

DATE: November 27, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 06-13613

DECISION OF ADMINISTRATIVE JUDGE

JACQUELINE T. WILLIAMS

APPEARANCES

FOR GOVERNMENT

J. Theodore Hammer, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 46 years old and employed as a paint foreman for the same defense contractor for more than 26 years. Applicant has a history of not meeting his financial obligations. His five outstanding delinquent debts total approximately \$10,412. He falsified two questions on his security clearance application. Applicant has not mitigated the financial considerations and personal conduct security concerns. Clearance is denied.

STATEMENT OF THE CASE

On June 29, 2004, Applicant applied for a security clearance and completed a Security Clearance Application (SF 86). [\(1\)](#) On July 26, 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 written statement, dated August 14, 2006, Applicant requested an in-person hearing. The case was assigned to me on September 6, 2006. The Notice of Hearing was issued on October 6, 2006, scheduling the hearing for October 24, 2006. The hearing was conducted as scheduled. The transcript (Tr.) was received on November 2, 2006. The record was left open through November 4, 2006, to allow Applicant to submit additional documents. Applicant did not submit any documents.

FINDINGS OF FACT

Applicant admitted the factual allegations pertaining to financial consideration under Guideline F, subparagraphs 1.a

through 1.c, and 1.e, and denied subparagraph 1.d. Applicant 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 46 years old and currently employed by a defense contractor as a paint foreman. Since September 1980, he has been employed by the same defense contractor in various jobs. He has held a security clearance since September 1981. Applicant has two years of college. He is twice divorced, and his second marriage was from 1983 to 2003. He divorced his first wife after 10 years of marriage, and their minor child lives with his first ex-wife.⁽²⁾ Applicant routinely and timely makes child support payments of approximately \$336 every two weeks.⁽³⁾

A credit bureau report, dated June 20, 2006, which serves as the basis for the allegations in the SOR, indicates Applicant has five delinquent debts, totaling approximately \$10,412. The debts at issue are as follows:

¶ **1.a/Check Mart (\$389)** This debt was incurred as a loan in 2003.⁽⁴⁾ At one time, the creditor indicated it would accept \$197 to settle this account.⁽⁵⁾ Applicant testified that he sent in a money order for this debt, and his receipt was at home. He was given the opportunity to submit it by November 4, 2006. Applicant provided no evidence to refute this debt. Account was placed for collection, and matured into a judgment.⁽⁶⁾ **This debt has not been paid.**

¶ **1.b/TV bill (\$344)** This debt was incurred during his second marriage, and he assumed payment for it as part of the divorce.⁽⁷⁾ Applicant provided no evidence to refute this debt. Account was placed for collection. **This debt has not been paid.**

¶ **1.c/Cell phone (\$862)** This debt was incurred during his second marriage. Applicant testified that "it's not paid off, but I pay on it. I don't pay a lot on it, but I pay some on it."⁽⁸⁾ Applicant provided no evidence to refute this debt. Account was placed for collection. **This debt has not been paid.**

¶ **1.d/WFFINACCPT (\$8,446)** Applicant initially denied responsibility for this debt in the SOR. At the hearing, he recalled this debt is for an auto loan.⁽⁹⁾ His second ex-wife's son purchased a car and Applicant co-signed the loan. Due to lack of payments, the car was returned to the dealer.⁽¹⁰⁾ He has not been in touch with his stepson or ex-wife regarding this debt. He had the opportunity to present evidence in the record by November 4, 2006, but he chose not to do so. **This debt has not been paid.**

¶ **1.e/FHUTCREDAD (\$371)** This debt was incurred for wall paintings during his second marriage. This debt has been outstanding since 2001 or 2002.⁽¹¹⁾ Applicant testified that this debt has been paid and that he would provide the receipt; however, the record is devoid of evidence to refute this debt.⁽¹²⁾ Account was placed for collection. **This debt has not been paid.**

Other delinquent debts that are reported on his credit report, but were not alleged in the SOR, were identified at the hearing to see if they were paid off or otherwise resolved.⁽¹³⁾ Applicant is uncertain of just how much delinquent debt he has, and admitted that he is not very good at managing his money.⁽¹⁴⁾ He does not have a working budget to assist in managing his expenses, nor has he received financial counseling.⁽¹⁵⁾

When completing his SF 86 in June 2004, Applicant answered "no" to the questions regarding whether in the last seven years he had been more than 180 days delinquent on any debts or was he currently more than 90 days delinquent on any debts.⁽¹⁶⁾ In fact, he had both. He denies these allegations. Applicant testified that regarding the questions about his delinquent debt when completing the SF 86 he thought:

I am thinking okay, seven years ago, seven years back, do I have any delinquent debt, no. And I said none that I know of. All those that I have now I'm paying. And it never occurred to me that - you're going all the way back to when I pretty much started working.⁽¹⁷⁾

Applicant testified that all of the debts listed in the SOR were outstanding at the time he completed his SF 86. He contends he was mistaken in not listing them.⁽¹⁸⁾ Applicant testified that he gets paid every two weeks, and after taxes, he takes home approximately \$1500 to \$1800.⁽¹⁹⁾ If he works overtime, he could bring home an additional \$600 to \$700.⁽²⁰⁾

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.⁽²¹⁾ The government has the burden of proving controverted facts.⁽²²⁾ The burden of proof is something less than a preponderance of evidence.⁽²³⁾ 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.⁽²⁴⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽²⁵⁾

No one has a right to a security clearance⁽²⁶⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽²⁷⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽²⁸⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽²⁹⁾ 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.

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. The individual is at risk of having to engage in illegal acts to generate funds to meet financial obligations.

Applicant has a history of financial difficulties going back as far as 2001 or 2002. There are five debts totaling approximately \$10,412. Although he initially denied obligation for the debt totaling \$8,446, at the hearing he remembered that he had co-signed on a car loan for his stepson. The car was returned to the dealership, and Applicant and his family believed that the debt was no longer outstanding. 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 considerations. Applicant is totally unaware of his financial situation. He knows that he earns a salary, timely pays child support and other routine expenses, but cannot account for how he spends the rest of his money. He is in need of financial counseling and an understanding of a personal budget. The total amount of the debts in the SOR could be considered negligible. Applicant has not paid them off, but seems surprised that they are still outstanding and creditors are seeking to be paid off. Applicant probably has the financial means to pay off his debts, if he took time to pay attention to his finances. An individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Thus, none of the available Financial Considerations Mitigating Conditions applies. Applicant has not mitigated the Government's case. Accordingly, allegations 1.a through 1.e of the SOR are concluded against Applicant.

Personal Conduct

Personal conduct under Guideline E is always a security concern because it asks the central question if a 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 denied that he deliberately falsified questions in the SF 86 that asked if he had delinquent debts that were 90 or 180 days past due. Applicant knew that he had a number of debts that were delinquent. He willfully chose to answer these questions incorrectly. Thus, Personal Conduct Disqualifying Condition 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, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies.

Various conditions can mitigate security concerns arising from personal conduct. However, none of the available Personal Conduct Mitigating Conditions applies. Applicant has not mitigated the Government's case. 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. Applicant has a steady work history. He has been promoted to his position as a foreman, where he received a raise. On a positive note, he has timely and routinely paid child support. Having been married twice, after each divorce, he was responsible for paying certain debts. However, he has not fulfilled that responsibility. In fact, it appears that he thought with time, those delinquent debts would disappear. However, his creditors still want their money. With financial counseling and a working budget, Applicant could probably pay off his outstanding debts without undue hardship, considering the fact that he brings home an additional \$600 to \$700 if he works overtime. For the reasons stated, I conclude Applicant should be denied 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: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: 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. Gov. Ex. 1 (Security Clearance Application, executed June 29, 2004).
2. Tr. 14, 48.
3. *Id.* at 46-47.
4. *Id.* at 18.
5. *Id.* at 19.
6. Gov. Ex. 3 (Credit Report, dated November 14, 2005); Gov. Ex. 4 (Credit Report, dated June 20, 2006).
7. Tr. 22-23.
8. *Id.* at 23.
9. *Id.* at 28.
10. *Id.*
11. *Id.* at 31.
12. *Id.* at 31-32.
13. *Id.* at 33-42.
14. *Id.* at 42-46.
15. *Id.* at 48-59.
16. Question "38. Your Financial Delinquencies - 180 days In the last 7 years, have you been over 80 days delinquent

on any debt(s)?" and Question "39. Your Financial Delinquencies - 90 days Are you currently over 90 days delinquent on any debt(s)?"

17. Tr. 64-65.

18. *Id.* at 66.

19. *Id.* at 17, 49.

20. *Id.* at 50.

21. ISCR Case No. 96-0277 (July 11, 1997) at 2.

22. ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.

23. *Dep't of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

24. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.

25. ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.

26. *Egan*, 484 U.S. at 531.

27. *Id.*

28. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

29. Executive Order 10865 § 7.