

DATE: December 29, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 06-06743

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 55-year-old machinist who has worked for a federal contractor since 2004. He has numerous delinquent debts that when he became aware of them he did not take action to repay or to resolve them. He was diagnosed as alcohol dependant in 2005, told to abstain from drinking alcohol, but has continued to do so. He provided sufficient corroborated evidence that he did not intentionally falsify his security clearance application. Applicant has mitigated the security concerns under Guideline E for personal conduct. He failed to mitigate the security concerns under Guideline F for financial considerations and Guideline G for alcohol consumption. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On July 31, 2006, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline F, (financial considerations) Guideline G (alcohol consumption), and Guideline E (personal conduct) of the Directive. Applicant answered the SOR in writing on September 12, 2006, and elected to have a hearing before an administrative judge. In his answer, Applicant denied all of the allegations under Guidelines F and E. He admitted all the allegations under Guideline G. The case was assigned to me on November 1, 2006. A notice of hearing was issued on November 21, 2006, scheduling the hearing for December 11, 2006. I conducted the hearing as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance. The Government offered nine exhibits for admission in the record and were marked as Government Exhibits (GE) 1-9. The exhibits were admitted into evidence without objection. Applicant testified on his own behalf and no exhibits were offered into evidence. DOHA received the hearing transcript (Tr.) on December 21, 2006.

FINDINGS OF FACT

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

Applicant is 55 years old and has worked for a federal contractor as a machinist since 2004. He is divorced and remarried and has two children from his first marriage that are grown and a 13-year-old son with his present wife.

Applicant has approximately \$28,000 in delinquent debts and judgments listed in the SOR. He denies any knowledge of them. He consistently claims his wife handles all of the finances and he did not know anything about any of his debts.⁽³⁾ He would deposit his paycheck for his wife to take care of all the finances. When he was interviewed by an investigator for the Office of Personnel Management (OPM) on July 22, 2005, he denied knowing about any of his debts, but indicated he would discuss the issues with his wife and contact his creditors to start repayment plans within 120 days.⁽⁴⁾ He indicated that with his current spending habits he did not have sufficient money to pay back his delinquent debts.⁽⁵⁾ The personal financial statement provided then indicated a negative cash flow of \$880 per month.⁽⁶⁾

When re-interviewed on September 19, 2006, about his debts he stated he had been unsuccessful in talking to his wife about their finances as they were having marital problems.⁽⁷⁾ He did receive a credit report and started putting money aside in an account from his overtime pay so he can then contact a debt consolidation company to assist him in repaying his debts.⁽⁸⁾ He has not yet contacted a debt consolidation company.⁽⁹⁾ When interviewed he indicated he was going to contact his creditors in the next 60 days to indicate a willingness to repay his debts.⁽¹⁰⁾ Applicant's wife admits she pays the bills and he "supposedly" deposits his check for help. She claims she has sufficient funds to pay the bills, but acknowledged owing certain debts, but did not believe they were as high as indicated.⁽¹¹⁾ She too indicated she would make arrangements to repay the debts.

In August 2005, Applicant contacted one creditor.⁽¹²⁾ He has not contacted any of other creditors and has not made any payments on any of his debts or judgments.⁽¹³⁾ He has not discussed the legitimacy of the debts or the reasons why the bills were not paid by his wife. He continues to deposit his pay, but does not inquire as to why the debts are not being paid. He lives with his wife and blames her for failing to pay the bills, but since learning of the delinquencies and judgments he has not done anything to resolve them. Although he claims he is saving money to pay off the debts, he has not paid even the smallest of debts.

Applicant started drinking when he was in the service in the 1970s. He stopped for a period of time but resumed around 1991, when he became a commercial fisherman. He began to consume alcohol excessively and it was a source of marital problems. Preceding 2005, for about seven years he was consuming between a half and full pint of vodka daily.⁽¹⁴⁾ His drinking became worse in 2005, when he was consuming about a fifth of vodka per day.⁽¹⁵⁾ He sought treatment in May 2005, and was diagnosed by a medical doctor as alcohol dependent.⁽¹⁶⁾ He was told not to drink alcohol again. In June 2005, as a part of a follow-on program, he was treated for approximately two weeks as an inpatient for alcohol dependence. He was again diagnosed by a medical doctor as alcohol dependent.⁽¹⁷⁾ He was advised to attend Alcoholics Anonymous (AA). He was told not to drink alcohol again. Since being diagnosed as alcohol dependent and advised not to drink alcohol again, he estimates he has consumed alcohol approximately five times.⁽¹⁸⁾ He attends AA about once every three weeks, does not have a sponsor and does not know the AA steps. He believes he is on step one, but did not really know exactly what step one stated. He is not comfortable attending AA, but does not attend any other support program. He admits he is an alcoholic, but does not believe he is a practicing alcoholic.⁽¹⁹⁾

Applicant completed his security clearance application (SCA) on September 15, 2004, and in response to questions 37, 38 and 39, asking if he had any judgments or delinquent debts over 90 or 180 days respectively, he answered that he did not. Applicant consistently denied he was aware of his finances because he totally left that responsibility to his wife. His wife admits that they do not communicate about their finances and she is responsible for paying the bills.⁽²⁰⁾ She acknowledged he may deposit his check but she does not pay attention to it. She also acknowledges that they have some delinquent debts and she was going to contact the creditors and attempt to resolve them.⁽²¹⁾

Applicant was terminated from employment in August 2004, for sleeping on the job. He denied he was sleeping on the job, but was still on probation with the job, so they terminated him.

Applicant denied on July 22, 2005, during an interview with an OPM investigator, that he "currently" consumed alcohol. At that time he had abstained from alcohol consumption after completing his alcohol treatment in May and June 2005. After the interview Applicant admitted he consumed alcohol.

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.⁽²²⁾ The government has the burden of proving controverted facts.⁽²³⁾ The burden of proof is something less than a preponderance of evidence.⁽²⁴⁾ 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.⁽²⁵⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽²⁶⁾

No one has a right to a security clearance⁽²⁷⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽²⁸⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽²⁹⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽³⁰⁾ 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 guideline most pertinent to the evaluation of the facts in this case:

Guideline F- Financial Considerations-a security concern exists when a person has significant delinquent debts. An individual who is financially overextended 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 irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Guideline G-Alcohol Consumption-a security risk may exist because excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

Guideline E-Personal Conduct is a security concern when an individual's conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that 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. The government has established a *prima facie* case for disqualification under Guidelines F and G. I find the government did not establish a *prima facie* case for disqualification under Guideline E.

Based on all the evidence, 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 in this case. Applicant has a history of accumulated delinquent debts that are unpaid.

I have considered all of the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC E2.A6.1.3.1 (*The behavior was not recent*), FC MC E2.A6.1.3.2 (*It was an isolated incident*), 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*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Applicant has many debts that remain delinquent and therefore are recent. FC MC E2.A6.1.3.1 and FC MC E2.A6.1.3.2 do not apply. Applicant acknowledged his debts, but claimed they were the responsibility of his wife to pay because she handles all the finances. He claimed he was unaware of their delinquency, however, once he became aware of the problem he did not discuss the finances with her, nor did he take any action to resolve them. Therefore, I find that the conditions that resulted in his financial problems were within his control and he chose not to handle them. I have considered FC MC E2.A6.1.3.3 and conclude it does not apply. No evidence was presented that Applicant is receiving or has received counseling for his financial problems. There is also no clear indication the problems are being resolved or that he has made a good-faith effort to repay his overdue creditors or otherwise resolve his debts. Applicant was on notice that he had delinquent debts, and despite his denial he was unaware of them he has had time to contact creditors or attempt to repay some debts. He has done neither. He had an opportunity to discuss his joint financial problems with his wife, but has not. He claimed he is setting money aside to start paying the debts in the future, but no payments have been made. He had an opportunity to show some progress toward paying his debts and failed to do so. Therefore, I find FC MC E2.A6.1.3.4 and FC MC E2.A6.1.3.6 do not apply.

I have considered all of the Personal Conduct Disqualifying Conditions and conclude none apply. Applicant consistently and credibly denied that he was aware of his delinquent debts. He deposited his paycheck and his wife admits she was responsible for paying the bills. Although Applicant is responsible for joint marital debts, I find he was unaware of his delinquent debts until his interview with OPM. This may not be the most prudent way to deal with his finances, but there is insufficient evidence to support Applicant intentionally provided false information. Therefore, I find Applicant's testimony was credible and corroborated by his wife's statement.

Applicant also made a statement that he did not currently consume alcohol. When he made the statement in July 2005, he was not consuming alcohol because he had just completed an alcohol treatment program, and did not intend to drink in the future. After that statement he relapsed and drank alcohol. Therefore, I find he did not deliberately falsify his security clearance application with regards to his finances and his alcohol consumption.

I considered all the disqualifying conditions and especially considered Alcohol Consumption Disqualifying Conditions (AC DC) E2.A7.1.2.3 (*Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence*), AC DC E2.A7.1.2.5 (*Habitual or binge consumption of alcohol to the point of impaired judgment*), AC DC E2.A7.1.2.6 (*Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program.*), and conclude they apply. Applicant was diagnosed by a medical doctor while attending a treatment program as alcohol dependent. He attended treatment twice and was told not to drink alcohol. He admits he had been drinking large quantities of alcohol on a daily basis for years and it has had a negative impact on his marriage. He acknowledges he is an alcoholic. Applicant continues to consume alcohol, but not as much and estimates he last had a drink a month ago and drank about five times last year. He is aware he is going against his doctor's advice.

I have considered all the mitigating conditions and especially considered Alcohol Consumption Mitigating Conditions

(AC MC E2.A7.1.3.2 (*The problem occurred a number of years ago and there is no indication of a recent problem*); AC MC E2.A7.1.3.3 (*Positive changes in behavior supportive of sobriety*); and AC MC E2.A7.1.3.4 (*Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program*)). I conclude none of the above mitigating conditions apply. Applicant has a history of alcohol dependence. He has been diagnosed and treated for his alcohol dependence, and he has slowed down his drinking, but has relapsed nonetheless. He has made some positive changes in his behavior, but continues to drink and has not made a lifetime commitment to sobriety. He infrequently attends AA and has no other formal support group that he attends for his alcoholism. He claims he does not intend on being involved with alcohol in the future, but has a somewhat weak commitment to abstinence. I find he has failed to mitigate the alcohol consumption security concern under Guideline G.

The Whole Person Analysis

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered the whole person. I have considered that Applicant was unaware of his financial problems for a period, however, when he became aware of them he did not act to resolve them. I have considered Applicant's alcohol consumption history and the progress he has made in reducing his consumption. However, he was diagnosed as alcohol dependent and continues to consume alcohol despite the diagnosis and advice to abstain. I considered the circumstances around the statement Applicant made on his security clearance application and to the investigator. I find he did not falsify his statements. I am persuaded by the totality of the evidence that Applicant successfully mitigated the security concerns under Guideline E, personal conduct, but failed to mitigate the security concerns under Guideline F, financial considerations, and Guideline G, alcohol consumption. Therefore, I find that it is not clearly consistent with the national interest to grant Applicant a security clearance.

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: 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

Subparagraph 1.h: Against Applicant

Subparagraph 1.I: Against Applicant

Paragraph 2. Guideline G: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Paragraph 3. Guideline E: FOR APPLICANT

Subparagraph 3.a: For Applicant

Subparagraph 3.b: For Applicant

Subparagraph 3.c: For Applicant

Subparagraph 3.d: For Applicant

Subparagraph 3.e: For 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.

Carol G. Ricciardello

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960) as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. GE 6, 7 and 8.
4. GE 6.
5. *Id.*
6. *Id.*
7. GE 7.
8. Tr. 43-44.
9. *Id.*
10. *Id.*
11. GE 8.
12. Tr. 42.
13. Tr. 42-43.

14. Tr. 61.
15. Tr. 61-63.
16. Tr. 59-60.
17. Tr. 67.
18. Tr. 61.
19. Tr. 63, 69.
20. GE 8.
21. *Id.*
22. ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).
23. ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
24. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
25. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
26. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
27. *Egan*, 484 U.S. at 531.
28. *Id.*
29. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
30. Executive Order 10865 § 7.