

KEYWORD: Financial Considerations; Personal Conduct; Criminal Conduct

DIGEST: Applicant has had a history of overdue debts that have not been resolved. Additionally, Applicant's credibility is suspect since he knew or should have known that the information that he provided to the Government in a Questionnaire for Public Trust Positions (QPTP) on August 24, 2004, regarding his indebtedness, was materially incorrect and incomplete. Mitigation has not been shown. Applicant's eligibility for assignment to a sensitive position is denied.

CASENO: 06-14119.h1

DATE: 07/12/2007

DATE: July 12, 2007

In Re:)	
)	
)	
-----)	ADP Case No. 06-14119
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
MARTIN H. MOGUL**

APPEARANCES

FOR GOVERNMENT
Candace Le'i, Esq., Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

Applicant has had a history of overdue debts that have not been resolved. Additionally, Applicant's credibility is suspect since he knew or should have known that the information that he provided to the Government in a Questionnaire for Public Trust Positions (QPTP) on August 24, 2004, regarding his indebtedness, was materially incorrect and incomplete. Mitigation has not been shown. Applicant's eligibility for assignment to a sensitive position is denied.

STATEMENT OF THE CASE

On August 31, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that Applicant is eligible for assignment to a sensitive position and recommended referral to an Administrative Judge to make a determination on this issue.

In a signed and sworn statement, notarized on September 20, 2006, Applicant responded to the SOR allegations (RSOR) and requested a hearing before a DOHA Administrative Judge.

On December 15, 2006, this case was assigned to another Administrative Judge to conduct a hearing and issue a written decision, but it was reassigned to this Administrative Judge on March 28, 2007. A Notice of Hearing was issued to the parties on May 29, 2007, and the hearing was conducted on June 12, 2007.

At the hearing, Department Counsel offered 11 documentary exhibits (Exhibits 1 through 11) and no witnesses were called. Applicant offered no documentary exhibits at the hearing but offered his own testimony. The transcript (Tr) was received on June 21, 2007.

FINDINGS OF FACT

In the SOR, the Government alleges concern under Adjudicative Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. The SOR contains 11 allegations, 1.a., through 1.k., under Guideline F, one allegation, 2.a., under Guideline E, and one allegation, 3.a., under Guideline J. In his RSOR, Applicant admitted SOR allegations 1.a., through 1.k., and 2.a., and denied 3.a. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the live testimony, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is 38 years old. He is unmarried, but separated, and he has two sons. Applicant is an employee of a defense contractor, and he seeks assignment to sensitive duties.

Paragraph 1 (Guideline F - Financial Considerations)

The SOR lists 11 allegations of overdue debts, 1.a. through 1.k, under Adjudicative Guideline F totaling approximately \$8,000. As stated above, Applicant's has admitted each allegation under Guideline F. No independent evidence has been introduced to indicate that any of these debts has been resolved or even reduced. The debts will be listed in the same order as they were in the SOR:

- 1.a. This overdue debt to Creditor 1 is cited in the SOR in the amount of \$1,834.
- 1.b. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$237.
- 1.c. This overdue debt to Creditor 3 is cited in the SOR in the amount of \$417.21.
- 1.d. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$279.79.
- 1.e. This overdue debt to Creditor 5 is cited in the SOR in the amount of \$1,069.
- 1.f. This overdue debt to Creditor 6 is cited in the SOR in the amount of \$167.
- 1.g. This overdue debt to Creditor 7 is cited in the SOR in the amount of \$149.
- 1.h. This overdue debt to Creditor 8 is cited in the SOR in the amount of \$2,223.
- 1.i. This overdue debt to Creditor 9 is cited in the SOR in the amount of \$450.
- 1.j. This overdue debt to Creditor 10 is cited in the SOR in the amount of \$846.21.
- 1.k. This overdue debt to Creditor 11 is cited in the SOR in the amount of \$377.

In a signed, letter signed on July 26, 2006, (Exhibit 2) which accompanied his Responses to Interrogatories (Exhibit 3) Applicant averred that he and his wife had "decided to file for bankruptcy within the next month to start over financially." He added that he is "submitting this letter as proof that I am taking action in order to resolve these credit issues." Yet at the time of the hearing he had still taken no action to resolve these debts. While he tried to he explain, that the reason he failed to take the affirmative action to resolve his debts as he described in his letter, was because he and his wife had separated, he did concede that they had separated in January of 2007, and he could give no explanation for his failing to take action from July through December of 2006.

Paragraph 2 (Guideline E - Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because when he completed a signed, sworn QPTP on August 24, 2004, he furnished untruthful information to the Government (Exhibit 1).

Question #20 asks, "Are you now over 180 days delinquent on any loan or financial

obligation? (Include loans or obligations funded or guaranteed by the Federal Government.)” Applicant answered “No” to this question. At the time he completed the QPTP, Applicant had been over 180 days delinquent on all of the debts listed above as 1.a. through 1.k.

In his testimony, Applicant claimed that he did not knowingly mislead the Government in the information that he furnished on his QPTP. He claimed that he did not read the question completely, and he stopped reading after he read the word “loan” and since he had no overdue loans, he answered “No.”

Paragraph 3 (Guideline J - Criminal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has engaged in criminal conduct. Applicant's conduct involved furnishing information to the Government in the form of a written, signed, completed questionnaire that was less than complete and truthful, as alleged in the SOR as 3.a. These misrepresentations are a violation of Federal Law, Title 18, United States Code Section 1001, a felony.

POLICIES

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information."

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in DoD 5200.2-R. "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security." DoD 5200.2-R, ¶ C6.1.1.1. Appendix 8 of the Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

As set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation

- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct

- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of alcohol abuse and criminal conduct that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future."

The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following with respect to Guidelines F, E, and J:

(Guideline F - Financial Considerations)

The Government has established its case under Guideline F. The record evidence clearly establishes Applicant's long history of indebtedness, and there is no evidence that Applicant has resolved these overdue debts.

Applicant's overall conduct pertaining to his financial obligations falls within Financial Considerations Disqualifying Condition (DC) (E2.A6.1.2.1.), and DC (E2.A6.1.2.3.), a history of not meeting financial obligations, and an inability or unwillingness to satisfy debts. I find that no

Mitigating Condition (MC) is applicable to this case.

Until Applicant makes a good-faith effort to resolve his debts, and he can establish a record of financial responsibility and stability, concerns will continue to exist under Guideline F. I resolve Guideline F against Applicant.

(Guideline E -Personal Conduct)

With respect to Guideline E, Applicant provided false material information to the Government in response to a question on the QPTP that he signed on August 24, 2004. While some questions on the QPTP may be somewhat ambiguous, Question #20 is straightforward and in plain English. I do not find it credible that he could have misread or misinterpreted this question. Applicant knew or should have known that he should have answered “Yes” to this question and included all of these debts that were more than 180 days overdue, which were 1.a. through 1.k, above.

In reviewing the DCs under Guideline E, I conclude that DC E2.A5.1.2.2. applies because the information that Applicant provided in his QPTP was known or should have been known by him to be omissions and concealment of relevant and material facts. No MCs apply.

In this case, Applicant failed to offer any independent evidence indicating that he has reformed and is now reliable and trustworthy. This precludes a finding that it is now clearly consistent with the national interest to grant him access to sensitive information. I resolve Guideline E against Applicant.

(Guideline J -Criminal Conduct)

The Government also established by substantial evidence that Applicant engaged in criminal conduct, as he furnished information to the Government that was not complete and truthful, which is a violation of Federal Law, Title 18, United States Code Section 1001.

DC (E2.A10.1.2.1.), allegations or admissions of criminal conduct, regardless of whether the person was formally charged, and DC (E2.A10.1.2.2), a single serious crime or multiple lesser offenses, apply in this case. Applicant has not mitigated this allegation. Paragraph 3 is found against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline F: 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
- Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph 3.a.: 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 Applicant's eligibility for assignment to sensitive duties.

Martin H. Mogul
Administrative Judge