

DATE: December 29, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-03812

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq. , Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate financial security concerns relating to 29 delinquent debts totaling nearly \$12,000 dating from 1999. Although he had entered a debt consolidation plan the report submitted by Applicant showed his monthly expenses exceeded his income even without payment on his plan. He also failed to mitigate personal conduct and criminal conduct allegations for failure to report the debts on his SF 86. Clearance is denied.

STATEMENT OF CASE

On July 19, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, 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 August 1, 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 submitted the government's written case on August 29, 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 a response with additional material on October 23, 2006. The case was assigned to me on November 1, 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 findings of fact:

Applicant is a 37-year-old employee of a defense contractor. He has worked for his present employer since November 2003. He admitted all 29 specific allegations concerning delinquent debts totaling nearly \$12,000 that have accumulated since 1999. They range from \$59 to \$1,300. He admitted with explanation all the personal conduct allegations relating to his failure to report his delinquent debts exceeding 90 and 180 days at Questions 38 and 39 on his security clearance application (SF 86) filed April 13, 2004. He did not answer the one criminal conduct allegation.

Applicant acknowledged in his answer that he had "lots of debt" but was working with a debt consolidation service to resolve them, and he was the only provider for himself and his fiancé who was expecting a baby. He stated that he did not understand the two SF 86 questions and did not answer in a "knowingly dishonest manner."

In the supplemental information filed after the receipt of the FORM, Applicant provided documentation, dated September 21, 2006, from a debt service company indicating that he had arrived at a schedule of payments for his debts requiring payment of \$292 per month beginning October 15, 2006. His submission did not show that any payments had been made. The debt service company document (Encl. 2) showed that his monthly expenses even without any payment for debt service exceeded his income by \$271.

In September, 2004, Applicant stated on his personal financial statement (PFS) that he had \$900 remaining after expenses and debt payments (Exh. 7). Several debts shown on that statement still appear on the SOR two years later (SOR 1. b., d, and v.) with no reduction in the amounts owed.

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 any mitigating conditions. He failed to establish the debts resulted from conditions beyond his control. He admitted that he was not paying the debts but intended to do so and was enrolled in a debt consolidation plan. Because the information from his debt service company shows an inability to pay the debts and that he has not resolved them since filing his PFS, he has failed to mitigate the allegations.

Applicant's failure to report his financial delinquencies of 90 and 180 days 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 did not understand the questions on the SF 86 and did not intend to be dishonest is not a credible excuse for his failure to report the information in view of the extent of the debts and the age of them. He offered no evidence concerning any instruction he might have received, or why he did not understand the questions. Thus, I conclude that the omissions were deliberate. No mitigating conditions are applicable.

Also alleged is under Guideline J is that such conduct is a violation of 18 U.S.C. 1001, a felony. In view of the fact that Applicant knew of the delinquent debts as evidenced by his answer and his investigative statement, and the lack of any proof of his contention that he received bad advice, I find that he intentionally concealed the relevant information in his answers to the relevant questions.

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 in person and none was submitted in the written record. The absence of any evidence makes it difficult to justify a finding in his favor under a whole person 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. Section 7 of Executive Order 120865 provides that industrial security clearance decisions shall be "in terms of the national interests and shall in no sense be a determination as to the loyalty of the applicant." Therefore, nothing in this decision should be construed to suggest that this decision is based on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

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

Subparagraph 1.s.: Against Applicant

Subparagraph 1.t.: Against Applicant

Subparagraph 1.u.: Against Applicant

Subparagraph 1.v.: Against Applicant

Subparagraph 1.w.: Against Applicant

Subparagraph 1.x.: Against Applicant

Subparagraph 1.y.: Against Applicant

Subparagraph 1.z.: Against Applicant

Subparagraph 1.aa.: Against Applicant

Subparagraph 1.bb.: Against Applicant

Subparagraph 1.cc.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph 3.a.: 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