

KEYWORD: Personal Conduct; Criminal Conduct

DIGEST: Applicant's deliberate falsification of his clearance applications and his financial irresponsibility render him unsuitable for access to classified information. Clearance denied.

CASENO: 06-26104.h1

DATE: 07/30/2007

DATE: July 30, 2007

In Re:	)	
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	)	
-----	)	ISCR Case No. 06-26104
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
JOHN GRATTAN METZ, JR**

**APPEARANCES**

**FOR GOVERNMENT**

Francisco J. Mendez, Jr., Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's deliberate falsification of his clearance applications and his financial irresponsibility render him unsuitable for access to classified information. Clearance denied.

## STATEMENT OF THE CASE

Applicant challenges the 23 April 2007 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of personal conduct and financial considerations.<sup>1</sup> Applicant answered the SOR 14 May 2007, and requested a hearing. DOHA assigned the case to me 12 June 2007, and I convened a hearing 28 June 2007. DOHA received the transcript (Tr.) 10 July 2007.

## FINDINGS OF FACT

Applicant admitted the SOR allegations of deliberately falsifying two security clearance applications in ¶1, but denied the allegations of financial delinquencies in ¶2, except for ¶2.e. Accordingly, I incorporate his admissions as findings of fact.

Applicant—a 45-year-old security guard employed by a defense contractor since September 2005—seeks to retain the access to classified information he has had, as needed, since approximately 1982.

When Applicant completed clearance applications in December 1993 (G.E. 1), July 1999 (G.E. 2), and April 2001 (G.E. 3), he truthfully disclosed an April 1992 arrest for felony assault with a deadly weapon—charges which were ultimately dropped. He failed to list this arrest on his September 2005 clearance application, which he attributes to an oversight.

When Applicant completed clearance applications in July 1999 and April 2001, he failed to disclose two automobile repossessions within the last seven years—in November 1995 and January 1996. In his September 2005 clearance application, he failed to disclose delinquent accounts. He has offered no credible explanation why he failed to disclose his financial difficulties, as he was aware on all three occasions that he had negative financial information required to be disclosed on the applications. In particular, he had been interviewed in May and June 2000 about the repossessions as part of the background investigation begun in July 1999. That investigation terminated in June 2000, when Applicant no longer needed a clearance in his job (G.E. 5).

Applicant has a history of financial difficulties dating to at least November 1995, when his first automobile was repossessed. Applicant purchased the automobile in June 1994, failed to make the first payment on time, and ultimately was unable to keep up with the payments. The automobile was repossessed in November 1995 and sold in March 1996, resulting in a deficiency balance of nearly \$6,600, which remains unpaid. After the November repossession, Applicant bought a second automobile in January 1996, which he considered to be a lemon, although he never pursued lemon law or other consumer protection complaints against the seller. He surrendered the automobile voluntarily in August 1996, and the seller reported a deficiency of over \$9,000. When Applicant was interviewed about these accounts in May and June 2000, he stated that he had not made payment on

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<sup>1</sup>Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended and modified—most recently in August 2006 (Directive).

either of the debts (G.E. 5). He reported nearly \$800 per month negative cash flow based on his regular salary, but did not feel that he was over-extended because he frequently worked overtime.

Applicant married in February 2002. He and his wife had difficulty managing their finances and eventually fell delinquent on several accounts, including the mortgage on a house they bought in August 2003. Applicant acknowledged (Tr. 40-41) that they sometimes spent money on frivolous things and did not utilize a budget.

When Applicant was interviewed about his clearance in April 2006 (G.E. 5), he acknowledged three delinquent accounts (SOR 2.b., 2.c., and 2.d.), as well as several medical collection accounts (SOR 2.a.). He explained that he and his wife bought a home in August 2003 for \$178,000 and refinanced it in 2004 for \$192,000, but he had experienced a brief period of unemployment in February 2005, resulting in the delinquent accounts. He acknowledged receiving dunning letters and telephone calls from his creditors, but did not have the funds to repay them. Although he intended to repay his creditors when he was able, he had no specific plan for addressing his debts, even though he knew that his job might be in jeopardy. Indeed, he took no steps to repay his creditors until after he received DOHA interrogatories in February 2007 (G.E. 7). Those interrogatories showed Applicant having \$125 per month negative cash flow. In the wake of those interrogatories, Applicant again refinanced his home, using cash out to pay all of the debts alleged in the SOR (.A.E. A), except 2.e., which remains unpaid because the creditor had archived his records and not yet been able to retrieve them (Tr. 38). He was not able to refinance his home any earlier because of his low credit score (Tr. 37). Although the mortgage company offered him credit counseling along with the refinancing, Applicant declined because he believes his wife was responsible for most of his financial difficulties (Tr. 74-75).

Applicant's supervisor considers him an honest employee and recommends him for his clearance (Tr. 92-95). He does not appear to be aware of Applicant's financial difficulties or his falsification of his clearance applications.

### **POLICIES AND BURDEN OF PROOF**

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are guidelines E (Personal Conduct) and F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute,

extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>2</sup>

## CONCLUSIONS

The government established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns, except for ¶1. a.. Having previously disclosed his April 1992 arrest on several earlier clearance applications, it is unlikely he deliberately omitted this arrest from his September 2005 clearance application. Further, the circumstances and disposition of that arrest were no longer relevant or material to a clearance determination in 2005. However, Applicant knew he had adverse financial information that should have been reported on clearance applications in July 1999, April 2001, and September 2005. He has offered no credible explanation for his failure to disclose that information. I conclude he deliberately concealed the nature and extent of his financial problems on his clearance applications.<sup>3</sup> In addition, none of the Guideline E mitigating conditions apply. The concealed information was relevant to a clearance decision. I conclude Guideline E against Applicant.

The government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Government records reflect nearly \$13,000 of delinquent debt acquired between November 1995 and April 2005.<sup>4</sup> Applicant attributes most of his financial problems to his wife, yet many of the debts were accrued before he married. Further, he experienced financial difficulties while he was in the military. While his unemployment in 2005 may have affected his finances some, it is clear the majority of his financial problems are attributable to his inability to live within his means, his unwillingness to seek and utilize financial counseling, and his failure to establish any financial cushion for unforeseen expenses.

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<sup>2</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>3</sup>¶16.(a) 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, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

<sup>4</sup>¶19.(a) inability or unwillingness to satisfy debts; (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; (c) a history of not meeting financial obligations; . . . (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple;<sup>5</sup> indeed they may be ongoing. Applicant has not established that his debts were due to circumstances beyond his control, or that he has acted responsibly in addressing his debts.<sup>6</sup> There is no evidence that he has sought credit counseling or otherwise brought the problem under control.<sup>7</sup> Although he refinanced his home and paid the majority of his outstanding debts just before the SOR was issued, the timing of the payments does not constitute a good-faith effort to satisfy his debts.<sup>8</sup> Further, given his unwillingness to seek or use financial counseling, there is nothing in the record to suggest that Applicant will put his financial problem behind him. I conclude Guideline F against Applicant.

### **FORMAL FINDINGS**

Paragraph 1. Guideline E:      **AGAINST APPLICANT**

    Subparagraph a:      For Applicant  
    Subparagraph b:      Against Applicant  
    Subparagraph c:      Against Applicant

Paragraph 2. Guideline F:      **AGAINST APPLICANT**

    Subparagraph a:      Against Applicant  
    Subparagraph b:      Against Applicant  
    Subparagraph c:      Against Applicant  
    Subparagraph d:      Against Applicant  
    Subparagraph e:      Against Applicant

### **DECISION**

In light of all 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 denied

**John G. Metz, Jr.**  
**Administrative Judge**

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<sup>5</sup>¶20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

<sup>6</sup>¶20.(b) the conditions that resulted in the financial problem were largely beyond the person’s control . . . and the individual acted responsibly under the circumstances;

<sup>7</sup>¶20.(c) 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;

<sup>8</sup>¶20.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.