

DATE: November 12, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-10120

ISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Ms. Catherine Engstrom, Esquire

Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has, since 1995, been fired from or has left under unfavorable circumstances four jobs. He deliberately omitted two such instances from a security questionnaire, and he repeated that falsification during an interview with a Defense Security Service (DSS) investigator. Applicant has demonstrated through his job performance and through deliberate falsifications that he is unreliable and untrustworthy. He has failed to present sufficient evidence to refute or mitigate the security significance of his adverse personal conduct or his financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On April 10, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant. The SOR informed Applicant that DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to continue Applicant's security clearance. [\(1\)](#) The SOR alleges facts which raise security concerns under Guideline E (Personal Conduct), and Guideline F (Financial Considerations).

On May 2, 2003, DOHA received Applicant's response to the SOR (Answer), wherein he admitted all but four of the allegations and requested a hearing. The case was assigned to me on June 9, 2003. On June 12, 2003, DOHA issued a Notice of Hearing setting this case to be heard on June 30, 2003. All parties appeared as scheduled, and DOHA received the transcript (Tr) on July 11, 2003.

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is a 34-year-old employee of a defense contractor. He seeks a clearance in connection with his duties as technical support for his employer's contract with DoD.

Applicant worked part-time as a bank teller between September 1994 and August 1995. He received about two weeks training in bank procedures such as verifying signatures for bank accounts and ensuring the identity of persons authorized to withdraw funds from accounts. He was fired for his failure to adhere to those procedures after a co-worker withdrew funds from someone else's account. The co-worker was able to do so because Applicant did not verify his co-worker was in fact authorized to take money from that account. Applicant's co-worker made these withdrawals - each for between \$300 and \$500 - four or five times.

He next worked as a security guard, until December 1995 when he was fired for falling asleep at his post at least once each month he was there. Applicant claims he was tired from his long commute, and he denies he was fired. Rather, he insists he left of his own accord because his position was to be converted to an armed guard and he did not wish to carry a weapon. However, he has not provided anything to substantiate this claim, and the records of his employment there show clearly he was cited for being asleep at his post and that he was "terminated" on December 14, 1995.⁽²⁾

Applicant found work a few weeks later, again as a security guard at a local courthouse. He left that job under unfavorable circumstances in December 1996. Applicant claims he left because of a disagreement with his supervisor over how his job should be done. However, Applicant indicated on a security application that he left this job when he was told he would be fired.⁽³⁾ I specifically find that Applicant left this position because he knew he would be fired for unsatisfactory performance and poor attendance.

Applicant then found work with a corporation doing work related to automated information systems and computer hardware. He filled various positions with that company between December 1996 and August 25, 1999, at which point he left under unfavorable conditions. While it is unclear if Applicant was fired or resigned of his own volition, it is clear he was a sub-standard performer, and he acknowledges leaving that job under unfavorable circumstances.

Applicant executed a security questionnaire (SF-86) on April 3, 2000. In response to Question 20 of the SF-86, he deliberately omitted the fact he was fired from his security guard job in December 1995. He also failed to list that he had left two other jobs under unfavorable circumstances in 1996 and 1999. When he was interviewed by a DSS investigator in May 2001, Applicant initially stated that the only time he was ever fired or left a job under unfavorable circumstances was in 1995, when he was fired from his bank teller job.⁽⁴⁾ However, he subsequently admitted to the other two adverse employment terminations after being confronted with the contents of Applicant's employment records DSS had obtained.⁽⁵⁾

Since August 2000, Applicant has owed approximately \$430.00 to three different delinquent credit card accounts. He has known about all three debts, but has taken no action to resolve them despite having the means to do so. Applicant also owes \$2,250.00 in delinquent federally-guaranteed student loans he obtained to attend college. He was dis-enrolled in January 2003 for poor academic performance. His refund for tax year 2002 was garnished to satisfy this obligation. Applicant intends to call the loan processing company to set up payments if he gets his clearance and can continue working in his current position.⁽⁶⁾

Applicant is well-regarded by at least four associates at his work site. Neither of the witnesses who spoke well of him at the hearing is familiar with Applicant's employment history.

POLICIES

The Directive sets forth adjudicative guidelines⁽⁷⁾ to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are Guideline E (Personal Conduct), and Guideline F (Financial Considerations).

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽⁸⁾ for an Applicant to either receive or continue to have access to classified information. The Government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden 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 bears a heavy burden of persuasion.⁽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 in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the Government.⁽¹⁰⁾

CONCLUSIONS

Guideline E (Personal Conduct). Under this guideline, conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. ⁽¹¹⁾ Of note in this case is the government's concerns about Applicant's honesty. The government has proven its case, as alleged in SOR paragraph 1, that Applicant deliberately omitted relevant information from his most recent SF-86 by deliberately omitting relevant and material information about his employment history. He also made false, written statements to a DSS investigator during an interview about his employment history. Guideline E disqualifying condition (DC) 2-⁽¹²⁾ and DC 3-⁽¹³⁾ apply.

The government has also presented sufficient evidence to conclude that Applicant is untrustworthy, unreliable, and possessed of poor judgment. Of particular concern is the fact that Applicant has repeatedly failed to fulfill his responsibilities when placed directly in positions of trust - a bank teller responsible for other people's money, and a security guard responsible for ensuring the safety of another's property. Such conduct goes to the heart of the personnel security program's need to assess an Applicant's suitability to act as a fiduciary for the government. By contrast, there is no basis whatsoever in this record for application of any of the Guideline E mitigating conditions. Applicant has presented nothing but his own uncorroborated testimony to support his denials of SOR allegations 1.b, 1.c, 1.e, and 1.f. Further, nothing he has offered in mitigation is sufficient to overcome the record as a whole in this regard that shows he is unsuitable for a position of trust. I conclude Guideline E against Applicant.

Guideline F (Financial Considerations). A security concern arises when it is shown that a person is either unwilling or unable to manage his finances so that he avoids unreasonable delinquencies. ⁽¹⁴⁾ Applicant owes about \$2,700.00 in delinquent debts. Three debts totaling less than \$500.00 have stood unaddressed for over three years, even in the two years since DSS interviewed him about his finances. A fourth debt - a federally-guaranteed student loan - is more recent, but suffers from the same inattention as the others. It is apparent that Applicant is unwilling to pay or otherwise resolve his modest financial obligations, despite the absence of unforeseen circumstances keeping him from doing so. He has had the means to pay these debts yet he has done nothing to date. In this instance, the Applicant's total debt is not significant. However, his delinquent debts are consistent of his general lack of judgment or reliability; as such, they present further indications that he should not be granted access to classified information. Guideline F DC 1-⁽¹⁵⁾ and DC 3-⁽¹⁶⁾ apply. None of the Guideline F mitigating conditions are available to Applicant given these facts. I conclude Guideline F against the Applicant.

I have carefully weighed all of the evidence in this case, and I have applied the aforementioned disqualifying and mitigating conditions as listed under each applicable adjudicative guideline. I have also considered the whole person concept as contemplated by the Directive in Section 6.3, and as called for by a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. The record evidence as a whole in this case presents an unacceptable risk to the government's compelling interest in ensuring its classified information is properly safeguarded. I conclude that Applicant should not be granted access to classified information.

FORMAL FINDINGS

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

Paragraph 1, Personal Conduct (Guideline E): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: Against the Applicant

Paragraph 2, Financial Considerations (Guideline F): AGAINST THE APPLICANT

Subparagraph 2.a: Against the Applicant

Subparagraph 2.b: Against the Applicant

Subparagraph 2.c: Against the Applicant

Subparagraph 2.d: Against the 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 the Applicant.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Government's Exhibit (GE) 6.
3. GE 2.
4. GE 3.
5. GE 4.
6. Tr., p. 87 - 89.
7. Directive, Enclosure 2.
8. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
9. *See Egan*, 484 U.S. at 528, 531.
10. *See Egan*; Directive E2.2.2.
11. Directive, E2.A5.1.1.
12. Directive, 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; (emphasis added)
13. Directive, E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination;
14. Directive, E2.A6.1.1.
15. E2.A6.1.2.1. A history of not meeting financial obligations;

16. E2.A6.1.2.3. Inability or unwillingness to satisfy debts;