

DATE: October 15, 2007

In re:)
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 -----) ISCR Case No. 06-25064
 SSN: -----)
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 Applicant for Security Clearance)
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**DECISION OF ADMINISTRATIVE JUDGE
PHILIP S. HOWE**

APPEARANCES

FOR GOVERNMENT

Caroline Jeffreys, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 37 years old, and works for a defense contractor. He has multiple delinquent debts which he has not paid or resolved. He deliberately failed to disclose the delinquent debts on his security clearance application. Applicant failed to mitigate the financial considerations and personal conduct security concerns. 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 March 30, 2007, DOHA issued a Statement of Reasons¹ (SOR) detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. Applicant answered the SOR in writing on May 7, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on June 21, 2007. On July 26, 2007, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. Applicant was given additional time to submit other exhibits, but failed to do so. DOHA received the hearing transcript (Tr.) on August 8, 2007.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. He admitted all allegations except Subparagraphs 1.u, 1.x, 1.ff, and 1.pp. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 37 years old, unmarried, and works for a defense contractor as a production control dispatcher. He earns about \$2,400 monthly. He lives with his mother and aunt, and shares the rent on their apartment. He gives his mother \$100 to \$200 monthly. He has no credit cards except for the business credit card used for business purposes. He drives a 2006 car purchased new, which is titled in his mother's name because of his poor credit history. The cost, with all finance charges included, is about \$20,000. He pays \$500 monthly on the car. He has about \$300 to \$400 each month available to repay debts. (Tr. 13-21, 64, 76)

Applicant has 42 delinquent debts totaling \$58,076. Of these debts, 12 debts are under \$100 and total \$881. These debts, in addition to another 24 delinquent debts alleged in the SOR which are under \$1,000, total \$11,959. The remaining 6 delinquent debts total about \$46,000. Applicant has not paid or arranged installment payments on any of this delinquent debt. He pays his current bills, and admits he does not care about paying his delinquent debts, and "just has not done anything" about contacting the creditors to make payments. He is waiting for them to contact him. He moved three or four times while incurring these debts. His interview with a Government investigator was in June 2006, and he learned then of the magnitude of his delinquent debts. After that interview he took no action to pay these debts. Applicant is paying \$50 monthly to the Internal Revenue Service on a tax debt by garnishment, which he should complete by the end of 2008. Applicant was on disability for four months in 2004, after being injured on his job. Later, he was disabled from August 2005 to December 2005. (Tr. 19, 23-67, 72-75, 85; Exhibits 2-4)

¹Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).

The following debts of Applicant are alleged in the SOR and remain unpaid or otherwise unresolved.

1.a. \$804 electric bill	Unpaid, Tr. 23-25; Exhibits 2-4
1.b. \$100 medical bill from accident	Unpaid, Tr. 25, 26; Exhibits 2-4
1.c. \$650 television service	Unpaid, Tr. 27, 28; Exhibits 2-4
1.d. \$534 cell phone service	Unpaid, Tr. 28-31; Exhibits 2-4
1.e. \$7,306 car purchase debt	Co-signer for cousin, unpaid, Tr. 31-33; Exhibits 2-4
1.f. \$320 for check not paid	Unpaid, Tr. 33, 34; Exhibits 2-4
1.g. \$3,980 for auto purchase, car returned	Unpaid, Tr. 34-37; Exhibits 2-4
1.h. \$241 for check loan	Unpaid, Tr. 37-39; Exhibits 2-4
1.i. \$612, Applicant uncertain of debt	Unpaid, Tr. 39-41; Exhibits 2-4
1.j. \$205 for cell phone service	Unpaid, Tr. 41; Exhibits 2-4
1.k. \$230 for rented video tapes	Unpaid, Tr. 41-43; Exhibits 2-4
1.l. \$514 for cell phone service	Unpaid, Tr. 43, 44; Exhibits 2-4
1.m. \$285 for a medical debt	Unpaid, Tr. 44, 45; Exhibits 2-4
1.n. \$805 for a medical debt	Unpaid, Tr. 46, 47; Exhibits 2-4
1.o. \$602 for a cable television bill	Unpaid, Tr. 47, 48; Exhibits 2-4
1.p. \$627 for telephone bill	Unpaid, Tr. 48, 49; Exhibits 2-4
1.q. \$75 for magazine subscriptions	Unpaid, Tr. 49, 50; Exhibits 2-4
1.r. \$150 judgment from 2004	Unpaid, Tr. 50, 51; Exhibits 2-4
1.s. \$51 for medical debt	Unpaid, Tr. 51, 52; Exhibits 2-4
1.t. \$146 for telephone bill which Applicant claims is the same as 1.p.	Unpaid, Tr. 52, 53; Exhibits 2-4
1.u. \$499 for 2004 judgment on apartment rent	Unpaid, Tr. 53-56; Exhibits 2-4
1.v. \$391 for telephone bill	Unpaid, Tr. 56, 57; Exhibits 2-4
1.w. \$15 for a medical bill	Unpaid, Tr. 57; Exhibits 2-4
1.x. \$1,600 for a 2003 judgment for apartment rent which Applicant claims is the same as 1.u.	Unpaid, Tr. 53-56; Exhibits 2-4

1.y. \$322 for 2003 collection account	Unpaid, Tr. 57; Exhibits 2-4
1.z. \$425 for 2003 telephone debt which Applicant claims is the same as 1.v.	Unpaid, Tr. 58; Exhibits 2-4
1.aa-1.ee, and 1.hh-1.jj \$640 total, for checks written on joint account with former girlfriend containing insufficient funds	Unpaid, Tr. 58-62; Exhibits 2-4
1. ff. \$685 for a debt about which Applicant is uncertain	Unpaid, Tr. 60, 61; Exhibits 2-4
1.gg. \$343 for 2003 electric bill	Unpaid, Tr. 60, 61; Exhibits 2-4
1.kk. \$153 for a medical debt from 2001	Unpaid, Tr. 62; Exhibits 2-4
1.ll. \$19,411 for the debt on a repossessed automobile	Unpaid, Tr. 63, 64; Exhibits 2-4
1.mm. \$12,649 for the same repossessed automobile	Unpaid, Tr. 63, 64; Exhibits 2-4
1.nn. \$1,171 for a 2000 judgment Applicant claims was repaid by garnishment, but has no documents to prove his claim	Unpaid, Tr. 64-66; Exhibits 2-4
1.oo. \$777 for a cellular telephone bill from February 2000	Unpaid, Tr. 66, 67; Exhibits 2-4
1.pp. \$758 for a debt about which Applicant is uncertain, but he has not taken any action to dispute or verify	Unpaid, Tr. 67; Exhibits 2-4

Applicant completed a security clearance application (SCA) on February 13, 2006. He deliberately failed to disclose in four blocks of questions the information concerning his personal finances and credit history as requested on the SCA. Applicant did not disclose any repossessions in the past seven years in answer to Question 27B, omitting the automobile repossessions on his credit record. Next, he failed to disclose the four judgments against him in answer to Question 27D listed in the SOR. Then, Applicant failed to disclose his financial delinquencies older than 180 days in the past seven years in answer to Question 28A. These delinquencies are listed in the SOR. Finally, Applicant failed to list any current debts over 90 days delinquent as requested in Question 28B, as listed in the SOR. Applicant has prior military service and had a secret clearance on active duty. He completed similar forms in the past and knew what information was required. He claims he submitted the SCA before he had an accurate list of debts, and relied on someone who told him to tell the Government investigator what his debts were but not list them on the SCA. Applicant knew he had delinquent debts. Applicant's Answer to the SOR admits he deliberately falsified his SCA answers. (Tr. 68, 69; Exhibits 1-4)

Applicant submitted three character reference letters. The writers view him as a very dependable, reliable, and conscientious employee. Applicant received the 2006 company award for customer satisfaction. (Exhibits A-C)

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. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information with Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 pertinent 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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "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* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline F: Financial Considerations: The Concern: Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which could raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes, including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

Guideline E: Personal Conduct: The Concern: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

CONCLUSIONS

Financial Considerations: Applicant has unpaid debts dating from 2000. He has undertaken no efforts to establish repayment plans for any of the debts. Instead, after moving three or four times and failing to inform his creditors of his latest address, he waits for them to find him and send collection letters. There are several debts of small amounts under either \$100 or \$1,000 that he could have repaid in the past year to show he was trying to fulfill his obligations, but he did nothing about repayment even after meeting with the Government investigator in June 2006. Furthermore, he has a series of checks written on his account for which there were insufficient funds to pay the checks when submitted to his bank, all of which remain unresolved.

The Disqualifying Conditions (DC) applicable are Financial Considerations Disqualifying Condition ¶19.a. (inability or unwillingness to satisfy debts), ¶19.b. (indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt), ¶19.c. (a history of not meeting financial obligations), and ¶19.d. (deceptive or illegal financial practices such as check fraud).

Based on the evidence introduced at the hearing, and Applicant's admissions, there are no Mitigating Conditions (MC) applicable. Applicant has done nothing about repaying or resolving any of the debts listed in the SOR. He failed to meet his burden of proof that any MC are applicable.

Personal Conduct: DC ¶16.a (involving deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, or determine trustworthiness) applies. Applicant knew he had delinquent debts, had experience completing a SCA, and yet provided false answers about his finances to Questions 27 and 28.

There are no MC applicable. Applicant was confronted by the Government investigator in the interview before making full disclosure about his debts. He provided no evidence that he relied on the advice of authorized personnel or legal counsel in making his answer, even though he was given additional time to submit more exhibits. These omissions were substantial. Applicant failed to meet his burden of proof that any ¶17 MC are applicable.

Whole Person Analysis

“The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance.” AG ¶ 2(a). “Each security clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy.” Directive ¶ 6.3. “Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.” AG ¶ 2(a). In evaluating Applicant's case, I have considered the adjudicative process factors listed in the AG ¶ 2(a).

Under this concept, Applicant's conduct is serious and continuous. He knew what he was doing when he incurred the debts and then deliberately refused to take any action to repay them. He displayed a consistent pattern of incurring debts and not repaying them. He was over 30 years of age when this conduct occurred, so he was mature and knew what he was doing. His actions were voluntary, and any justification he gave about debts incurred while on disability are not persuasive. He continued to have an income during that period. He could have paid the debts instead of ignoring them. There is potential for coercion or duress with this volume of delinquent debts. With his pattern of behavior on debts, it is likely it will recur in the future. He demonstrated by all his actions related to his debts that he lacks good judgment, lacks self-control by incurring additional debt before repaying older debt, and is not reliable.

After considering all of the evidence, I conclude the financial considerations security concern against Applicant. I also conclude the personal conduct security concern against Applicant. Finally, the “whole person concept” I conclude against Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

 Subparagraph 1.a to 1.pp: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

 Subparagraph 2.a to 2.d: Against Applicant

DECISION

In light of all of 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.

Philip S. Howe
Administrative Judge