

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant's embarrassment over what his co-workers would think if they knew of his arrest and his financial situation may explain his behavior, but it does not mitigate four falsifications on his security clearance application. He has also failed to mitigate a bad debt of approximately \$4,000.00. Moreover, he has failed to demonstrate his financial situation has improved from a negative monthly remainder of approximately \$243.00, after expenses, that he acknowledged to a DSS special agent. Clearance is denied.

CASENO: 02-11073.h1

DATE: 08/31/2004

DATE: August 31, 2004

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-11073

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant's embarrassment over what his co-workers would think if they knew of his arrest and his financial situation may explain his behavior, but it does not mitigate four falsifications on his security clearance application. He has also failed to mitigate a bad debt of approximately \$4,000.00. Moreover, he has failed to demonstrate his financial situation has improved from a negative monthly remainder of approximately \$243.00, after expenses, that he acknowledged to a DSS special agent. Clearance is denied.

STATEMENT OF THE CASE

On April 22, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ issued a Statement of Reasons (SOR) to Applicant. The SOR details security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant him access to classified information and recommends that his case be submitted to an Administrative Judge.

Applicant submitted a response to the SOR, dated July 11, 2003, in which he requested a decision on the written record in lieu of a hearing. The Applicant received the File of Relevant Material (FORM), containing nine documents, on November 15, 2003 and has not submitted any additional information or objections to the material contained therein. This case was assigned to me on January 15, 2004.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, including Applicant's admissions to SOR ¶ 1.b-2.c, I make the following findings of fact:

Applicant is a 37-year-old technician employed by a U.S. defense contractor. He is seeking a security clearance.

In 1995, Applicant co-signed a loan for his girlfriend to purchase an automobile. When she stopped making payments, Applicant assumed the payments. He eventually stopped making payments. The finance company repossessed the vehicle and charged off the loan as a bad debt. A debt of approximately \$4,000.00 remained on the account that has not been paid (SOR ¶ 1.b).

On June 3, 1997, a state authority ordered Applicant to pay \$480.00 per month in child support for his two children by his former wife. An order was entered to collect the support from Applicant's pay. Applicant failed to pay the child support in August 2000 and December 2001 (SOR ¶ 1.a). That past due support has been satisfied and Applicant is current on his child support payments.

On September 29, 2001, Applicant was arrested and charged with three counts of harassment, a misdemeanor. On November 28, 2001, Applicant pleaded nolo contendere. The charges were subsequently dismissed.

On December 7, 2001, Applicant executed a security clearance application (SF 86). In response to question 9, "your relatives and associates," he failed to list his three children (SOR ¶ 2.a).

After answering, "no" to questions 21-25 on the same SF 86, Applicant answered, "no," in response to question 26. ⁽³⁾ He failed to list his arrest and being charged with three counts of harassment (SOR ¶ 2.b).

In response to question 34 on the same SF 86, Applicant answered, "no." He failed to list that his wages had been garnished to collect child support payments (SOR ¶ 2.c).

In response to question 38⁽⁵⁾ on the same SF 86, Applicant answered, "no." He failed to list a debt of approximately \$4,000.00 owed to an automobile financing company (SOR ¶ 2.d).

On February 4, 2002, Applicant was interviewed by a special agent of the Defense Security Service (DSS). Applicant acknowledged his false answers on the SF 86 and told the investigator he did so because of his concern and embarrassment over what his co-workers would think if they knew of his arrest and his financial situation (SOR ¶ 2.a-2f). Based on information he provided to the investigator, Applicant's personal financial statement reflected a negative monthly remainder of approximately \$243.00, after expenses (SOR ¶ 1.c).

POLICIES

Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted. Directive E3.1.14. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration 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 decision. This assessment should include the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 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. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

Guideline F: Financial Considerations

The concern is that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Conditions that could raise a security concern and may be disqualifying include E2.A6.1.2.1, a history of not meeting financial obligations (Disqualifying Condition 1). They also include E2.A6.1.2.3, inability or unwillingness to satisfy debts (Disqualifying Condition 3). Conditions that could mitigate security concerns include E2.A6.1.3.6, the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (Mitigating Condition 6).

Guideline E: Personal Conduct

The concern under Guideline E is 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. Conditions that could raise a security concern and may be disqualifying under Guideline E include E2.A5.1.2.2 (Disqualifying Condition 2). Disqualifying Condition 2 addresses 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.

Conditions that could mitigate security concerns include E2.A5.1.3.3 (Mitigating Condition 3). Mitigating Condition 3 applies when the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts.

CONCLUSIONS

Guideline F: Financial Considerations

Applicant's financial information, reflecting a negative remainder of approximately \$243.00 per month, after expenses, his unwillingness to resolve an outstanding obligation of approximately \$4,000.00, and his delinquency on a child support obligation raise both Disqualifying Condition 1 and Disqualifying Condition 3.

Evidence of record indicates Applicant is current on his child support obligation (SOR ¶ 1.a). Therefore, Applicant has mitigated this obligation in accordance with Mitigating Condition 6. Accordingly, I find in favor of Applicant with regard to SOR ¶1.a.

However, Applicant has not provided nor does the record contain evidence that Applicant's financial status has improved from the negative remainder of approximately \$243.00 per month in February 2002. In addition, Applicant states an unwillingness to resolve his debt of approximately \$4,000.00 on an auto loan he co-signed. Based on this record, I find against Applicant with regard to SOR ¶ 1.b and 1.c.

Guideline E: Personal Conduct

Applicant admits to four falsifications, relating to his criminal record and personal finances, on his security clearance application. This is substantial evidence of Disqualifying Condition 2.

Applicant told the DSS special agent he did so because of his embarrassment over what his co-workers would think if they knew of his arrest and his financial situation. Embarrassment may explain his behavior but it does not mitigate his conduct. ISCR Case No. 99-0557 (July 10, 2000) at p. 3.

Applicant said in his answer to the SOR that he told the DSS agent about his criminal case (SOR ¶ 2.b). In doing so, however, he did not act promptly to correct the falsification before being confronted with the facts, as required by Mitigating Condition 3. Having failed to mitigate his multiple falsifications on his SF 86, I find against Applicant with regard to SOR ¶ 2.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

DECISION

In light of the evidence of record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Signed

Roger E. Willmeth

Administrative Judge

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.
3. "In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in modules 21, 22, 23, 24,, or 25?"
4. "In the last 7 years, have you had your wages garnished for any reason?"

5. "In the last 7 years, have you been over 180 days delinquent on any debt(s)?"