

DATE: September 14, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 06-03840

DECISION OF ADMINISTRATIVE JUDGE

JACQUELINE T. WILLIAMS

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 28 years old and has served as an aircraft helper since January 2005. His outstanding delinquent debts total approximately \$12,600, of which \$11,628 is for unpaid student loans. He deliberately falsified questions on his security clearance application when divulging information about his financial situation. Applicant has not mitigated security concerns. Clearance is denied.

STATEMENT OF THE CASE

On January 19, 2005, Applicant applied for a security clearance and completed a Security Clearance Application (SF 86).⁽¹⁾ On April 19, 2006, 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*, dated 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 or revoked.

In a sworn, undated written statement, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing.⁽²⁾ Department Counsel prepared the Government's written case on June 12, 2006.⁽³⁾ A complete copy of the file of relevant material (FORM)⁽⁴⁾ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He had 30 days to respond to the FORM, and his response was due on July 20, 2006. He submitted an undated three-page document, which Department Counsel received on August 3, 2006. The document was received without objection by Department Counsel. The case was assigned to me on August 14, 2006.

FINDINGS OF FACT

Applicant admitted the factual allegations pertaining to financial considerations under Guideline F (subparagraphs 1.a through 1.c, and 1.e through 1.h). He denied the factual allegations pertaining to (subparagraph 1.d). He denied the factual allegations pertaining to personal conduct under Guideline E (subparagraphs 2.a and 2.b). Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is a 28-year-old aircraft helper who has worked for a defense contractor since January 2005. From February 2000 through June 2000, he attended the Westwood College of Aviation Technology. He attended the National Aviation Academy from September 2000 to November 2001. In November 2001, he was awarded an associate's degree. He has never been married.

An April 4, 2006, credit bureau report indicated that Applicant had eight delinquent debts, totaling approximately \$12,600. The debts at issue in the SOR as follows:

Online Collections (\$83.00) Debt was turned over for collection.

Bank (\$467.00) Debt was paid on July 10, 2006. [\(5\)](#)

Cable (\$143.00) Debt was paid on July 11, 2006. [\(6\)](#)

Restaurant (\$41.00) Debt is unknown to Applicant.

Student Loan (\$3,579.00) Debt was turned over for collection.

Student Loan (\$5,011.00) Debt was turned over for collection.

Student Loan (\$3,038.00) Debt was turned over for collection.

Department Store (\$251.00) Debt was turned over for collection.

The bulk of Applicant's delinquent debt is for student loans, totaling approximately \$11,628.00. Applicant contends that he is "in negotiations with the loan offices to set up a structured repayment plan, one which I can afford with my current rate of pay." [\(7\)](#)

When completing his SF 86 in January 2005, Applicant answered "no" to the questions regarding whether in the last seven years he had been over 180 days delinquent on any debts or was he currently more than 90 days delinquent of any debts. In fact, he had both. He acknowledged that he failed to provide accurate answers to these questions, but stated that it was an honest mistake on his part because he did not read the questions completely. [\(8\)](#)

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.⁽⁹⁾ The government has the burden of proving controverted facts.⁽¹⁰⁾ The burden of proof is something less than a preponderance of evidence.⁽¹¹⁾ 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.⁽¹²⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹³⁾

No one has a right to a security clearance⁽¹⁴⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁵⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹⁶⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹⁷⁾ 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 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.

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.

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

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards, and I reach the following conclusions.

Financial Considerations

Under Guideline F, a security concern exists for an individual who is financially overextended. This person is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be unconcerned, negligent, or careless in properly handling and safeguarding classified information. Applicant has a history of financial problems. His current delinquent debts total approximately \$12,600. Thus, Financial Considerations Disqualifying Conditions (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.

Various conditions can mitigate security concerns arising from financial difficulties. Applicant's delinquent debts total \$12,600, but he has paid \$610.00 been paid. He disputes responsibility for a bill for \$41.00 as not being his. The bulk of his debt, approximately \$11,628, is for student loans. He is in negotiation to set up a structured repayment plan for these loans. However, Applicant was awarded his associate's degree in November 2001, and he has had ample time since then to pay his loans. Further, Applicant failed to provide any evidence as to what caused his debts to become delinquent. Thus, I cannot find that Financial Considerations Mitigating Conditions (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)*), 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*), or FC MC E2.A6.1.3.6 (*the individual initiated a good faith effort to repay overdue creditor*) apply. Applicant has not mitigated the Government's case. Accordingly, allegations 1.a through 1.c and 1.e through 1.h of the SOR are

concluded against Applicant. Since Applicant is not aware of the debt at 1.d, I find he is not liable for that debt.

Personal Conduct

Personal conduct is always a security concern because it asks the central question whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Having financial problems is the type of personal conduct which causes security concerns. While there are no express disqualifying conditions under personal conduct guideline that cover judgment lapses associated with financial difficulties, the core judgment and reliability concern of the guideline is implicit in Applicant's past troubles with finances. Applicant said that he misread the questions that asked if he had delinquent debt that was 90 or 180 days past due. I do not find his explanation for not divulging his debt plausible. Applicant had delinquent debt. He knew the SF 86 was asking personal information about his lifestyle. Applicant had a responsibility to indicate on the SF 86 that he had outstanding debt, even if he could not recall all of his creditors. Moreover, he had several thousand dollars in unpaid student loans that he did not divulge. I conclude that he knew his job would be in jeopardy if he divulged his financial information. Therefore, Personal Conduct Disqualifying Conditions (PC DC) E2.A5.1.2. (*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, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies. None of the available Personal Conduct Mitigating Conditions apply in this case. Under these circumstances, Applicant has failed to mitigate or overcome the Government's case. The evidence leaves me with doubts as to Applicant's security eligibility and suitability. Accordingly, allegations 2.a. and 2.b of the SOR are concluded against Applicant.

I have considered all the evidence in this case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I conclude that Applicant has not mitigated security concerns because of his delinquent and unpaid debts totaling approximately \$12,600 together with the deliberate falsification of his SF 86. It is clearly not consistent with the national interest to grant Applicant a security clearance. For the reasons stated, I conclude Applicant is not suitable for access to classified information.

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: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

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

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

DECISION

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

Jacqueline T. Williams

Administrative Judge

1. Item 4 (Security Clearance Application, dated January 19, 2005).
2. Item 3 (Applicant's Answer, undated).
3. Department Counsel erroneously submitted this case as an ADP case, when this is actually an ISCR case.
4. The Government submitted six items in support of the allegations.
5. Applicant's undated response, at p. 3.
6. *Id.* at 2.
7. *Id.* at 1.
8. *Id.* at 1.
9. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
10. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
11. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
12. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, ¶ E3.1.15.
13. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15.
14. *Egan*, 484 U.S. at 531.
15. *Id.*
16. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
17. Executive Order 10865 § 7.