

DATE: October 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-16867

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is a 56-year-old aircraft mechanic working for a U.S. Government contractor. He admitted having three delinquent debts, amounting to approximately \$11,755, but denied intentionally falsifying his security clearance application when he failed to disclose the existence of those delinquent debts. Applicant mitigated security concerns regarding his personal conduct, but failed to mitigate security concerns arising from financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On May 25, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) concluding it was unable to find that it is clearly consistent with the national interest to grant him a security clearance.⁽¹⁾ The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). In a notarized statement, dated June 21, 2006, Applicant responded to the SOR allegations. He admitted the three allegations raised under Guideline F and denied the two allegations raised under Guideline E. Additionally, he waived his right to an administrative hearing in favor of a decision based on the written record.⁽²⁾

Department Counsel prepared a File of Relevant Material (FORM),⁽³⁾ dated August 9, 2006. Applicant received a complete copy of the FORM on August 15, 2006. He was given the opportunity to submit documentary information in rebuttal, or to explain adverse information in the FORM. Any response was due by September 15, 2006, but he chose not to submit any additional documentation. The case was subsequently assigned to me on October 12, 2006.

FINDINGS OF FACT

Applicant's answers to the allegations in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 56-year-old aircraft mechanic employed by a U. S. Government contractor. He has worked for his present employer since October 2004. From May 1969 through November 1989, Applicant served in the U.S. Air Force, from which he was honorably discharged at the rank of Master Sergeant [E-7]. He subsequently worked in the manufacturing field before acquiring his current employment. Thrice married and divorced, he is the father of three adult children.

Inasmuch as Applicant's answers to the allegations in the SOR are direct with little elaboration, and inasmuch as he chose to only submit two documents in support of his case, the record reveals few facts regarding his life or his finances. Of the three debts at issue in the SOR amounting approximately \$11,766 and which were delinquent as of the first half of 2006, their status and Applicant's comments⁽⁴⁾ regarding them are as follows:

Allegation 1.a - You are indebted to [a company] on an account that is in collection from [a bank] in the approximate amount of \$7,985.00. The date of last activity on this account was approximately September 2000. As of May 2, 2006, this debt has not been paid. Applicant stated: "I admit that I owe this debt and am in the process of resolving this matter [-] please see attached paper work." Applicant attached two documents.

The second document attached to Applicant's response to the SOR, a May 31, 2006, is a letter from a collection agent for the bank. The letter introduces the agent as the new holder of a debt in the amount of \$6,277, and states that Applicant is eligible for a no annual fee, unsecured Visa credit card to which he can transfer his balance at a zero percent annual percentage rate. The first document, dated June 7, 2006, shows that he accepted the offer for the Visa card to pay off his balance. Because the amount at issue is in excess of this Visa card's credit limit of \$2,448, however, the program requires him to reduce the outstanding balance to the credit limit within twelve months. A monthly payment of \$189 is suggested by the program, with a minimum payment due of \$126. Hand annotated at the top of the letter, Applicant has written: "1st payment of 200.00 made on June 7 06 and every month on the 7th of each month a 200.00 payment will be withdrawn directly from my checking account." No substantiating or corroborating evidence, however, was submitted.

Allegation 1.b - You are indebted to [a creditor] on an account that is charged off in the approximate amount of \$3,644.00. The date of last activity on this account was approximately November 1999. As of May 2, 2006, this debt had not been paid. Applicant stated: "I admit that I owe this debt to [a creditor] but I have not received any correspondence from them regarding this debt in the last five years." No other information is offered.

Allegation 1.c - You are indebted to [a telecommunications company] on an account that is in collection with [a collection agent] in the approximate amount of \$126.00. As of February 23, 2006, this debt has not been paid. Applicant stated: "I admit that I owe this debt and again I have not received any correspondence from them either." No other information is offered.

On Applicant's February 2, 2005, security clearance application, Standard Form 86 (SF-86), he answered "No" to: **Question 38. Your Financial Delinquencies - 180 Days. In the last 7 years, have you ever been over 180 days delinquent on any debt(s)?"** and **Question 39. Your Financial Delinquencies - 90 Days. Are you currently over 90 days delinquent on any debt(s)?"** Although incorrect, he answered the questions to the best of his abilities, based on his recollection at the time.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be

measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁵⁾ The government has the burden of proving controverted facts.⁽⁶⁾ The burden of proof is something less than a preponderance of evidence.⁽⁷⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁸⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

No one has a right to a security clearance⁽¹⁰⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹¹⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹²⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹³⁾ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a security clearance.

Based upon consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline F - Financial Considerations. *The Concern:* An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.⁽¹⁴⁾

Guideline E - Personal Conduct. *The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.⁽¹⁵⁾

Conditions pertaining to these adjudicative guidelines that could raise a security concern and may be disqualifying, as well as those which would mitigate the security concerns raised in this matter, are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the applicable legal standards. The government has established a *prima facie* case for disqualification under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). For clarity, I will discuss each separately.

Financial Considerations

The government demonstrated that Applicant accrued three delinquent debts, two of which had been neglected for over six years. Taken together, they represent approximately \$11,755 of unaddressed debt. Consequently, Financial Considerations Disqualifying Condition (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*) apply.

With the government's burden met, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. Here, he admits to the three debts. Therefore, neither FC MC E2.A6.1.3.1 (*the behavior was not recent*) nor FC MC E2.A6.1.3.2 (*it was an isolated incident*) applies.

By failing to give any facts or explanation as to how his debts arose, or what precluded him from making some token measures toward addressing them over the years, Applicant has provided no basis upon which an assessment can be made as to whether 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. This same lack of information makes it impossible to question whether 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) applies.

The one thing Applicant has done toward mitigating security concerns is to introduce some evidence that he apparently has negotiated a form of repayment on one of his delinquent debts by transferring its balance to a new Visa card on attractive terms. As it stands, however, his evidence regarding this transfer is incomplete. Although he has presented tangible evidence that he accepted an offer to join this repayment plan, he failed to supplement the record with either proof of an initial \$200 payment to Visa or any paperwork proving that he instituted a direct deposit link between his checking account and the credit card. While it is possible that he did not have such proof at the time he responded to the SOR on June 21, 2006, some proof should have been available by September 15, 2006, the deadline for submitting additional information in response to the FORM. By failing to submit such substantiating or corroborating evidence, FC MC E2.A6.1.3.6 (*[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) cannot be applied with regard to the first debt cited in the SOR.

By choosing to limit his narrative and evidentiary submissions, Applicant failed to mitigate the security concerns raised by his finances. Moreover, his suggestion that the failure of two of the creditors to correspond with him does not relieve him of his financial obligations. In such matters, the burden is on the debtor to address his debt, not on the creditor to continually seek satisfaction of an obligation. Given these facts, and in the absence of any additional offer of facts or documentation, Applicant failed to mitigate security concerns arising under Guideline F.

Personal Conduct

The SOR alleges that Applicant deliberately falsified material facts on his SF-86 regarding his delinquencies because his answers to Questions 38 and 39 failed to mention the three delinquencies at issue. Under this theory, Personal Conduct Disqualifying Condition E2.A5.1.2.2 (*[t]he 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*) would apply.

Applicant, however, states that he did not intentionally falsify his answers to these questions. Rather, he states that he answered these questions to the best of his ability, based on his recollection at the time. In the absence of any indication that he intentionally falsified, omitted, or concealed information regarding his delinquencies, and given the ultimate disposition of this matter, I do not find that a disqualifying condition under Guideline E has been raised.

I have considered both the record evidence and Applicant in light of the "whole person" concept. Applicant is a mature man who has honorably served this country in the U.S. Air Force and continues to serve in his current capacity. In his response to the SOR, however, he expressed his feeling that this process is inevitably biased against him and that his loyalty to the country is in question. To reiterate, once the government has met its burden in a case, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him; there is no indication that Applicant's ability to present such evidence was impeded. Moreover, there is no basis in the record to question his character or integrity; neither is at issue herein. The Executive Order clearly states that a decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹⁶⁾ As noted by the DOHA Appeal Board, however, even good people can pose security risks.⁽¹⁷⁾

This decision is based solely on the record and a consideration of the security concerns raised, and nothing more.

The facts of record do not demonstrate that Applicant intended to commit a falsity when answering the financial questions on his SF-86 regarding delinquent accounts. By choosing to only submit scant information regarding his life and finances, and by submitting incomplete and inconclusive documentation to substantiate his one potentially successful proffer regarding his finances, however, Applicant failed to mitigate the security concerns his delinquent debts raise. This failure was compounded by his request to forego a live hearing, where deficiencies might have been addressed, in favor of a determination based solely on the record. In view of the foregoing, Applicant has failed to mitigate the security concerns raised in the SOR. Clearance is denied.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline F (Financial Considerations) AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Paragraph 2. Guideline E (Personal Conduct) FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is denied.

Arthur E. Marshall, Jr.

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended (Directive).
2. "As to whether I wish to have a hearing or not about which decision will be made, it is very obvious that you have already made up your mind as to what the decision is to be. I do not wish to have a hearing. It seems that serving your country and loyalty are not enough to satisfy being an american [sic] citizen. If my answers seem to be fill with anger, they are. You do not know me or about me yet you have passed judgement on my past indebtness [sic]. I work here as another way to serve my country."
3. The FORM includes a seven-page brief and eight documents.
4. From Applicant's Response to the SOR, dated June 21, 2005.
5. ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).
6. ISCR Case No. 97-0016 at 3 (App. Bd. Dec 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
7. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
8. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
9. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
10. *Egan*, 484 U.S. 518, at 531.
11. *Id.*
12. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

13. Executive Order 10865 § 7.
14. Directive, Enclosure 2, ¶ E2.A6.1.1
15. Directive, Enclosure 2, ¶ E2.A5.1.1.
16. Executive Order 10865 § 7.
17. ISCR Case No. 01-26893 (October 16, 2002), at 8.