

KEYWORD: Criminal Conduct; Financial; Personal Conduct

DIGEST: Applicant failed to mitigate criminal conduct security allegations relating to arrests and convictions on drug matters aggravated by probation violations and an outstanding warrant for his arrest. He also failed to mitigate financial allegations since only a few of his smaller debts and one of three delinquent tax debts have been resolved leaving approximately \$22,000 in outstanding delinquent debts. He mitigated personal conduct allegations relating to failure to detail his criminal record as lacking the requisite deliberate intent to omit since he did answer affirmatively that he did have a criminal record. Clearance is denied.

CASENO: 06-22061.h1

DATE: 06/29/2007

DATE: June 29, 2007

In Re:)	
)	
)	
-----)	ISCR Case No. 06-22061
SSN: -----)	
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
CHARLES D. ABLARD**

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq. , Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

_____Applicant failed to mitigate criminal conduct security allegations relating to arrests and convictions on drug matters aggravated by probation violations and an outstanding warrant for his arrest. He also failed to mitigate financial allegations since only a few of his smaller debts and one of three delinquent tax debts have been resolved leaving approximately \$22,000 in outstanding delinquent debts. He mitigated personal conduct allegations relating to failure to detail his criminal record as lacking the requisite deliberate intent to omit since he did answer affirmatively that he did have a criminal record. Clearance is denied.

STATEMENT OF CASE

_____On November 29, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On January 16, 2007, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to me on February 13, 2007. A notice of hearing was issued on March 2, 2007, for a hearing on March 23, 2007, but postponed at Applicant's request. A notice was re-issued on April 11, 2007 for a hearing on April 24, 2007, and held that day. The government and Applicant each offered eight exhibits into evidence and all were admitted. The record was left open for additional evidence and 18 additional exhibits were submitted by Applicant. They were admitted without objection. The transcript was received on May 4, 2007.

PROCEDURAL ISSUES

_____The government moved at the conclusion of the hearing to add an additional allegation to conform with evidence developed at the hearing as SOR ¶ 3.c. under Personal Conduct to allege as follows:

“You falsified material facts on a Questionnaire for National Security Positions signed by you on September 27, 2005, in response to Question 23 (f) Your Police Record: In the last seven years have you been arrested for, charged with, or convicted of any offenses not listed in response to a, b, c, d, or e above. You answered “Yes”; However, you deliberately failed to disclose you had been arrested for two probation violations, first, on October 26, 1999, and second, on January 9, 2004”.

_____Applicant had no comment on the motion to amend the SOR to add the additional allegation and the motion to amend was granted.

FINDINGS OF FACT

_____Applicant admitted all SOR allegations relating to delinquent debts and criminal conduct with explanation for some. He denied falsifying his answers on his application for security clearance (SF86). After a complete review of the record, I make the following additional findings of fact:

Applicant is a 36-year-old employee of a major defense contractor who has worked as a product technician on aircraft for the past five years. The first two years he worked for a different company in the southwest and moved to the east coast three years ago to work for higher wages for his present employer.

Applicant was arrested and charged with theft in 1991 and received a deferred judgment. He was arrested and convicted for possession of cocaine in 1994 and given deferred probation for ten years and fined \$4,000. Charges were later made for missing probation reporting in 1999 and 2004 resulting in three separate charges arising from the first arrest (SOR ¶ 1.a., c., and d.). The charges resulted from actions of a tenant in a group house on which Applicant held the lease. His tenant was storing and selling drugs out of the house with Applicant's knowledge.

He was also arrested and charged in 2003 for possession of marijuana and unlawfully carrying a weapon arising from a speeding arrest. The marijuana was in his car in the possession of his wife who had used marijuana over several years. The gun was in the possession of a friend of his wife who was in the car with him unbeknownst to Applicant. He was convicted only for the marijuana possession. He has been on probation as a result of his conviction and a motion to revoke probation was issued in 2005 and an active warrant was issued for his arrest. He is in the process of retaining counsel to satisfy the court and have the warrant dismissed but no action has been taken to do so.

Applicant denied his two drug arrests at Question 23 (d) calling for such information on his SF86 submitted on September 27, 2005. He also omitted details of two arrests alleged in SOR 1. a. and c. for the probation violations arising from the 1994 offense at Question 23 (f) although he answered affirmatively that there had been arrests other than those described in Question 23 (a- e). He also omitted information about the probation arrests in his interview with a Department of Defense investigator on May 15, 2006, although he did discuss both the 1994 and 2003 drug arrests in that interview.

Applicant was alleged to have delinquent debts totaling over \$25,000 of which approximately half, or approximately \$12,000, are for back federal taxes for three years and another \$10,000 for two auto repossessions. The remaining consist of eight debts, only one of which is in excess of \$1,000, that are for routine charges and living expenses he could not pay. He has made payments on some of them and paid one in full. The following is an analysis of the debts:

1. SOR ¶ 2.a. credit card checking account delinquent debt of \$303 was paid down from over \$500 but no payments since then (Tr. 64).
2. SOR ¶ 2.b. telephone bill of \$439 with three payments made on regular schedule (Exhs

G and I 15).

- _____ 3. SOR ¶ 2.c. cable debt of \$171. Paid in full (Exhs. I 9 and 14).
4. SOR ¶ 2.d. Telephone bill from former residence of \$536. No contact with creditor.
5. SOR ¶ 2.e. Satellite dish debt of \$145. May have been paid but no proof offered.
- _____ 6. SOR ¶ 2.f. Debt of \$1,097. No contact with creditor.
7. SOR ¶ 2.g. Telephone bill of \$728. Creditor contacted but refused partial payment (Tr. 52).
8. SOR ¶ 2.h. Telephone bill of \$138. Two payments made and paid in full (Exh. I 12).
9. SOR ¶ 2.i. and j. Two auto repossessions for \$5,900 and \$3,790 charged off in 2003. No contact with creditor's offices although Applicant intends to challenge one of them.
10. SOR ¶ 2.k. 2003 tax debt to IRS of \$2,253 monthly payments of \$75 for over two years and now the debt is discharged (Exhs I 16-18).
11. SOR ¶ 2. l. 2004 tax debt to IRS of \$1, 957. Payments will start to be made on same basis as the 2003 debt.
12. SOR ¶ 2.m. 2005 tax debt to IRS of \$7,927. No payments now being made.

_____ Applicant has a GED equivalent and two associates degrees. He is working on a bachelor's degree. He is married with two children for whom he pays \$1,000 per month in child support but is behind in payments of approximately \$6,000. He is an hourly employee of his company paid \$24 per hour. He is well regarded in his company. He has never held a security clearance but seeks one now since because his present work is on a military base and requires access to a secure flight line.

POLICIES

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 access to such information.” *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other 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. Directive, ¶ E2.2.1. Security clearances are granted only when “it is clearly consistent with the national interest to do so.” Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

_____ Initially, the government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. See *Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating it is clearly consistent with the national interest to grant or continue a security clearance. “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” Directive, ¶ E2.2.2. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531. See Executive Order No. 12968 § 3.1(b).

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

Guideline J (Criminal Conduct) is alleged under revised adjudicative guidelines (AG) effective September 1, 2006, for his arrests and convictions and failure to answer correctly Question 23 on his SF 86 as criminal conduct under 18 U.S.C. 1001 for failure to report all of his criminal record on his SF 86 and in an interview with a Department of Defense investigator. Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness and calls into questions a person’s ability or willingness to comply with laws and regulations (AG ¶ 30). Conditions that could raise a security concern and may be disqualifying include a single serious crime or multiple lesser offenses (AG ¶ 31 a), if an individual is currently on probation (AG ¶ 31 d), and violation of parole or probation (AG ¶ 31.e).

The allegation could be mitigated by the fact the crime was not recent and is unlikely to recur (AG ¶ 32 a) or there is evidence of successful rehabilitation (AG ¶ 32 d). I conclude Applicant’s 1991 arrest is mitigated by the passage of time. Although the arrests in 1999 and 2003 also occurred a number of years ago, they are of a pattern and resulted in an allegation of an outstanding probation violation and a warrant for arrest which has not been resolved. They are not mitigated. However I find that he did not have the requisite deliberate intent required for criminal intent in failing to report the specific of the arrests at Question 23(d and f) on his SF86. He did admit that he had been arrested but did not enumerate the details of the arrests as he should have. The allegation regarding criminal conduct under 18 U.S.C. 1001 is mitigated.

Applicant’s delinquent debts prompted the allegation of security concern under Guideline F because an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds (AG ¶ 18). Conditions that could raise a security concern and may be disqualifying include an inability or unwillingness to satisfy debts (AG ¶ 19 a), and a history of not meeting financial obligations (AG ¶ 19 c).

Mitigating conditions (MC) might include the fact that the conditions that resulted in the behavior were largely beyond the person’s control (AG ¶ 20 b) and the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (AG ¶ 20 d). There is no evidence the debts resulted from conditions beyond his control except the assertion that the cost of living on

the east coast may have been the cause of some of his financial problems even though he was making more money in his new employment. He has paid one tax delinquency for one year, one of the smallest debts in full, and is paying regularly on three others. Therefore, I find that those are mitigated since it is not necessary that all debts be paid, only that a reasonable effort is being made to do so. The others remain unpaid, and in several instances, not investigated. They are not mitigated.

Applicant's failure to report his drug arrests and specifics of his probation violations on his SF 86 raises issues under Guideline E that might indicate questionable judgment, unreliability, and unwillingness to comply with rules and regulations and could indicate that the person may not properly safeguard classified information. (AG ¶ 15). Specifically, the deliberate omission, concealment, or falsification of relevant and material facts from a personnel security application (AG ¶ 16 a), or to an investigator (AG ¶ 16 b) could raise a security concern and be disqualifying. Based on his testimony and the fact that he did acknowledge arrests on the SF 86, I conclude that it was not deliberate as required by the guideline.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Applicant is a hard-working competent person with family responsibilities who is attempting to be a responsible parent. His earlier misconduct appears to be behind him but he has not had the ability or initiative to resolve his debts and what remains of the issues growing out of his criminal record. His delinquent debts have accumulated to the point that he lost control of them and was unable to resolve them. I believe he intends to resolve the debts when he has the financial means to do so. However, he does not now have the funds to do so now and is unlikely to be in such a position in the near future without additional income or a more effective debt management plan.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I decline to grant a security clearance.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

_____ Paragraph 1. Guideline J:	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.:	For Applicant
Subparagraph 1.f.:	For Applicant

Paragraph 2. Guideline F: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant
Subparagraph 2.b.: For Applicant
Subparagraph 2.c.: For Applicant
Subparagraph 2.d.: Against Applicant
Subparagraph 2.e.: Against Applicant
Subparagraph 2.f.: Against Applicant
Subparagraph 2.g.: Against Applicant
Subparagraph 2.h.: For Applicant
Subparagraph 2.i.: Against Applicant
Subparagraph 2.j.: Against Applicant
Subparagraph 2.k.: For Applicant
Subparagraph 2.l.: Against Applicant
Subparagraph 2.m.: Against Applicant

Paragraph 3. Guideline E: FOR APPLICANT

Subparagraph 3.a.: For Applicant
Subparagraph 3.b.: For Applicant
Subparagraph 3.c.: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or renew a security clearance for Applicant. Clearance is denied.

Charles D. Ablard
Administrative Judge