

SYNOPSIS

Applicant, a 25 year old engineer, employed since his graduation in 2005 mitigated security concerns arising from youthful criminal conduct four to eight years ago while in high school and college by the passage of time and evidence of successful rehabilitation. He also mitigated financial security concerns arising from less than \$4,000 in delinquent debts. He earns \$55,000 per year since his graduation. He paid one of the major debts six months before the hearing and entered negotiation for the remaining two which now total less than \$3,000. He also mitigated allegation of failure to report as use of an alias the use of a friend's drivers license without his permission when his own license was suspended. He credibly established that this was not a deliberate omission. Clearance is granted.

STATEMENT OF CASE

_____ On August 31, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, 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, 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.

On September 18, 2006, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to me on January 8, 2007. A notice of hearing was issued on January 10, 2007, for a hearing on January 26, 2007, and held that day. The government and Applicant each offered nine exhibits into evidence, and all were accepted. The record was left open for 30 days. Applicant offered three additional exhibits that were admitted without objection. The transcript was received on February 6, 2007

FINDINGS OF FACT

_____ Applicant admitted some and denied some of the SOR allegations relating to criminal conduct, delinquent debts, and personal conduct with explanatory information for all. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 25-year-old engineer who has worked for a major defense contractor since August 2005 after he graduated from a leading U.S. engineering school with an outstanding academic record. He had a double major in aerospace engineering and physics and is working on a masters degree while being employed full time. He intends to get a Ph.D.

Applicant had drug arrests involving possession of marijuana in 1998 when he was 17 years old and in 2002 when he was 21. The later arrest also involved use of another person's drivers licence and placing false information on official documents. He admitted both these arrests and incidents. He paid fines for both matters (Exh. G). He was also arrested in 1999 when he was 18 and

charged with aggravated assault, resisting arrest, making “terroristic threats” and disorderly conduct. This incident grew out of a dispute with a girl friend whom he threatened to kill. He plead and was fined \$253 for one count of resisting arrest.

Applicant was alleged in the SOR to have four delinquent debts totaling nearly \$4,000 incurred during his student years. He is contesting the smallest debt of \$102 for a telephone bill (SOR ¶ 1.2.a.) but will pay the debt if it cannot be resolved. He has been in contact with the credit card creditors for two delinquent debts of \$1,849 and \$877 (SOR ¶ 1.b and c.) He paid the fourth delinquent debt of \$1,452 (SOR ¶ 1.d.) six months before the hearing (Exh. E). He has paid several

other delinquent debts including fines and court costs not alleged in the SOR over the past years both before and since his present employment. These amounted to several thousand dollars in excess of those alleged in this matter (Exhs. 7, E, and I).

Applicant used a friend’s drivers license without his permission in connection with his 2002 arrest (SOR 1.a.). He did not have a valid license at that time because his had been suspended for traffic violations. He did not state this use of another’s name on his Electronic Questionnaire for Investigations (e-QIP) processing for a security clearance in 2005 in response to a question about using names other than his own as an alias as he did not interpret this conduct as using an “alias”.

Applicant’s background indicates a long struggle with family adversity. He and his brother were principal care-givers for their mother who was a single mother who suffered from mental problems. They literally raised themselves. Applicant had behavioral difficulties in his youth with anger and authority figures. He dropped out of high school in his senior year but obtained his GED and was admitted to college through a state sponsored special program for educationally and financially disadvantaged students who show promise. Both he and his brother are graduate engineers and excelled even beyond the program’s expectations. Both have radically changed their life-style and have promising careers ahead of them (Exhibit C Post hearing submission).

The annual salary of Applicant is \$55,000. He has no dependents but continues to provide financial assistance to his mother. His financial obligations consist primarily of monthly rent of \$825 and payments on a three year old auto of \$512 per month. He has school loans that are deferred pending completion of his graduate studies. He has adequate funds to resolve his remaining outstanding delinquent debts and is in the process of doing so. He has been in touch with financial counseling services but has not yet engaged their services (Exh. B Post hearing submission).

_____ Applicant is highly regarded by his supervisor (Exh. C) who deem him to be an excellent and well motivated employee. His academic supervisors and deans at his university submitted strong character and professional recommendations for him extolling his record of achievement, motivation, and good character (Exhs. A, B, and Post hearing submission C). In addition to his graduate studies, he serves as a tutor for other students at his university.

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 applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating it is clearly consistent with the national interest to grant or continue a security 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 adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

Security concerns were raised under Guideline J (Criminal Conduct) over the three arrests that occurred four to eight years ago. The allegations could be mitigated by the fact that the criminal behavior was not recent (E2.A10.1.3.1.), the factors leading to the violations are not likely to recur (E2.A10.1.3.4), and there is clear evidence of successful rehabilitation (E2.A10.3.6.). He acknowledged his responsibility for the offenses, paid fines and has since changed his life style and no longer associates with the same people with whom he knew during that period. I conclude Applicant’s behavior and is mitigated by the passage of time, his lack of contact with those with whom he knew in college and his successful rehabilitation.

Applicant’s four delinquent debts prompted the allegation of security concern under Guideline F since 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) include the fact that the conditions that resulted in the behavior were largely beyond the person’s control (E2.A6.1.3.3.), 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 (E2.A6.1.3.4.), and the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.).

The evidence that the debts resulted from conditions beyond his control include the fact that they accumulated during his youthful student days when he had limited income, financial requirements, and more credit cards than he could manage. He has repaid one of the two largest delinquent debts as well as other large debts he incurred in his college years. He has not engaged credit counseling although he indicated he had a need for those services at the hearing and in his Post Hearing submission Exh. B. He has been in touch with credit counselors but has not finalized their services. He intends to do so no matter the outcome of this matter because he recognizes that he needs to achieve a good credit rating for future endeavors.

Applicant acknowledged having made financial mistakes and agreed that he must resolve the remaining debts. He has initiated good faith efforts to repay the creditors and has reduced the delinquent debt substantially with only approximately \$2,700 remaining to two creditors with efforts to settle or pay those.

Applicant's failure to report his use of another person's drivers license when he was 21 years old as his use of an alias on his e-QIP raised 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.)

While the arrest relating to drug possession and use of a false drivers license in 2002 were serious offenses for someone who had reached maturity, he was found guilty and punished for them (Exh. 7). Whether he should have realized that the use of the improperly obtained drivers license in 2002 would be deemed by the government as use of an "alias" when filling out his form is problematic. I find his testimony that he had no intent to falsify to be credible (Tr. 66-67). Thus, I conclude that the omission of an admission about use of an alias on the application was not deliberate as required by the guideline and thus mitigated.

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 established that he is now a hard-working professional whose juvenile conduct several years ago is now behind him. His debts accumulated during his student days to the point that he had lost control and account of them but will resolve them satisfactorily now that he has the financial means to do so. The impressive submissions from his corporate supervisor and his advisors at his university speak extremely well of him as a person of growth and character.

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 a security clearance should be granted.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

_____ Paragraph 1. Guideline J:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	For Applicant
_____ Subparagraph 1.c.:	For Applicant
_____ Paragraph 2. Guideline F:	FOR APPLICANT
Subparagraph 2.a.:	For Applicant
Subparagraph 2.b.:	For Applicant
Subparagraph 2.c.:	For Applicant
Subparagraph 2.d.:	For Applicant
_____ Paragraph 3. Guideline E:	FOR APPLICANT
_____ Subparagraph 3.a.:	For Applicant
_____ Subparagraph 3.b.:	For 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 renew a security clearance for Applicant. Clearance is denied.

Charles D. Ablard
Administrative Judge