

DATE: January 31, 2007

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-00184

DECISION OF ADMINISTRATIVE JUDGE

PAUL J, MASON

APPEARANCES

FOR GOVERNMENT

Emelio Jaksetic, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has had ongoing financial problems since he was honorably discharged from the military in 1991. Instead of attempting to address his delinquent debts over the years, he has ignored them. In addition to the notice he was provided individually by the listed creditors, in December 2004 he was shown his credit report, and provided information regarding each creditor. Further, he said he would pay off one or two creditors and include the others in bankruptcy. Finally, in April 2006, Applicant received additional indications the government was concerned about his overdue debts and judgments. In October 2006, Applicant made his first payment in a debt consolidation plan. Without a sustained record of repayments, Applicant's financial problems have not been mitigated.

Applicant's deliberate omission of material information from his January 2004 security form represents poor judgment within the scope of the personal conduct guideline. Clearance is denied.

STATEMENT OF THE CASE

On June 22, 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. On June 22, 2006, Applicant responded to the SOR and requested a hearing before an Administrative Judge.

The case was assigned to me on September 22, 2006. On November 9, 2006, this case was set for hearing on November 28, 2006. The Government submitted seven exhibits (GE 1-7), and Applicant submitted two exhibits (AE A-B). Testimony was taken from Applicant. The transcript was received on December 28, 2006.

FINDINGS OF FACT

Paragraph 1 of the SOR alleges financial problems and paragraph two alleges personal conduct. Applicant admitted all allegations. In his supplemental answer, he explained that in January 2004 he transferred information from a military security questionnaire to the security clearance application (SCA) without checking the information. He did not deliberately conceal the information.

Applicant is 57 years old and employed as a functional analyst for a defense contractor. He seeks a secret clearance. GE 1 reflects he has held a security clearance since 1991. Applicant entered the United States (U.S.) in 1968 and married in 1970. He had three children during the marriage. He was honorably discharged from the service in 1991. He divorced his first wife in 2002 and remarried in July 2005 (Tr. 55).

Financial considerations

Behind his admission to SOR 1.a. are records reflecting that Applicant's military pay was not taxed during his active duty. He testified that he received a bill for \$19,264.00 in approximately 1997 (Tr. 37) from the Internal Revenue Service (IRS) and a federal lien was levied in 2004 for the full amount of the lien. AE C shows periodic payments by Applicant of \$500.00 a month from October 2005 to October 2006 to resolve this lien. The two judgments identified in SOR 1.b. and 1.c. were filed by the his former landlord in 2002. One judgment is for unpaid rent. The record does not indicate what the other judgment is for. In his December 2004, Applicant stated he paid the delinquent rent (SOR 1.b.), but provided no documentation showing the delinquent rent paid. Both judgments are now part of his debt consolidation plan.

SOR 1.k. is a judgment rendered in May 2002 for dental services. In Applicant's affidavit (GE 3), he acknowledged the debt, but believed his insurance had taken care of the matter. Applicant did not know he had been sued by the dentist (Tr. 67). SOR 1.l. is a judgment rendered against Applicant on a credit card account.

SOR 1.d. is a past due debt for a credit card Applicant was ordered to pay pursuant to his divorce decree in 2002. No additional information was provided. SOR 1.e. is a delinquent debt on a credit card account Applicant opened in 1999. The account is currently in Applicant's debt plan.

SOR 1.f. is another credit card debt that is in the debt plan. Applicant claims he paid the SOR 1.g. account (automobile) in October 2006 during the time he was enrolling in the debt consolidation plan. No documentation was provided (Tr. 45).

Two additional credit card accounts (SOR 1.h., 1.i., and 1.j.) were also placed in his debt plan in October 2006. Applicant's federal lien, four judgments, and seven delinquent debts total \$53,230.00. The overdue debts are corroborated by GE 3 through GE 6. GE 7 provides a brief description of the federal lien and judgments. GE 7 also identifies a judgment not listed in the SOR.

Applicant recalled receiving creditor notices about his delinquent debts. Those notices came at different times between 1994 and 2004. In his SCA (GE 1) he filled out in January 2004, he acknowledged the fact he owed taxes. Applicant provided an affidavit in December 2004. The investigator asked him about the delinquent debts in the credit bureau report, and Applicant reiterated his intention to file bankruptcy.

Applicant provided responses to interrogatories (GE 2) in April 2006. He noted that most of the debts listed in the form were between 7 to 10 years old. He provided a copy of a letter that he had sent to the credit bureau requesting that five creditors be deleted from the report. Two of those creditors, SOR 1.d. and 1.i., currently appear in his debt consolidation plan.

After his discharge from the military in June 1991, Applicant had trouble adjusting financially to civilian life. He admitted a lackadaisical attitude and irresponsibility were the primary causes of his financial problems between 1991 and 2004 (Tr. 54). He and his first wife (1970 to 2002) gradually found themselves in a position where they were living beyond their means as evidenced by delinquent creditor notices they received in the 1990s. Applicant could not recall his wife or three children for the first marriage suffering any serious medical condition (Tr. 64).

In October 2006, Applicant enrolled in a debt consolidation plan. Applicant has no credit cards and does not buy anything on credit. In talking with the debt plan counselors, Applicant has learned it is important to pay creditors. Applicant decided not to file bankruptcy because of the adverse financial consequences (Tr. 82). Applicant has made one payment under the plan.

Personal Conduct

When Applicant filled out the SCA in January 2004, he knew he had other delinquent debts besides the federal lien. He recalled being given about two weeks to complete the form. Instead of putting current information on the form, he claimed that he transferred the information from an old military questionnaires onto the SCA. ⁽¹⁾ He did not have a credit report with him when he filled out the form. (Tr. 69) He answered "no" to question 37 (requiring information about judgments or liens). He under reported the information he supplied to question 38 (requiring information about debts over 180 days delinquent in the last 7 years), and question 39 (requiring information about debts that are over 90 days delinquent). Because Applicant was aware of some of the judgments and most of the other delinquent debts when he filled out his SCA (Tr. 62-67) in January 2004, and was not rushed, but had plenty of time to complete the form (Tr. 70), I find he deliberately omitted debt information from his SCA.

Character Evidence

Applicant was honorably discharged from the United States (U.S.) Army in 1991. Applicant received several good conduct medals. No additional character evidence was presented.

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)

Security concerns are raised when a person is financially overextended or living beyond their means.

Personal conduct (Guideline E)

Security concerns are raised when a person deliberately provides false information during the course of the security investigation.

CONCLUSIONS

Financial Considerations (FC)

Applicant candidly admitted he has had problems paying his bills since he was discharged from the military in 1991. Applicant's financial dilemma was exacerbated by the 2002 divorce decree ordering him to pay off several additional credit cards. The financial exhibits (AE 3 through AE 6) confirm Applicant's admission, and the negative impact of the divorce. The SOR identifies 12 debts totaling more than \$53,000.00. FC disqualifying condition(DC) E2.A6.1.2.1. (*a history of not meeting financial obligations*) applies. FC DC E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*) also applies based on Applicant's inability to address the past due debt during the 1990s, especially after he received notice of a huge tax bill in 1997. Considering there are five judgments included in the total delinquency is viewed as unwillingness by Applicant to demonstrate financial responsibility required of those who seek access to classified information.

The five mitigating conditions have been carefully evaluated but none are applicable to the circumstances of this case. FC mitigating condition (MC) E2.A6.1.3.1. (*the behavior was not recent*) does not apply due to the recency of the debts. FC DC E2A6.1.3.2. (*it was an isolated incident*) does not apply to 12 delinquent judgments and debts totaling more than \$53,000.00.

Because of the 2002 divorce decree provision requiring Applicant to take responsibility for several additional credit cards, FC MC E2.A6.1.3.3. (*the conditions that resulted in the behavior were largely beyond the person's control*) provides some extenuation for Applicant's overall indebtedness. However, the extenuation Applicant receives by his 2002 is dramatically reduced by the fact that Applicant had been experiencing financial difficulties throughout the 1990s because of his abuse of credit cards.

FC 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 to these circumstances as Applicant has had no counseling other than the brief consultation with the debt plan counselors in October 2006.

FC E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) cannot be applied either. Had Applicant been presented a track record of payments already made under the debt plan, then there could have been a some probative basis upon which to find in his favor under the FC guideline. However, Applicant has made only one payment under the plan, and has paid only the federal tax debt. Considering the evidence as a whole, Applicant has not furnished sufficient evidence to overcome the Government's case under the FC guideline.

Personal Conduct (PC)

Poor judgment and dishonesty are the core security concern of the PC guideline. If a person exhibits dishonesty during the security investigation, he may not be a suitable candidate to safeguard classified information. The financial irresponsibility that Applicant demonstrated throughout the 1990s is same behavior he exhibited when he filled out the SCA in January 2004. Even though he did not have a credit report with him when he filled out the SCA, two weeks should have been an ample amount of time for him to answer the SCA questions correctly. Throughout the hearing, Applicant indicated that he was aware of the creditor notices that had been sent him in the 1990s. He may not have been aware of all the judgments, but he was aware of some of them when he filled out the SCA. Applicant was not a young adult when he signed and certified the form; rather, he was at least 53 years of age, having possessed a security clearance since 1991. His old military questionnaire would not listed a federal tax obligation. I conclude his omissions of the SCA were deliberate, and therefore fall within PC DC E2.A5.1.2.2. (*the deliberate omission of a security questionnaire used to determine security clearance eligibility*).

The mitigating conditions under the PC guideline have been examined closely. They are: PC MC E2.A5.1.3.1. (*the information was unsubstantiated or not pertinent to a determination of judgment trustworthiness or reliability*); PC MC E2.A5.1.3.2. (*the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*); and, E2.A5.1.1.3.3. (*the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*), but are inapplicable due to Applicant's ongoing belief he did not deliberately omit material information. The adverse findings under the FC and PC guidelines have included an evaluation of this case under the general factors of the whole person concept.

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. Against the Applicant.

Subparagraph 1.c. Against the Applicant.

Subparagraph 1.d. Against the Applicant.

Subparagraph 1.e. Against the Applicant.

Subparagraph 1.f. Against the Applicant.

Subparagraph 1.g. Against the Applicant.

Subparagraph 1.h. Against the Applicant.

Subparagraph 1.i. Against the Applicant.

Subparagraph 1.j. Against the Applicant.

Subparagraph 1.k. Against the Applicant.

Subparagraph 1.l. Against the Applicant.

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

Subparagraph 2.a. Against the Applicant.

Subparagraph 2.b. Against the Applicant.

Subparagraph 2.c. Against the Applicant.

DECISION

In light of all the circumstances 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.

Paul J. Mason

Administrative Judge

1. The military service questionnaire would not have shown a federal tax lien because Applicant was not notified of the lien until after he was discharged from the military (Tr. 37).