

KEYWORD: Criminal Conduct; Personal Conduct; Financial

DIGEST: Applicant has a history of criminal activity and a history of failing to meet his financial obligations. As of the date of his hearing, he had 12 accounts, owing approximately \$22,300, that have been delinquent for many years. His evidence is insufficient to show he has a track record of financial responsibility. Furthermore, he deliberately falsified his security clearance application. Clearance is denied.

CASENO: 06-17494.h1

DATE: 04/30/2007

DATE: April 30, 2007

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| In re: |) | |
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| ----- |) | |
| SSN: ----- |) | ISCR Case No. 06-17494 |
| |) | |
| Applicant for Security Clearance |) | |
| |) | |

**DECISION OF ADMINISTRATIVE JUDGE
JUAN J. RIVERA**

APPEARANCES

FOR GOVERNMENT

Caroline F. Jeffreys, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of criminal activity and a history of failing to meet his financial obligations. As of the date of his hearing, he had 12 accounts, owing approximately \$22,300, that have been delinquent for many years. His evidence is insufficient to show he has a track record of financial responsibility. Furthermore, he deliberately falsified his security clearance application. Clearance is denied.

STATEMENT OF THE CASE

On November 1, 2005, Applicant¹ submitted a security clearance application.² On August 17, 2006, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline J (Criminal Conduct) and Guideline E (Personal Conduct). The SOR informed Applicant that, based on information available to the Government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant him access to classified information and recommended that his case be submitted to an administrative judge for a security determination.³ On September 3, 2006, November 2, 2006 (notarized), and December 4, 2006 (notarized), Applicant submitted answers to the SOR and requested a hearing.

On February 15, 2007, the government moved to amend the SOR and provided Applicant with 30 days to object to the government's motion and to answer the SOR. The amended SOR added one Guideline E allegation, and alleged additional security concerns under Guideline F (Financial Considerations). Applicant answered the amended SOR on March 18, 2007. He did not object to the government's motion to amend the SOR in his answer to the SOR, or at the hearing. I granted the motion.

The case was assigned to me on March 1, 2007. On March 27, 2007, I convened a hearing at which the government presented four exhibits, marked GE 1-4, to support the SOR. Applicant testified on his own behalf, and presented two exhibits, marked AE 1-2,⁴ which were admitted without objection. DOHA received the transcript (Tr.) on April 11, 2007.

PROCEDURAL ISSUE

Because Applicant's SOR was issued prior to the effective date of the revised adjudicative guidelines, I applied the provisions of the Directive (old Guidelines) to Applicant's case.⁵

FINDINGS OF FACT

¹ (*) Concerning his last name change, Applicant explained his mother changed his last name when he was three years old and he used that name for many years. He changed his last name back to his father's last name when he became an adult.

² GE 1 (Electronic Questionnaires for Investigations Processing (e-QIP), dated November 1, 2005).

³ See Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960, as amended), and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992) (Directive), as amended.

⁴ AE 2 was submitted post-hearing. I left the record open to allow Applicant time to submit additional information. AE 2 includes a government memorandum indicating Department Counsel did not object to the exhibit.

⁵ On August 30, 2006, the Under Secretary of Defense (Intelligence) (USDI) published a memorandum directing application of the revised adjudicative guidelines (Guidelines) to all adjudications and other determinations made under the Directive in which *a statement of reasons has not been issued by September 1, 2006*. (emphasis added)

Applicant admitted all SOR allegations except those contained in ¶¶ 2.a through 2.d, with explanations. I considered SOR ¶¶ 2.a - 2.d, denied, because he denied doing so with the deliberate intent to mislead the government. His admissions and explanations are incorporated herein as findings of fact.

After a thorough review of the pleadings, Applicant's testimony, and the evidence, I make the following additional findings of fact:

Applicant is a 45-year-old security guard working for a defense contractor. He graduated from high school in June 1989. He has no military service. Applicant has never been married. He has a 15-year-old daughter for whom he provides support. He has worked for his current employer, and has held an interim security clearance at the secret level since February 2004.

In his November 2005 security clearance application, Applicant answered "No" to question 23a (asking whether he had ever been charged with or convicted of any felony offense); question 23d (asking whether he had ever been charged with or convicted of any offense related to alcohol or drugs); question 23f (asking whether in the last seven years he had been arrested for, charged with, or convicted of any offense otherwise not disclosed); question 28a (asking whether in the last seven years he had been over 180 days delinquent on any debt); and question 28b (asking whether he was currently over 90 days delinquent on any debt).

The subsequent background investigation revealed that between 1980 and 2004, he had been arrested and charged with the offenses alleged in SOR ¶¶ 1.a through 1.f. Concerning the allegation in ¶ 1.a, Applicant explained that in 1980, he served as a lookout for a friend who was stealing a car's license tags. He was charged with theft over \$500, a felony, and theft over \$300. He was found guilty of a lesser offense and sentenced to serve community service. (Tr. 72-73) He was approximately 20 years old at the time of the offense.

In 1981, Applicant and a friend were arrested while in possession of stolen property. Applicant was charged with receiving stolen property. (SOR allegation ¶ 1.b) Concerning SOR ¶ 1.c, he explained he was moving his household goods in a pick up truck when he was stopped by the police. During the ensuing search of his person and vehicle, the policemen found a pellet pistol, the remains of a marijuana cigarette, and a knife. He was charged with carrying a pistol without a license, a violation of the Uniform Controlled Substances Act, and carrying a dangerous weapon (knife). Applicant testified he pled guilty to the weapon and knife charges and was sentenced to serve six months of supervised probation. (Tr. 79-80)

Regarding the allegation in SOR ¶ 1.d, he explained that, while drunk, he confused his car with another person's car and was arrested while attempting to change a tire. He was using his own jack and iron head to change the tire. He was charged with possession of burglary tools and attempted larceny. The charges were latter dismissed. (Tr. 80-81) In 1994, Applicant was stopped by the police and the ensuing search revealed a "dime bag of weed" (marijuana) he had purchased through a friend for his own use. He was charged with misdemeanor possession of marijuana. (SOR ¶ 1.e) He was sentenced to perform 40 hours of community service. (Tr. 83-85) Applicant testified that when he was 32 to 33 years old, he smoked marijuana at least every other day. He stopped using marijuana in 1995. (Tr. 86) In 2004, Applicant was involved in an altercation with his then girlfriend, and was charged with simple assault. (SOR ¶ 1.f) The charge was later dismissed.

The background investigation also revealed Applicant has 12 delinquent/charged off debts, owing approximately \$22,300. The debts became delinquent and were assigned to collection between February 2002 and May 2005.⁶ Applicant admitted these were his debts. He presented little or no evidence to explain why the alleged debts became delinquent, what efforts, if any, he has taken to pay, settle, or resolve the debts, whether he has been making payment on other debts, or whether he has taken any measures to avoid future financial problems.

Applicant has been consistently employed as a security guard for the last 10 years. In October 2006, he began working a second job as a security guard seeking a better paying job. In February 2006, he was interviewed by a government background investigator, and was confronted about his delinquent obligations. Applicant took no action to pay, settle, or resolve his delinquencies from February 2006 to the day of his hearing. He claimed he has no money left at the end of the month and could not afford paying his old delinquent debts and his current debts and living expenses. (Tr. 101, 120) When asked why/how he had accumulated so many small debts, Applicant explained he was lazy and did not pay his debts on time. (Tr. 113) He testified he has been using whatever money he has left over at the end of the month to fix his apartment, and to purchase new furniture and other goods. (Tr. 121)

Applicant has a 15 year-old-daughter. He started making court ordered child support payments for his daughter around 2002 when she was age 10. According to Applicant's state's Child Support Services obligation summary, dated March 14, 2007, he is \$19,369 in arrearage.

During his 2006 interview, Applicant was also confronted with some of his past criminal behavior. He admitted to the investigator that he was charged with assault in 2004 and possession of burglary tools in 1993. Applicant was then asked whether he had been arrested, charged with, or convicted of any other offenses. He told the investigator "No," and deliberately failed to disclose the incidents alleged under SOR ¶¶ 1.a - 1.c, and 1.e.

Applicant provided several explanations for his failure to disclose his past criminal behavior, i.e., he believed the 20-year-old charges would not show up in the background investigation or the government would not investigate that far back (Tr. 62-63); he did not understand the question (Tr. 16); since some of the charges were dropped, he believe he did not have to disclose the arrest or charges; prior to completing his security clearance application, he looked at his records and believed it would have been very difficult for the government to find out about his old criminal records. (Tr. 63)

Applicant knew he was required to be candid and forthright in his answers to the security clearance application. (Tr. 97) He expressed remorse for deliberately falsifying the security clearance application, and stated he had learned his lesson. He promised never to lie again about his past behavior in any other application. He explained his current job is the best job he has ever had and did not want to loose it. He falsified his application because he was afraid that if he disclosed his past criminal behavior he would loose his interim security clearance and his job. (Tr. 92)

⁶ GE 2 (Credit report, dated January 2007), and GE 3 (Credit report, dated December 2005).

Concerning his failure to disclose his delinquent debts, Applicant explained he did not know it was important for him to disclose his delinquent debts, or that they would be a concern for the government. He believed he could resolve his financial problems on his own, and elected not to disclose the information.

Applicant considers himself to be reliable, dependable, and a hard worker. There is no evidence he has mishandled or caused the compromise of classified information while employed by a defense contractor. He was adamant about how much he loves his job, and his desire to receive a security clearance to be able to continue working as a security guard.

POLICIES

The Directive sets forth adjudicative guidelines which must be considered in evaluating an Applicant's eligibility for access to classified information. Foremost are the disqualifying and mitigating conditions under each adjudicative guideline applicable to the facts and circumstances of the case. However, the guidelines are not viewed as inflexible ironclad rules of law. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive,⁷ and the whole person concept.⁸ Having considered the record evidence as a whole, I conclude Guideline J (Criminal Conduct), Guideline F (Financial Considerations), and Guideline E (Personal Conduct) are the applicable relevant adjudicative guidelines.

BURDEN OF PROOF

The purpose of a security clearance decision is to determine whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.⁹ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest to ensure each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own.

⁷ Directive ¶ 6.3. Each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2.

⁸ Directive ¶ E2.2.1. “. . . The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. . . .” The whole person concept includes the consideration of the nature and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the age of the applicant; the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation; and the probability that the circumstances or conduct will continue or recur in the future.

⁹ See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the government must establish by substantial evidence¹⁰ a prima facie case that it is not clearly consistent with the national interest for the applicant to have access to classified information. The responsibility then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, the applicant carries a heavy burden of persuasion.¹¹ The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.¹²

CONCLUSIONS

Under Guideline J (Criminal Conduct), a history or pattern of criminal conduct is a security concern because it may indicate an unwillingness to abide by rules and regulations and may show the applicant to be lacking in judgment, reliability and trustworthiness.¹³ The government established its case under Guideline J by showing that Applicant was implicated in six offenses between 1980 and 2004. He was convicted in 1980 for theft, in 1988 for carrying a dangerous weapon (knife), and in 1993 for misdemeanor attempted larceny. I also find, as discussed below under Guideline E, that Applicant deliberately falsified his 2005 security clearance application and deliberately made a false statement to a government investigator. His falsification of the SF 86, and his false statement are violations of 18 U.S.C. 1001, a felony. Disqualifying Condition (DC) 1: *Allegations or admission of criminal conduct*,¹⁴ and DC 2: *A single serious crime or multiple lesser offenses*¹⁵ apply.

Applicant's past behavior, from 1980 to 2006, forms a pattern of criminal activity. His falsification brings to the forefront the criminal conduct and financial considerations concerns raised by his past behavior. Under the totality of the circumstances, I find Applicant's criminal behavior is recent and not isolated. Applicant has engaged in criminal misconduct over a period of at least 26 years, from the time he was 18 until age 44. Applicant's last two incidents of criminal misconduct are his falsification of the security clearance application in 2005, and his false statement to the government investigator in 2006. Considering his history of criminal behavior, the nature and seriousness of his misconduct, his falsification of the SF 86, his false statement, and his disregard for the law, I decide Guideline J against Applicant. His behavior raises questions about his ability and willingness to follow the law, and ultimately, to protect classified information.

¹⁰ ISCR Case No. 98-0761 at 2 (App. Bd. Dec. 27, 1999)(Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.); ISCR Case No. 02-12199 at 3 (App. Bd. Apr. 3, 2006)(Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.); Directive ¶ E3.1.32.1.

¹¹ *Egan*, 484 U.S. 518, at 528, 531.

¹² *See, id.*; Directive ¶ E2.2.2.

¹³ Directive, ¶ E2.A10.1.1.

¹⁴ Directive, ¶ E2.A10.1.2.1.

¹⁵ Directive, ¶ E2.A10.1.2.2.

Under Guideline F (Financial Considerations), a security concern exists when a person has significant unpaid debts. An individual who is financially overextended is at risk to engage in illegal or unethical acts to generate funds to meet financial obligations.¹⁶ Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his/her obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life can often indicate how a person may behave in other aspects of life.

Applicant has a history of failing to meet his financial obligations dating back to the early 2000s. He accumulated approximately \$22,300 in 12 debts resulting from his abuse of his credit and his lack of financial responsibility. Financial Considerations Disqualifying Condition (FC DC) 1: *A history of not meeting financial obligations*; and FC DC 3: *Inability or unwillingness to satisfy debts*, apply in this case.

I considered all Guideline F Mitigating Conditions (MC) and I conclude none apply. He presented little or no evidence to explain why the alleged debts became delinquent, what efforts, if any, he has taken to pay, settle, or resolve the debts, whether he has been making payment on other debts, or whether he has taken any measures to avoid future financial problems. The evidence shows Applicant ignored his delinquent debts and took little or no action to pay or resolve his debts. Although he has been consistently employed during the last 10 years, he presented no evidence of circumstances beyond his control that would have prevented him from paying his debts. On balance, and after careful consideration of all information, Applicant's evidence is not sufficient to show he has dealt responsibly with his financial obligations. His financial history and lack of favorable evidence preclude a finding that he has established a track record of financial responsibility. Guideline F is decided against Applicant.

Under Guideline E, personal conduct is always a security concern because it asks the ultimate question – whether a person's past conduct instills confidence the person can be trusted to properly safeguard classified information. An applicant's conduct is a security concern if it involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Such behavior could indicate that the person may not properly safeguard classified information.¹⁷

The government established, and Applicant admitted, that he deliberately failed to disclose his past criminal behavior in his response to questions 23.a, 23.d, and 23.f of his security clearance application, and that he made a false statement to a government investigator. He deliberately falsified his security clearance application, and deliberately made a false statement, because he was afraid that disclosing his past criminal behavior would adversely affect his ability to obtain a security clearance and he would lose his job. I am also convinced that Applicant deliberately failed to disclose his delinquent debts in his response to question 28. Numerous factors weighed in my analysis to reach that conclusion, including: Applicant's age, his employment history, his demeanor and testimony, the number and value of the debts, his long term disregard of the debts, and his deliberate falsification of other answers in the application. I also considered the same reasons previously outlined under the Guideline J and Guideline F discussions, incorporated herein.

¹⁶ Directive, ¶ E2.A6.1.1.

¹⁷ Directive, ¶ E2.A5.1.1.

Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2: *the 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, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities, applies.*

I specifically considered all Guideline E Mitigating Conditions and conclude that none apply. Considering that the falsification occurred in 2005, and he made his false statement in 2006, Applicant's evidence is not sufficient to support the applicability of any of the mitigating conditions. Additionally, for the same reasons outlined above under the discussion of Guidelines J and F, incorporated herein, I conclude Applicant's behavior shows questionable judgment, lack of reliability, and untrustworthiness. Guideline E is decided against Applicant.

I have carefully weighed all evidence, and I applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guidelines. I applied the whole person concept. I specifically considered Applicant's maturity and his years of good performance working for a defense contractor. Considering the totality of Applicant's circumstances, Applicant demonstrated a lack in judgment and trustworthiness in the handling of his financial affairs. Moreover, Applicant failed to present sufficient evidence to mitigate the overall judgment, honesty, and trustworthiness security concerns raised by his falsifications.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

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| Paragraph 1, Criminal Conduct (Guideline J) Subparagraphs 1.a - 1.g | AGAINST APPLICANT Against Applicant |
| Paragraph 2, Personal Conduct (Guideline E) Subparagraphs 2.a - 2.e | AGAINST APPLICANT Against Applicant |
| Paragraph 3, Financial Considerations (Guideline F) Subparagraphs 1.a - 1.l | 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.

Juan J. Rivera
Administrative Judge