

DATE: December 29, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-16700

DECISION OF ADMINISTRATIVE JUDGE

CHRISTOPHER GRAHAM

APPEARANCES

FOR GOVERNMENT

Fahryn Hoffman, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 57- year- old supply technician and site administrator for a defense contractor. He gave false answers to four questions on a security clearance application. The State Department denied him access to Sensitive Compartmented Information. He has been financially irresponsible, and he has willfully failed to file federal income tax returns for 1986-1988, 2004, and 2005. He failed to mitigate the security concerns under Guideline E (personal conduct), Guideline F (financial considerations), and Guideline J (criminal 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 February 2, 2006, detailing the basis for its decision - security concerns raised under Guideline E (Personal Conduct), Guideline F (Financial Consideration), and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on March 6, 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 November 9, 2006. I convened a hearing on December 5, 2006, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The government offered four exhibits, marked as exhibits 1-4. Applicant offered one exhibit, marked as exhibit A. I kept the record open until December 15, 2006, to allow Applicant to submit any additional documentation. Applicant's Exhibits B, C, and D were received by department counsel on December 15, 2006, and the government offered no objection by memorandum dated December 18, 2006. Applicant's Exhibits B, C, and D were admitted into evidence. DOHA received the hearing transcript (Tr.) on December 13, 2006.

FINDINGS OF FACT

Applicant admitted the allegations in SOR subparagraphs 1.a., 1.e., 1.f., 2.e., and 2.j. He denied the remaining allegations. 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 57-year-old supply technician and site administrator for a defense contractor. ⁽¹⁾ He was divorced in 1990 and has not remarried. ⁽²⁾ He has two children. The youngest, age 25, lives with him, is dependent upon him for support, and he is her guardian. ⁽³⁾ He completed 1 ½ years of college. ⁽⁴⁾ He served 10 years in the United States Navy, from 1970 to 1980. He attained the rank of E6, and received an honorable discharge. ⁽⁵⁾ While serving in the Navy, he received a top secret clearance and has held it since that time. ⁽⁶⁾

Financial Considerations

On August 1, 1991, Applicant filed a Chapter 13 bankruptcy petition to stop a foreclosure sale of his home. The case was dismissed in October 2001. ⁽⁷⁾ On August 13, 2004, Applicant again filed a Chapter 13 bankruptcy petition, which he successfully paid and was discharged in October 2006. ⁽⁸⁾

Applicant received notice of a Federal Tax Lien on May 1, 1993, in the amount of \$34,771, on June 1, 1993, in the amount of \$3,651, and on April 1, 2001, in the amount of \$29,977. His total tax liability to the IRS is over \$88,000. He commenced a repayment plan in September 2005, paying the IRS \$373 per month. ⁽⁹⁾ All three liens are consolidated into this one repayment plan. ⁽¹⁰⁾

Applicant has delinquent accounts in the amounts of \$4,087 for a recreational vehicle that is in storage, ⁽¹¹⁾ \$438 credit card debt, ⁽¹²⁾ \$1,941 credit card debt, ⁽¹³⁾ and \$2,053 credit card debt, ⁽¹⁴⁾ which are not paid.

Personal Conduct

Applicant answered "No" to question 33 on his security clearance application. It asked: **33. Your Financial Record - Bankruptcy** In the last 7 years, have you filed a petition under any chapter of the bankruptcy code (to include chapter 13)? He failed to list that he had filed Chapter 13 bankruptcy on August 1, 2001, and August 13, 2004. ⁽¹⁵⁾

He 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 a lien filed against him in April 2001. ⁽¹⁶⁾

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 2.f., 2.g., and 2.h. ⁽¹⁷⁾

He also falsified material facts when he answered "No" to this 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 2.f., 2.g., and 2.h. ⁽¹⁸⁾

On September 12, 2005, Applicant declined to provide his signature on a tax check waiver requested by an authorized investigator for the Department of Defense. ⁽¹⁹⁾

In October 2005, the U.S. Department of State, Washington, DC, determined that Applicant was not eligible for access to Sensitive Compartmented Information. ⁽²⁰⁾

Criminal Conduct

Applicant willfully failed to file his federal income tax returns for tax years 1986, 1987, and 1988. He did not file tax returns for 2004 and 2005. In fact, he could not remember the last year that he did file a federal income tax return. ⁽²¹⁾

Applicant's false answers on his security clearance application constitute felony violations of 18 U.S.C. § 1001.

Applicant had less than \$2,000 in his checking and savings accounts, he owned no mutual funds, stocks, or bonds, and he had no IRA, 401 (k), or any retirement plan. (22) He owned a 1995 Infiniti that he purchased in 1997 or 1998. He purchased a 2003 Jaguar in November 2006, for which he pays \$463 per month. He pays \$90 per month storage for a RV. In 2004 or 2005, he spent \$3,000 to repair the Infiniti. He has five credit cards, obtaining one in October 2006, and three in November 2006. (23) He pays \$331 per month for a \$150,000 term life insurance policy. (24) His budget shows a monthly deficit of \$1,785. (25)

Applicant cares for his daughter who has disabilities. Her medication is quite expensive, and he only recently was able to get assistance to help with her expenses from his county government. Her medications can vary from \$800 up to \$1200 per month. She is not covered by Medicare or Medicaid, as she is able to work for up to a month to month and a half at a time. When she has a medical episode, her employer will terminate her or she will be hospitalized. (26)

POLICIES

"No one has a 'right' to a security clearance." (27) 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 is a that will give that person access to such information." (28) 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." (29) 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." (30)

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." (31)

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. (32) 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

Financial Considerations

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 the Chapter 13 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)*) applies. Part of Applicant's financial problems are due to the care of a daughter with disabilities, which is beyond his control. The medication costs alone are a financial burden.

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. He has entered a repayment plan with the IRS, but he has not filed tax returns for 2004 in 2005, and could not remember the last year that he did file returns.

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. At the rate he is making payments to the IRS, it will take nearly 20 years to pay off the tax liens. He may have additional taxes, interest, and penalties for the years that he has not filed his tax returns. His budget shows a monthly deficit of nearly \$1800, yet he keeps an RV in storage that costs him over \$1000 a year. He still owes nearly \$5,000 on the RV. He bought a 2003 Jaguar in November 2006. He obtained four credit cards in the last two months, and his standard of living is irresponsible in light of his income and delinquent taxes and debts. 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 falsified four answers on his security clearance application. One of his rationales was that he couldn't remember. Applicant has held a security clearance for 36 years and knows what the questions are looking for. Because of his perilous financial situation, he did not disclose his fiscal problems.

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

Criminal Conduct

The security concern under Guideline J (criminal conduct) is that someone who willingly disregards the law may also disregard rules and procedures intended to safeguard classified information. Criminal Conduct Disqualifying Condition (DC CC) E2.A10.1.2.1. (*Allegations or admission of criminal conduct, regardless of whether the person was formally charged*) applies. Applicant willfully failed to file his income tax returns for 1986, 1987, and 1988. He also admitted failing to file returns for 2004 and 2005, and could not remember when he had last filed a return. His false answers on his security clearance application are violations of 18 U.S.C. § 1001, which are also instances of disqualifying conduct.

There are no valid reasons given nor are there any extenuating circumstances that explain Applicant's conduct. Tax evasion is a serious matter. To his credit, he is making payments under an agreement with the IRS for 1986-1988. Because he has not filed returns for 2004 and 2005, and for perhaps a number of years, the conduct is recent and Criminal Conduct Mitigating Conditions (CC MC) E2.A10.1.3.1. (*The criminal behavior was not recent*) and CC MC E2.A10.1.3.2. (*The crime was an isolated incident*) do not apply. I find no other mitigating conditions that apply. I conclude Guideline J 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."⁽³³⁾

"Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination."⁽³⁴⁾

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.⁽³⁵⁾ I considered his age (57), his education which includes one and one-half years of college, his employment, his Navy service, 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 he didn't remember. He lied to enhance his chances of obtaining a security clearance. He has allowed delinquent debts to accumulate and remain unpaid. He has wilfully refused to file his income tax returns. His budget shows a deficit of about \$1,800 per month, yet he spends money on an RV, buys a Jaguar, and he just obtained four credit cards. This is irresponsible conduct. 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 he is a security risk and 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 E: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

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

Paragraph 2. Guideline F: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

Subparagraph 2.e: Against Applicant

Subparagraph 2.f: Against Applicant

Subparagraph 2.g: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.I: Against Applicant

Subparagraph 1.j: Against Applicant

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph 3.a. Against Applicant

Subparagraph 3.b. Against Applicant

Subparagraph 3.c. Against Applicant

Subparagraph 3.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 7, 2005) at 1; Tr. at 12, 15.
 2. Tr. at 12.
 3. *Id.* at 13.
 4. *Id.*
 5. *Id.* at 13-14.
 6. *Id.* at 14-15.
 7. Tr. at 17.
8. Government Exhibit 3, *supra*, note 7, at 8.
9. Tr. at 16-17; Government Exhibit 4 (Credit Bureau Report, dated December 4, 2006) at 1.
10. Applicant's Exhibit A (Department of the Treasury, Federal Payment Levy Program, dated December 1, 2006) at 1.
 11. Tr. at 45.
 12. *Id.*
 13. *Id.* at 46.
 14. *Id.*
15. Government Exhibit 3 (Credit Bureau Report, dated August 3, 2005) at 8.
 16. *Id.* at 6.
 17. *Id.* at 3-6.
 18. *Id.* at 3-6.
 19. Tr. at 22-23.
20. Government Exhibit 2 (United States Department of State Adverse Information Report, dated October 7, 2005) at 1.
 21. *Id.* at 42-43.
 22. *Id.* at 48.

23. *Id.* at 48-54.

24. *Id.* at 58-59.

25. Applicant's Exhibit C (Proposed Monthly Budget for January 2007) at 1.

26. *Id.* at 24-26.

27. ⁰*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

28. ⁰*Id.* at 527.

29. ⁰Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

30. ⁰Directive ¶6.2.

31. ⁰ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

32. ⁰*See* Exec. Or. 10865 § 7.

33. Directive ¶ E.2.2.1.

34. *Id.*

35. *Id.*