

DATE: August 11, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-17706

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Pamela C. Benson, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is a 44-year-old systems analyst working for a defense contractor. In 1984, early in his military career, Applicant married. The couple eventually separated and were living apart by the time he completed a security clearance application in 2003. When completing that application, he stated that he had no liens or delinquent debts. Unbeknownst to him, however, a state tax lien had been entered against him during a military deployment, and several accounts had become delinquent. Applicant has mitigated security concerns regarding his personal conduct, but has failed to mitigate those arising from his finances. Clearance is denied.

STATEMENT OF THE CASE

On July 18, 2003, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86). On December 23, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, February 20, 1960, 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. The SOR detailed reasons, under Guideline F (Financial Considerations) and Guideline E (Personal Conduct), 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, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a notarized statement, dated January 18, 2006, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel prepared the government's written case and submitted the file of relevant material (FORM) on May 19, 2006. A complete copy of the FORM was received by Applicant on May 28, 2006, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Any such submissions were due by June 27, 2006. Applicant declined to respond to the FORM. The case was assigned to me on July 25, 2006.

FINDINGS OF FACT

Applicant's answers to the allegations in the SOR are incorporated herein. After a thorough and careful review of the evidence and exhibits, I make the following additional findings of fact:

Applicant is a 44-year-old systems analyst working for a defense contractor. He enlisted in the U.S. Army in 1982. Six years later, in 1988, he was granted a security clearance. In 2002, after 20 years of military service, Applicant was honorably discharged from the Army.

In 1984, early in his military career, Applicant married. The relationship became strained by the mid- to late-1990s, and the couple separated. By the time he submitted his SF-86 security clearance application in July 2003, Applicant and his wife were living apart.⁽¹⁾ While completing the SF-86, Applicant answered "no" to three pertinent questions. To 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, although a lien had been placed against his property in 1999.⁽²⁾ To 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 in the negative, although he had been over 180 day delinquent on at least five debts.⁽³⁾ To Question 39, "**Your Financial Delinquencies - 90 Days** Are you currently over 90 days delinquent on any debt(s)?," he also answered "no," although he was similarly delinquent on those same five debts.

Also existent at the time Applicant submitted his SF-86 security clearance application was an obligation to a county hospital for \$201.⁽⁴⁾ That account was placed for collection in about May 2005. As with the other debts cited, however, none were satisfied as of December 20, 2005. Indeed, in his January 9, 2006, response to the SOR, Applicant admitted responsibility for all six debts and the tax lien, and stated that they all remained unaddressed.

In his submissions, Applicant offers little information to explain how these debts arose or what he is currently doing to address them. His most insightful comment is:

"Most of these debts were incurred during separation from my estranged wife pending divorce. Divorce is not complete because of her medical condition and inability to pay child support. She used medical through [my insurer] while I was active duty. I know I should have taken a firmer hand on settling these debts but I had trusted her to [sic] much to do the right thing. Also none of these companies has been in touch with me until recently as I had made contact with them. I am taking a more assertive role in solving these issues but will take time."

Other than this statement, Applicant's explanations are limited. He established, however, that in 2003 he was not aware of these obligations and had no intent to falsify his SF-86.

Applicant implies that most of these obligations were incurred by his estranged wife without his knowledge. Similarly, with regard to the tax lien, he notes in his response to the SOR that he was unaware the lien had been placed, stating that he had provided his wife with sufficient funds to meet their joint tax obligation while he was stationed abroad. While he repeatedly states that efforts are being made to satisfy these debts, he offers no details or documentation demonstrating what his efforts have been.

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 the 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 security concerns, are set forth and discussed in the conclusions below.

CONCLUSIONS

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

Financial Considerations

The government demonstrated that Applicant has, over the past few years, acquired debts which remain unsatisfied. 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, Applicant admits to the existence of the multiple obligations enumerated in the SOR. He also concedes that they remain unaddressed. 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 the time Applicant submitted his SF-86 security clearance application, he and his wife had already separated and were living apart. At various times in his response to the SOR, he argues that he was unaware of the tax lien and the debts incurred because they were created by his wife without his knowledge. Indeed, with regard to the tax lien, he notes that because he had provided his wife with sufficient funds while he was on military deployment to pay their joint state income taxes, he assumed they had been paid. Inasmuch as their estrangement contributed to the creation of these

obligations and his lack of knowledge regarding them, 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.

There is no evidence that Applicant received financial counseling. Therefore, 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. [\(16\)](#)

Applicant admits that he has not satisfied any of the obligations at issue. Although he states that he is making efforts to address them, he has failed to explain what those efforts entail. In the absence of some facts or documentation that could shed light on these alleged efforts to address these debts, FC MC E2.A6.1.3.6 (*[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) does not apply.

In his responsive materials, Applicant has presented enough facts to explain how these obligations may have been created without his knowledge. He has failed, however, to explain his plans to address these debts or prevent debt delinquency from occurring in the future. In the absence of such explanation, Applicant has failed to mitigate security concerns arising from financial considerations.

Personal Conduct

The SOR alleges that Applicant deliberately falsified material facts on his 2003 SF-86 concerning his state tax lien and delinquent debts. Applicant admits answering the questions cited in the negative, but argues that his answers were not designed to intentionally mislead or defraud. Instead, he argues that they were incurred by his estranged wife without his knowledge, both before and after his military discharge in 2002. Given the fact the couple was estranged, separated, and living apart well before the time Applicant completed his SF-86 in July 2003, his argument is credible. Based on the facts presented, there is no evidence indicating that Applicant deliberately omitted, falsified, or concealed the existence of the obligations at issue. Rather, the facts indicate that he was unaware of most, if not all, of the debts. In the absence of some deliberate conduct designed to intentionally mislead, the disqualifying conditions provided under Guideline E do not apply. [\(17\)](#)

I have considered both the record evidence and Applicant in light of the "whole person" concept. Applicant is a mature man in his early 40s with two decades of experience serving his country in the U.S. Army. Although he has presented sufficient evidence as to how his current debts, amounting to a little under \$10,000, were acquired, he has failed to provide any explanation or evidence with regard to how he proposes to address and satisfy those obligations. Without such information, security concerns regarding his finances remain. Consequently, Applicant has failed to mitigate the security concerns raised. 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

Subparagraph 1.d. Against Applicant

Subparagraph 1.e. Against Applicant

Subparagraph 1.f. Against Applicant

Subparagraph 1.g. Against Applicant

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

Subparagraph 2.a. For Applicant

Subparagraph 2.b. For Applicant

Subparagraph 2.c. 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. Applicant's SF-86, dated July 18, 2003.
2. The lien arose from an obligation to his state in the amount of \$994 in taxes, penalties, and interest.
3. The five debts at issue are set forth in the SOR as sub-allegations 1.b. through 1.f., and represent approximately \$8,638 of indebtedness.
4. Applicant states that the debt was created while he was on active duty and alleges, without documentary proof, that it has since been referred to his insurer.
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. It is notable, however, that Applicant had his student loans consolidated and paid through wage garnishment.
17. Specifically, the government urges application of Personal Conduct Disqualifying Conduct 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, determined security clearance eligibility or trustworthiness, or award fiduciary responsibilities).