

DATE: October 26, 2007

In re:)
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 -----) ISCR Case No. 06-00021
 SSN: -----)
)
 Applicant for Security Clearance)
)
)

**DECISION OF ADMINISTRATIVE JUDGE
MARC E. CURRY**

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

_____ Applicant's history of excessive alcohol consumption and financial management problems have resulted in six convictions for driving while intoxicated and the accrual of approximately \$33,000 in delinquent debt. He intentionally omitted this information from a security clearance application in 2004. These issues generate security concerns that he failed to mitigate. Clearance is denied.

STATEMENT OF THE CASE

On February 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a statement of reasons (SOR) explaining why it was not clearly consistent with the national interest to grant or continue a security clearance. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended. DOHA received Applicant's answer and request for a hearing on March 19, 2007.

The case was assigned to me on August 20, 2007. DOHA issued a notice of hearing on August 31, 2007, scheduling it for September 13, 2007. Applicant waived his right to 15 days notice of the hearing. During the hearing, I received 14 government exhibits and Applicant's testimony. The record was left open at Applicant's request to allow him an opportunity to submit exhibits that he had been unable to obtain in advance of the hearing. Within the time allotted, he submitted one exhibit that was admitted into the record. DOHA received the transcript on September 24, 2007.

FINDINGS OF FACT

_____ Applicant admitted all of SOR Paragraphs 1 and 2 except subparagraphs 1.d, 1.e, and 1.g. He did not answer Paragraph 3. I have construed his non-answer as a general denial. The SOR admissions are incorporated into the findings of fact. In addition, I make the following findings of fact.

Applicant is a 51-year-old single man. His three past marriages ended in divorce, and he has no children. He earned two years of college credits and completed electrician's trade school.¹

Applicant is a supervisory electrician who works on classified electronic systems for a defense contractor.² According to his supervisor, he is "an excellent employee with good technical ability and excellent attendance."³ He has worked for the same employer for 30 years. He has held a clearance intermittently since 1987.⁴

Between 1979 and 1991, Applicant was arrested and charged six times with driving under the influence of alcohol (DUI).⁵ The 1979 charge was dismissed and the remainder resulted in convictions. During this period, Applicant was a heavy drinker, consuming approximately 10 beers per week and frequently getting intoxicated.⁶

After his sixth conviction, in 1991, the court placed him under two years of supervised probation, ordered him to attend alcoholic's anonymous (AA) sessions, and participate in alcohol

¹Tr. 26.

²Tr. 27.

³Exhibit A.

⁴Exhibit 7.

⁵Exhibit 9.

⁶Exhibit 3 at 2.

abuse treatment.⁷ Applicant stopped drinking alcohol in March 1992, promising never to drink it again.⁸

On November 17, 1993, the government issued a statement of reasons alleging that his history of alcohol-related arrests and alcohol consumption rendered him a security risk. After considering the record evidence, a DOHA administrative judge revoked Applicant's clearance in November 1994.⁹

Applicant continued to abstain from alcohol consumption for another eight years.¹⁰ At some point during this time, he reapplied for a clearance, and his application was granted.¹¹

Applicant resumed drinking alcohol in approximately 2002. On the afternoon of June 25, 2003, the car Applicant was driving collided with another vehicle. He was intoxicated.¹² Subsequently, the police charged him with DUI. On May 27, 2004, he pleaded guilty, and was sentenced to 45 days in jail, ordered to participate in one year of counseling, and placed on probation for five years.¹³ He attended the counseling, as ordered, and remains on probation.

Applicant owes nine creditors approximately \$33,000. The debt includes the deficiency owed from a car repossession (SOR subparagraph 1.a) and one that resulted from an adverse civil judgment relating to Applicant's 2003 car accident (SOR subparagraph 1.c). The remainder are owed to credit card companies. A tenth delinquency is alleged in SOR subparagraph 1.e. It alleges a \$57 delinquency resulting from a bounced check. Applicant satisfied this in 1994.¹⁴

All of the other debts are delinquent. According to Applicant, they accrued because “. . . one thing led to another . . . and [he] couldn't afford to pay them.”¹⁵

In 2005, Applicant consulted a credit agency to help him get his delinquencies charged off his credit report, and enable him to purchase a home.¹⁶ The credit agency's efforts were unsuccessful, and Applicant was unable to purchase the home.¹⁷

⁷See note 5 at 2.

⁸Exhibit 6 at 1.

⁹Exhibit 9.

¹⁰Tr. 49.

¹¹Tr. 55, 56.

¹²Tr. 59.

¹³Answer; Tr. 35.

¹⁴Exhibit 11 at 5.

¹⁵Tr. 32.

¹⁶Tr. 40.

¹⁷Tr.42.

On January 28, 2004, Applicant executed a security clearance application (SF 86). He was required to disclose whether he had been arrested, charged or convicted in the past seven years, whether he had ever been charged or convicted of a felony or an alcohol-related offense, and whether any criminal charges were currently pending. He neither disclosed his past DUI convictions, nor the 2003 charge, which was pending when he completed the application.

The application also required Applicant to disclose whether he had ever been more than 180 days delinquent on any debts, and whether he was currently 90 days delinquent on any debts. Applicant did not disclose any of his delinquencies, either.

In response to cross-examination questions, Applicant stated he omitted the information because he “got nervous,” and the questions “threw him off.”¹⁸ This is not the first time Applicant has completed a security clearance application.¹⁹

POLICIES

The adjudicative guidelines, as revised December 29, 2005, and implemented September 1, 2006, apply to the analysis of this case. In addition to brief introductory explanations for each guideline, they are divided into those that may be considered in deciding whether to deny or revoke an individual’s eligibility for access to classified information (disqualifying conditions) and those that may be considered in deciding whether to grant an individual’s eligibility for access to classified information (mitigating conditions).

Because the entire process is a scrutiny of a number of variables known as the “whole person concept,” all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. Specifically these are: (1) the nature and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the age of the applicant; (5) the extent to which the participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is “clearly consistent with the national interest.”²⁰ In reaching this decision, I have drawn only those conclusions that are based on the evidence contained in the record.

The Government is responsible for presenting evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting evidence to rebut, explain, extenuate,

¹⁸Tr. 60.

¹⁹Exhibit 2, Personnel Security Questionnaire, Standard Form 49, dated March 27, 1987.

²⁰*See generally*, Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

or mitigate facts admitted by the applicant or proven by the Government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

CONCLUSIONS

Financial Considerations

“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 can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.”²¹ Here, Applicant’s history of financial problems triggers the application of Financial Considerations Disqualifying Conditions (FC DC) 19(a): *inability or unwillingness to satisfy debts*, FC DC 19(c): *a history of not meeting financial obligations*, and FC DC 19(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*.

I have considered all of the mitigating conditions and conclude none apply. Although he did consult a credit agency in 2005, his goal was to get the delinquencies charged off, not satisfied. His efforts were unsuccessful, and since then, he has not made any efforts at resolving his delinquencies. Applicant’s financial delinquencies remain a security concern.

Alcohol Consumption

“Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.”²² Here, Applicant’s history of alcohol abuse and alcohol-related arrests trigger the application of Alcohol Consumption Disqualifying Conditions (AC DC) 22 (a): *alcohol related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent*, and AC DC 22 (c): *habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent*.

I have considered all the mitigating conditions and conclude none apply. Applicant has been convicted of DUI six times in the past 25 years. The most recent occurred nine years after the government had revoked his clearance based upon alcohol consumption concerns generated by the previous DUIs. Although he completed alcohol counseling consistent with a court order, he is still on probation. Applicant has not mitigated the alcohol consumption security concerns.

Personal Conduct

“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

²¹Adjudicative Guidelines (AG) ¶ 18.

²²AG ¶ 21.

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.”²³ Here, Applicant’s SF-86 omissions trigger the issue of whether Personal Conduct (PC DC) 16 (a): *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, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*, applies. Because Applicant had completed a security clearance application in the past, his explanation for omitting the convictions and the financial delinquencies was particularly dubious.

I conclude his omissions were intentional. PC DC 16(a) applies to the security clearance application omissions without mitigation.

SOR subparagraph 3.g alleges Applicant provided false information about a vehicle inspection sticker to an investigative agent during a February 2006 interview. Applicant denied the allegation, the agent did not testify, and the government did not present any documentary corroborating evidence. I find in Applicant’s favor with respect to SOR subparagraph 3.g.

Whole Person Concept

Having lost his clearance several years ago because of security concerns generated by multiple alcohol-related charges and convictions, Applicant was well aware of the potential consequences of any future alcohol-related criminal activity. Nevertheless, he was arrested again for DUI in 2003. In addition to still being on probation for this offense, Applicant has more than \$30,000 of delinquent debt. Any reassurances he made at the hearing about changing his behavior were undermined by his security clearance application falsifications. Evaluating this case in the context of the whole person concept, I conclude Applicant has not mitigated the security concerns. Clearance is denied.

FORMAL FINDINGS

<hr style="width: 10%; margin-left: 0;"/> Paragraph 1 - Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1.j:	Against Applicant
Paragraph 2 – Guideline G:	AGAINST APPLICANT
Subparagraphs 2.a-2.i:	Against Applicant
Paragraph 3 - Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a-3.f:	Against Applicant
Subparagraph 3.g:	For Applicant

²³AG ¶ 15.

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 is denied.

Marc E. Curry
Administrative Judge