid), he answered "YES" and supplied the date, the amount, and the address of the state lien. He did not

include the judgment described in SOR 1.b. In response to question 38 (SOR 2.b.) of the same SCA (debts over 180 days delinquent in the last 7 years), Applicant answered "YES," followed by information describing the 1.f. creditor. He did not include information regarding the debts in SOR 1.e., 1.f., 1.g., 1.i., and 1.j. In response to question 39 (SOR 2.c., debts over 90 days delinquent), Applicant answered "YES," and supplied information about a second account of the same creditor. But, he did not disclose the other debts listed in 1.e., 1.f., 1.g., 1.i., and 1.j. Though he did not disclose the judgment (SOR 1.b.) as required by question 37, he did divulge the state tax lien (SOR 1.a.), that was over \$7448 when he submitted the SCA in ay 2004. Having observed Applicant's demeanor and deportment during his testimony regarding the omitted information, I find he did not intentionally conceal material information from the security form.

POLICIES

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

Burden of Proof

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *See Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

Financial Considerations (Guideline F)

The concern is failure to pay bills can put pressure on a person to commit inappropriate acts to generate funds.

Personal Conduct (Guideline E)

Demonstrating poor judgment or dishonesty during the security investigation does not bode well for a person who seeks a security clearance.

CONCLUSIONS

Financial Considerations (FC). The credit reports reveal that two of the debts in the SOR became delinquent in 2000 while two others became delinquent in 2005. Compounding Applicant's financial problems was his failure to file a 1999 state income tax return, causing the state to file a tax lien against him for more than \$74,000.00. The lien was not reduced until he filed the missing return. Even after the return was filed, he still owed approximately \$7,850.00, before he began making payments to reduce the lien to the quoted figure (\$7,448.79) in SOR 1.a. Owing more than \$13,000.00 to 10 creditors meets the definition of FC disqualifying condition (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*).

The FC concerns may be mitigated when the behavior was not recent as set forth in FC mitigating condition (MC) E2.A6.1.3.1. (*the behavior was not recent*) or the debts were few in number as set forth in FC MC E2.A6.1.3.2. (*it was an isolated incident*). Though SOR 1.e., 1.f., and 1.j. have been completely repaid, Applicant still owes money to seven creditors. Neither mitigating condition is applicable.

FC MC E2.A6.1.3.3. (*the conditions that resulted in the behavior were largely beyond the person's control*) provides

examples of unforeseen occurrences that are largely beyond a person's control. One of those examples is a business downturn. The sudden termination of the partnership in the spring of 2000 was an unanticipated business event that Applicant could not have foreseen. As the credit reports show, the impact on his finances was fairly immediate, with several of his listed and unlisted obligations falling delinquent. Applicant receives some extenuation under FC MC E2.A6.1.3.3.

Though Applicant has had no financial counseling, he has taken responsible financial steps that convince me he will resolve his remaining debt obligations. First, he exercised good judgment by filing his 1999 state return after receiving the lien in July 2002. This action allowed his tax liability to be tabulated accurately. Next, GE 4 provides persuasive evidence that Applicant initiated voluntary efforts to repay several of his unlisted debts up to 18 months before receiving the SOR. GE 4 reflects good judgment by Applicant in satisfying five unlisted creditors. Considering the measures taken to pay the unlisted and listed creditors, Applicant receives significant mitigation under FC MC E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay creditors or otherwise resolved debts*). The record shows Applicant has reduced his overall debt load by \$6,000.00 to bring the balance down by more than 50% to approximately \$6,400.00. The FC guideline is found in Applicant's favor.

Personal Conduct (PC). Making false statements on a security form or during an interview /affidavit raise security concerns about an applicant's security clearance suitability. Applicant's omission of a judgment and several debts would activate PC DC E2.A51.2.2. (*the deliberate omission of relevant and material facts from any personnel security questionnaire used to determine security clearance eligibility*) as Applicant omitted material information (delinquent debts) from his SCA (GE 1) in May 2004. However, after weighing and balancing Applicant's favorable demeanor and conduct at the hearing with the information furnished on the form, I find the omissions were not motivated by an intent to deceive or misrepresent his debt difficulties. In sum, considering all the evidence under specific guidelines as well as the general factors of the whole person concept, I find Applicant will continue to responsibly satisfy his remaining debts so that he can establish a financially secure life for his wife and three children.

FORMAL FINDINGS

Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (Financial Considerations, Guideline F): FOR THE APPLICANT.

Subparagraph 1.a. For the Applicant.

Subparagraph 1.b. For the Applicant.

Subparagraph 1.c. For the Applicant.

Subparagraph 1.d. For the Applicant.

Subparagraph 1.e. For the Applicant.

Subparagraph 1.f. For the Applicant.

Subparagraph 1.g. For the Applicant.

Subparagraph 1.h. For the Applicant.

Subparagraph 1.i. For the Applicant.

Subparagraph 1.j. For The Applicant.

Paragraph 2 (Personal Conduct, Guideline E): FOR THE APPLICANT.

Subparagraph 1.a. For the Applicant.

Subparagraph 1.b. For the Applicant.

Subparagraph 1.c. For the Applicant.

DECISION

In light of all 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.

Paul J. Mason

Administrative Judge

1. The contents of AE A have been remarked for clarification purposes; the changes are as follows: AE A, one page in length, lists all the debts that are addressed in the remainder of the exhibit. AE A1 addresses SOR 1.a. AE A2 relates to SOR 1.b. AE A3 addresses SOR 1.c. AE A4 provides documentation pertinent to SOR 1.d. AE A5 refers to SOR 1.e. AE A6 relates to SOR 1.g. AE A7 supplies payment information for SOR 1.i. AE A8 provides information for SOR 1.f.