

KEYWORD: Personal Conduct; Criminal Conduct; Financial

DIGEST: Applicant is 38 years old, married with three children, and employed by a defense contractor. He has a 1999 court-martial conviction for assaulting his wife, and a 2000 civilian arrest for similar conduct, reduced to disorderly conduct. Applicant gave false information about these incidents to investigators during his security clearance application process. Applicant also has delinquent debts which he has not paid, even after his income increased substantially in the past three years and he reduced his expenses. Applicant has not mitigated the personal conduct and financial considerations security concerns. He mitigated the criminal conduct security concern. Clearance is denied.

CASENO: 01-26493.h1

DATE: 07/16/2004

DATE: July 16, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-26493

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 38 years old, married with three children, and employed by a defense contractor. He has a 1999 court-martial conviction for assaulting his wife, and a 2000 civilian arrest for similar conduct, reduced to disorderly conduct. Applicant gave false information about these incidents to investigators during his security clearance application process. Applicant also has delinquent debts which he has not paid, even after his income increased substantially in the past three years and he reduced his expenses. Applicant has not mitigated the personal conduct and financial considerations security concerns. He mitigated the criminal conduct security concern. Clearance is denied.

STATEMENT OF THE CASE

On October 9, 2002, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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. The SOR detailed reasons under Guideline E (Personal Conduct), Guideline J (Criminal Conduct), and Guideline F (Financial Considerations), and 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, and recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn statement, dated December 4, 2002, Applicant responded to the SOR allegations. He did not request a hearing. Later, Applicant submitted several extension requests to obtain legal counsel to advise him on a response to the File of Relevant Material (FORM), which the Government sent to Applicant on January 24, 2003, on Applicant's non-hearing case. Applicant requested a hearing on May 30, 2003.

This case was originally assigned to another Administrative Judge, but reassigned to me on December 22, 2003 due to caseload considerations. A Notice of Hearing was issued on February 3, 2004, setting the hearing for February 18, 2004.

Applicant received the Notice of Hearing on February 10, 2004. I convened the hearing on that date to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government presented eight exhibits which were admitted into evidence. Applicant appeared, testified, and submitted 18 exhibits, including three exhibits submitted after the hearing and to which Department Counsel had no objections⁽¹⁾. I received the transcript of the hearing on March 2, 2004.

PROCEDURAL RULINGS

The Government moved to amend the SOR in subparagraph 1.a. to delete "2001" and insert in its place "2000". Applicant had no objection. The motion was granted. (Tr. 152)

FINDINGS OF FACT

Applicant denied the SOR allegations in Paragraph 1 (Guideline E). He admitted the allegations in Paragraph 2 (Guideline J), except he never admitted nor denied subparagraph 2.c. that alleged his actions specified in Paragraph 1 violated 18 U.S.C. §1001. He admitted the allegations in subparagraphs 3 a. through 3.d., 3.f. through 3.h., and denied subparagraphs 3.e. and 3.i. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 38-year-old employee of a defense contractor. He is married and has three children. Applicant formerly served in the Air Force until his discharge after his court-martial in 2000. Applicant received an honorable discharge on January 22, 2000. Applicant was an E-5, but the court-martial sentence reduced him to pay grade E-2. (Tr. 81, 85; Exhibits 1 at 4 and 5, 2, 8, and L)

Applicant was apprehended by military authorities in February 1999 for an incident of domestic violence with his spouse in their residence on a military base at which Applicant was stationed at the time. Applicant was tried at a special court-martial, and convicted in September 1999 on two specifications of assault and one of communicating a threat to his wife. Applicant was sentenced to six months confinement and a reduction in grade from E-5 to E-2. The reduction in grade reduced Applicant's income and thereby caused part of his financial problems involving unpaid bills. Applicant reluctantly admits he assaulted and committed battery on his wife in that incident by hitting her in the head several times, grabbing her hair, and choking her. His commander kept Applicant out of the marital home for several months until the court-martial occurred as a result of the incident. (Tr. 78, 79, 94, 101 to 107; Exhibits 4, 6, and 8)

Applicant was arrested by civilian police authorities in October 2000 and charged with Assault and Domestic after his wife called police during an

altercation they had after dinner. Applicant's spouse had her wrist injured during the altercation, including having the skin broken. Applicant later plead guilty to disorderly conduct, and he paid a fine of \$75.00. (Tr. 78, 79, 101, 103; Exhibits 5, 7, S)

Applicant did not fully disclose the full extent of the actions and injuries involved in his altercations with his spouse in two interviews with government investigators. The interviews occurred in November 2000 and January 2001. Applicant continued in the interviews to omit descriptions of his physical actions toward his spouse, and assert his spouse had mental and emotional problems which made her the aggressor in these situations. Applicant admitted in a third interview in July 2001 that he was not truthful in the previous two interviews about the full extent of his actions in the two domestic altercations in 1999 and 2000 because he was embarrassed. Applicant did not disclose his 2000 domestic violence arrest upon the advice of his attorney that the case was not yet resolved so he should not disclose it. (Tr. 88 to 107, 135 to 137; Exhibits 4, 5, and 6)

Applicant has several delinquent debts. He had a six month plan to pay off the bills in 2000, but only paid two of the nine debts. In his Answer to the SOR in December 2002, Applicant stated he had a 12 month plan to pay all his past due bills in full. At the hearing Applicant stated he would pay the debts listed in subparagraphs 3.a., 3.b., 3.d., and 3.h. that totaled \$560 within 60 days. Later he stated he would pay them in one year. These are small debts which could have been paid before the hearing. Applicant's salary has increased by \$24,000 in three years, he has no credit cards at present, and rents a townhouse. He has the disposable income to have paid these four delinquent and small denomination debts. Applicant has paid two debts (subparagraphs 3.c. and 3.i. in full. Applicant's current status on the delinquent debts listed in the SOR are set forth in the chart below:(Tr. 60, 62, 66, 162; Exhibit 4 at 5; Answer at 5)

SOR ALLEGATION	NATURE OF DEBT AND AMOUNT	CURRENT STATUS	RECORD EVIDENCE
3.a.	\$30 to medical center	unpaid	Tr. 57, 108; Exhibit 3 at 1.
3.b.	\$101 to telephone company	unpaid	Tr. 67, 109; Exhibit 3 at 8, 11.
3.c.	\$541 to military exchange	paid	Tr. 52 to 54, 109; Exhibit 3 at 1 and 11, Exhibit 4 at 5, Exhibit M.
3.d.	\$191 to mail order catalog	unpaid	Tr. 68, 110; Exhibit 3 at 8.
3.e.	\$2602 to credit card	in dispute, claims to owe only \$348, Applicant has cancelled checks showing payments	Answer at 6; Tr. 54 to 56, 68, 110 to 113; Exhibit 3 at 1, 11.
3.f.	\$6441 for repossessed car	car repossessed when payments could not be made after wife lost her job and Applicant had just started his post-military civilian job.	Tr. 70, 113, 129, 131 to 133; Exhibit 3 at 8, 11, Exhibit 4 at 5.
3.g.	\$10,250 balance on auto lease	pickup truck voluntarily surrendered when Applicant had overseas military orders. Applicant maintains he owes nothing under the lease and has not been billed since 1997.	Tr. 72, 73, 115 to 117; Exhibit 3 at 8.
3.h.	\$238 for phone service	unpaid	Tr. 74, 122, 123; Exhibit 3 at 8.
3.i.	\$130 for medicine	paid	Tr. 74, 75; Exhibit 3 at 8, 11; Answer at 7.

Applicant attributes his financial difficulties to the demotion he incurred resulting from his court-martial, his wife losing two jobs due to health

problems in about 1997 and then in 2001. Applicant does not have credit cards. Applicant currently has one car, which he bought after another car was repossessed for non-payment (subparagraph 3.f.). (Tr. 49, 61, 62)

Applicant has 17 employment evaluations from 1988 to 2003, all showing he meets or exceeds expectations and standards, including his military service evaluations. Applicant also submitted character references from co-workers and superiors. (Exhibits N, O, P)

Applicant completed a "Prevention and Relationship Enhancement Program" in 1999 as a result of the domestic incident in February 1999. Applicant submitted a report from 1999 of his spouse's social evaluation and reaction to the 1999 incident. (Exhibits A and B)

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 pertinent 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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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

Guideline E - Personal Conduct:

(A) The Concern: 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. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

Refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personal security or trustworthiness determination.

(B) Conditions that could raise a security concern and may be disqualifying also include:

(2) The deliberate omission, concealment, falsification or misrepresentation 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; E2.A5.1.2.2

(C) Conditions that could mitigate security concerns include:

(6) A refusal to cooperate was based on advice from legal counsel or other officials

that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information; E.2.A5.1.3.6

Guideline J: Criminal Conduct

(A) The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

(B) Conditions that could raise a security concern and may be disqualifying include:

(1) Allegations or admissions of criminal conduct, regardless of whether the person was formally charged; E2.A10.1.2.1

(2) A single serious crime or multiple lesser offenses. E2.A10.1.2.2

(C) Conditions that could mitigate security concerns include:

(1) The criminal behavior was not recent. E2.A10.1.3.1

Guideline F: Financial Considerations

(A) The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

(B) Conditions that could raise a security concern and may be disqualifying include:

(1) A history of not meeting financial obligations. E2.A6.1.2.1

(3) Inability or unwillingness to satisfy debts. E2.A6.1.2.3

(C) Conditions that could mitigate security concerns include:

(6) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. E2.A6.1.3.6

Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national

interest. In reaching the fair and impartial overall common sense determination required, I draw only those inferences and conclusions which have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to each allegation set forth in the SOR:

With respect to Guideline E, I conclude the Government proved its case as Applicant deliberately stated in the official interview that he did not attempt to hurt his wife in 1999, but in fact he punched her in the back of the head, pulled her hair, and grabbed her neck. He was convicted at a special court-martial in 1999 of these acts and admitted the hair pulling at the hearing. Applicant also admitted in a statement in July 2001 that he had not been truthful in the November 2000 statement about what physical actions he perpetrated against his wife. I find Disqualifying Condition (DC) 2 applies to subparagraph 1.a. of the SOR. I do not find any (Mitigating Conditions) MC that apply to these allegations.

Considering subparagraph 1.b. of the SOR, I conclude the Government proved its case. Applicant did assault his wife in 2000 and she was injured, as shown by the statement in Exhibit 7 from the police officer who responded to the telephone call from Applicant's wife. This allegation pertains to a statement made by Applicant to an investigator in January 2001. At that time the disorderly conduct charge was adjudicated in the state court, and the case concluded. Applicant refers to his attorney in that statement, but Applicant's attempt to have MC 6 apply are not effective, because the issue is the veracity of his statements in January 2001, not at any time earlier. Applicant also admitted in his July 2001 statement that he was not truthful about the actions he took against his wife in October 2000. Therefore, I apply no MC on this allegation. Consequently, I find against Applicant on Guideline E.

Regarding Guideline J (Criminal Conduct), the Government proved its case. A history or pattern of criminal activity creates doubt about a person's judgement, reliability and trustworthiness. A security concern arises and may be disqualifying in this case when there are allegations or admissions of criminal conduct, regardless of whether the person is formally charged, which is Disqualifying Condition (DC) 1. Also, DC 2 applies here, because a single serious crime or multiple lesser offenses has occurred. This conclusion also applies to subparagraph 2.c. of the SOR.

MC 1 (incident was not recent) applies here. The arrests were five and four years ago. There are no repeated offenses on record. Applicant is employed and has taken counseling on marital dispute resolution. His statements to the investigators were made three and four years ago, and are also mitigated for subparagraph 2.c. Therefore, I find for Applicant on Guideline J.

Considering Guideline F (Financial Considerations), I find DC 1 and DC 3 apply. Applicant incurred these debts over the past seven years. Seven of the nine debts alleged are small in amount, being less than \$1000. Applicant chose to pay off one debt for \$541 in the past three years. His large increase in salary over the past four years enabled him to pay the other small debts, but he did not do so. He contests one debt, and has paid two debts (subparagraphs 3.c. and 3.i.), but the other debts remain unpaid with no persuasive reason for not doing so. Applicant had since October 9, 2002, when the SOR was sent to him to pay the debts or arrange for installment payment plans. He also obtained several extensions of time to file a response to FORM which was prepared initially when he did not request a hearing. He has had two years to pay \$560 from his \$66,000 annual salary, at present, but did nothing.

Applicant had some financial downturns when he was demoted in the military as part of his court-marital sentence. But since 1999 he has done better financially, including reducing his expenses for housing. The hearing showed he has about a \$1000 monthly with which to pay debts. I conclude Applicant did not make good faith efforts to pay his debts in the past four years. He has paid his current expenses for food, housing, clothing, etc. But these debts from phone companies, credit purchases, and automobile purchases or leases have not been resolved. He did pay two delinquent bills, and I give him credit for those payments. Between his Answer, statement, and testimony at the hearing, he gave four different time periods within which the debts would be paid, but only two were paid. Therefore, I do not apply any MC to this allegation. I conclude against Applicant on Guideline F.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline E: Against Applicant

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Paragraph 2 Guideline J: For Applicant

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Paragraph 3 Guideline F: Against Applicant

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: Against Applicant

Subparagraph 3.c.: For Applicant

Subparagraph 3.d.: Against Applicant

Subparagraph 3.e.: Against Applicant

Subparagraph 3.f.: Against Applicant

Subparagraph 3.g.: Against Applicant

Subparagraph 3.h.: Against Applicant

Subparagraph 3.i.: For Applicant

DECISION

In light of all the circumstances and facts 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.

Philip S. Howe

Administrative Judge

1. Exhibit Q was marked at the hearing. It is a clearance letter Applicant obtained from his prior military station. Applicant had one copy at the hearing, was given leave to mail a copy within two weeks, but never mailed it to me.