

DATE: November 30, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-16656

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez Jr., Esq. , Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred 17 debts of \$30,000.00 that had become delinquent, and failed to report them at Questions 38 and 39 of his SF 86. Three of the debts were for state and federal tax liens totaling \$19,000.00 that were not reported at Question 36. He failed to mitigate the security concerns submitting no credible evidence of payments, ability to resolve the debts, or credible excuses for not reporting them. Clearance is denied.

STATEMENT OF CASE

On February 23, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to 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 the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement dated April 3, 2006, Applicant responded to the allegations in the SOR admitting all but one of the financial allegations and denying all of the personal conduct allegations. He elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on July 11, 2006. A complete copy of the file of relevant material (FORM) was provided to the Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed no response and the case was assigned to me on August 29, 2006.

FINDINGS OF FACT

After a complete and thorough review of the information in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 42-year-old employee of a defense contractor working as a quality assurance engineer. He has worked for his present employer since April 2004. He worked in a similar position for another defense contractor since 1989. He admitted all of the 17 specific allegations concerning delinquent debts totaling over \$30,000.00. These included three state and federal tax liens exceeding \$19,000.00. He denied all the personal conduct allegations relating to his failure to report tax liens filed within the past seven years and delinquent debts exceeding 90 and 180 days and on his security clearance application (SF 86) filed May 4, 2004 at Questions 36, 38, and 39.

Applicant accumulated over \$5,000.00 in credit card debts that had not been paid since 1999. He declines to pay those debts since he challenges the way they were prepared that included penalties for late payments and interest charges. He is paying on a federal tax lien that exceeds \$11,000.00 filed in 2002 but is not paying on two state tax liens totaling over \$2,800.00 filed in 1999 and 2002. He intends to pay them but offered no plan or evidence of doing so in either his answer or his statement made during his security interview (Exhs. 5). In addition, on January 18, 2006, a third tax lien was filed by the state for \$5,474.00 (Exhs. 7 and 9).

Applicant provided names and phone numbers of work references but no statements from any of them. He is a college graduate, married with four children.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to all allegations set forth in the SOR:

Applicant's delinquent debts prompted the allegations in the SOR under Guideline F in that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)

Mitigating conditions (MC) might include the fact that the person has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (E2.A6.1.3.6.), and that the conditions resulting in the problems were largely beyond the person's control (E2.A6.1.3.3.). No evidence was offered by Applicant to establish that any mitigating condition was applicable. He is paying only on the federal tax lien. He has failed to establish the debts resulted from conditions beyond his control and admitted that he was not paying on any others; only that he intended to do so.

Applicant's failure to report his tax liens at Question 36 and his financial delinquencies at Questions 38 and 39 on his SF 86 raises issues under Guideline E that might indicate questionable judgment, unreliability, and unwillingness to comply with rules and regulations and could indicate that the person may not properly safeguard classified information (E2.A5.1.1.). Specifically, the deliberate omission, concealment, or falsification of relevant and material facts from a personnel security application could raise a security concern and be disqualifying. (E2.A5.1.2.2.) Applicant's statement in his answer that he completed the SF 86 to the best of his ability is not a credible excuse for his failure to report the information. He implies that the instruction he received was inadequate or erroneous but offered no evidence concerning the instruction he received. He knew of the federal and state tax liens at the time of filing and the debts were numerous enough that he must have been aware of many of them. Thus, I can only conclude that the omissions were deliberate. No mitigating conditions are applicable.

The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Applicant elected not to have a hearing where such evidence might have been submitted. As such it is impossible for me to make an adequate whole person analysis. There is insufficient evidence to provide a valid analysis.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is not clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: For 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

Subparagraph 1.p.: Against Applicant

Subparagraph 1.q.: Against Applicant

Subparagraph 1.r.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

DECISION

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge