

KEYWORD: Financial, Criminal Conduct; Personal Conduct

DIGEST: Applicant is 38 years old and has worked for a federal contractor since May 2005. He has a long history of financial delinquencies and criminal conduct. He deliberately failed to disclose the extent of his delinquent debts and criminal conduct. Applicant failed to mitigate security concerns raised under Guideline F, financial considerations, Guideline J, criminal conduct, and Guideline E, personal conduct. Clearance is denied.

CASENO: 06-16571

DATE: 05/23/2007

DATE: May 23, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-16571
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
CAROL G. RICCIARDELLO**

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

_____Applicant is 38 years old and has worked for a federal contractor since May 2005. He has a long history of financial delinquencies and criminal conduct. He deliberately failed to disclose the extent of his delinquent debts and criminal conduct. Applicant failed to mitigate security concerns raised under Guideline F, financial considerations, Guideline J, criminal conduct, and Guideline E, personal conduct. Clearance is denied.

STATEMENT OF CASE

On November 29, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.¹ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F (financial considerations), Guideline J (criminal conduct), and Guideline E (personal conduct).

In a sworn statement dated December 12, 2006, Applicant responded to the SOR allegations. Applicant admitted all of the allegations except SOR 1.k and 3.a, which he denied. Applicant elected to have his case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on January 29, 2007. The FORM was mailed to Applicant on the same day and received on February 12, 2007. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not provide a response. The case was assigned to me on March 28, 2007.

PROCEDURAL ISSUE

The SOR alleges in subparagraph 3.b that Applicant failed to disclose information about his criminal offenses as set forth in "subparagraphs 1.a and 1.b." It appears this allegation has a typographical error and should read "subparagraphs 2.a and 2.b." Applicant admitted the allegations in SOR 1.a, 1.b, 2.a, and 2.b. The narrative of the allegations explains specifically what question on the Security Clearance Application (SCA) Applicant failed to provide information. I find Applicant was not misled and there was sufficient notice of the allegation.

FINDINGS OF FACT

_____Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 38 years old and has worked for a federal contractor since May 2005. He was married from 1988 to 1992. He divorced and remarried in 2001. He has one child and one stepchild.

¹This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

Applicant has approximately \$42,266 in delinquent debts listed in the SOR that he admits he owes. He denies the debt in SOR 1.k for \$35. He stated in his answer that he paid the debt in SOR 1.a, a state tax lien. He failed to provide documentation and the debt is still listed on his credit report.² He owes a debt to the Internal Revenue Service (IRS) for taxes due in 1996. He stated he paid \$1,000 on December 8, 2006, and has a repayment plan with them. No documentation was provided to support his position or payment. No other information about the status of the other delinquent debts listed in the SOR or mitigating conditions was provided.

On September 4, 2003, Applicant was charged with battery and domestic violence. He was found guilty and paid a fine.

On March 29, 2000, Applicant was charged with disturbing the peace. He paid a fine.

On December 23, 1993, Applicant was charged with assault and disorderly conduct. The charges were dismissed.

Applicant was charged on August 26, 1992, with domestic battery and violation of a domestic violence order. The disposition was not recorded.

On July 26, 1992 and November 1, 1991, Applicant was charged with domestic battery. He paid a fine on each occasion.

Applicant executed his SCA on August 31, 2005. In response to Question 23, which required Applicant to disclose his police record for the past seven years, he deliberately failed to disclose the charges against him on September 4, 2003 and March 29, 2000.

In response to Question 28.a, which required Applicant to disclose if in the last seven years he had been more than 180 days delinquent on any debts, he deliberately failed to disclose those listed in SOR 1.b through 1.g and 1.h through 1.l. In response to Question 28.b, which required disclosure of debts currently over 90 days delinquent, Applicant failed to disclose the same debts. Applicant did not provide any explanation.

Applicant denied the allegations in SOR 1.k and 3.a. The Government failed to provide any evidence in support of these allegations.

POLICIES

“[N]o one has a ‘right’ to a security clearance.”³ 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

²Answer; GE 6.

³*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

access to such information.”⁴ The President 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 with the national interest to do so.”⁵ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”⁶ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁸ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁹ 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.¹⁰

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. 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 to be considered in evaluating a person’s eligibility to hold a security clearance. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the revised adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions below.

CONCLUSIONS

⁴*Id.* at 527.

⁵Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

⁶ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

⁷*Id.*

⁸*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

⁹Executive Order 10865 § 7.

¹⁰*See* Exec. Or. 10865 § 7.

I have carefully considered all the facts in evidence and the legal standards.

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

Guideline F-Financial Considerations are a concern because 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. 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 J-Criminal Conduct is a security concern because criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

Guideline E-Personal Conduct is a concern because conduct involving questionable judgment, lack of candor, dishonest, 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.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) 19(a) (*inability or unwillingness to satisfy debts*) and FC DC 19(c) (*a history of not meeting financial obligations*), apply in this case. Applicant has numerous delinquent debts that date back to 1996. He did not provide any documentation to substantiate a debt he claimed he paid or another that he claimed he is repaying. He failed to provide any information regarding any of the other debts.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). In Applicant's answer he stated he repaid one debt and started a repayment plan on another. He failed to provide any substantiated documentation on these debts or amplifying information on his many other debts. I find none of the mitigating conditions apply.

Based on all of the evidence, Criminal Conduct Disqualifying Condition (CC DC) 31a (*a single serious crime or multiple lesser offenses*) and CC DC 31(b) (*allegation or admission of criminal conduct, regardless of whether the person was formally charged, formerly prosecuted or convicted*) apply. Applicant was charged with battery and domestic violence on at least three separate occasions and disturbing the peace on one occasion. He paid fines in each case. He had other criminal incidents that were dismissed or not recorded. The battery and domestic violence offenses occurred in 1991, 1992, 1993, and 2003, spanning both of his marriages.

I have considered all of the Criminal Conduct Mitigating Conditions. Applicant failed to provide any information about any of the offenses he admitted committing. There is a serious pattern of misconduct by Applicant. None of the mitigating conditions apply.

I have considered Personal Conduct Disqualifying Conditions (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*). Applicant admitted he deliberately failed to disclose information on his SCA. Therefore, PC DC 16(a) applies. Applicant failed to provide any explanation or other evidence by way of mitigation to the pertinent allegations. Hence, no mitigating conditions apply.

The Whole Person Analysis

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person’s life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the “whole person” concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered all the evidence provided and also considered the “whole person” concept in evaluating Applicant’s risk and vulnerability in protecting our national interests. I find Applicant has failed to mitigate the security concerns raised by the financial considerations, criminal conduct, and personal conduct concerns. Other than Applicant’s admissions and denials in his answer to the SOR, no other information was provided in mitigation. Therefore, I am persuaded by the totality of the evidence presented in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline F, Guideline J, and Guideline E are decided against Applicant.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1	Financial Considerations (Guideline F)	AGAINST APPLICANT
	Subparagraph 1.a.-1.j:	Against Applicant
	Subparagraph 1.k:	For Applicant
	Subparagraph 1.l:	Against Applicant
Paragraph 2	Criminal Conduct (Guideline J)	AGAINST APPLICANT
	Subparagraph 2.a.-2.f:	Against Applicant
Paragraph 3	Personal Conduct (Guideline J)	AGAINST APPLICANT

Subparagraph 3.a:
Subparagraph 3.b:
Subparagraph 3.c:

For Applicant
Against Applicant
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 is denied.

Carol. G. Ricciardello
Administrative Judge