

KEYWORD: Financial; Criminal Conduct; Personal Conduct

DIGEST: Applicant failed to pay off six delinquent debts totaling more than \$9,500. Applicant was arrested for child fondling and lascivious assault and two DUIs. He deliberately omitted his arrest for child fondling and lascivious assault from his security clearance application. Applicant failed to mitigate the security concerns raised by his financial situation and his criminal and personal conduct. Clearance is denied.

CASENO: 02-26842.h1

DATE: 02/17/2005

DATE: February 17, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-26842

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Jason Perry, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant failed to pay off six delinquent debts totaling more than \$9,500. Applicant was arrested for child fondling and lascivious assault and two DUIs. He deliberately omitted his arrest for child fondling and lascivious assault from his security clearance application. Applicant failed to mitigate the security concerns raised by his financial situation and his criminal and personal conduct. Clearance is denied.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 2 June 2004, DOHA issued a Statement of Reasons [\(S\)](#) (SOR) detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in an undated writing and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on 17 November 2004. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on 1 December 2004, but did not respond. The case was assigned to me on 14 January 2005.

### **FINDINGS OF FACT**

Applicant is a 43-year-old order processor for a defense contractor. Item 4 at 1, 2.

Applicant admits each of the delinquent debts, totaling more than \$9,500, alleged in the SOR. Answer; Item 5 at 1. These debts were caused by Applicant and his wife overusing their credit cards. They cut up the credit cards and now pay for everything with cash. In his 9 July 2002 statement to a Defense Security Service (DSS) agent, Applicant stated he intended to pay the debts alleged in the SOR, except the two debts alleged in ¶¶ 1.a and 1.d, that total more than \$8,500. He intends to let the two large delinquent debts "expire" from his credit report. Item 5 at 2.

Applicant was arrested in November 1983 and charged with child fondling and lascivious assault (a felony). He declined to disclose any details of the arrest, except that the charges were dismissed. <sup>(2)</sup> Item 5 at 3.

In April 1986, he was arrested for driving while intoxicated (DUI). Applicant was arrested after stopping to urinate at the side of the road on his way home from a bar. Applicant pled guilty to the offense. *Id.* Applicant was arrested in April 1988 on another DUI charge. He had been drinking at a bar and had an accident while driving to his girlfriend's house. He pled guilty to the charge and served 10 days in jail. *Id.* at 4.

Applicant completed a security clearance application (SCA) on 29 March 2002. Question 21 asked if Applicant had ever been charged with or convicted of any felony offense. Item 4 at 6. Applicant failed to list his 1983 arrest for lascivious assault because he "was embarrassed by the event and did not want it (sic) to volunteer such uncomfortable information that might unnecessarily jeopardize my chances for getting a security clearance." Item 5 at 3. He "thought the arrest was expunged from [his] record and would not be disclosed during the course of the personnel security investigation." *Id.*

## 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. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

## CONCLUSIONS

### **Guideline F-Financial Considerations**

In the SOR, DOHA alleged Applicant had four delinquent credit card accounts totaling more than \$9,500 (¶¶ 1.a-1.d) and two delinquent accounts that had been referred for collection totaling \$175 (¶¶ 1.e-1.f). An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government established each of the allegations in the SOR. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1.) and is unable or unwilling to satisfy his debts (DC E2.A6.1.2.3.). Although he claimed he would pay all but the two largest delinquent debts, he made no claim in his answer and provided no evidence he has paid any of the debts. None of the mitigating conditions listed under the guideline apply. Although none of the debts were recently incurred, they are still outstanding. I find against Applicant.

### **Guideline J-Criminal Conduct**

In the SOR, DOHA alleged Applicant was arrested in November 1983 for child fondling and lascivious assault (¶ 2.a), was arrested in April 1986 for DUI (¶ 2.b), was arrested for DUI in April 1988 (¶ 2.c), and violated 18 U.S.C. § 1001 by falsifying his SCA (¶ 2.d). A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1.

It is a criminal offense to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the jurisdiction of the executive branch of the Government of the United States. 18 U.S.C. § 1001. Security clearances are within the jurisdiction of the executive branch of the Government of the United States. *See Egan*, 484 U.S. at 527. And an applicant's criminal arrests are material to a determination of his security worthiness. Applicant deliberately omitted information about his arrest for child fondling and lascivious assault from his SCA.

The only evidence Applicant engaged in the crimes of indecent fondling and lascivious assault is his admission that he was arrested and charged for the offenses and they were subsequently dismissed in court. An allegation of criminal conduct, regardless of whether the person was formally charged is a condition that raises a security concern and may be

disqualifying. DC E2.A10.1.1. Applicant had the burden of rebutting or mitigating the disqualifying condition, but did not do so. Instead, he refused to discuss the details of the incident. The incident occurred some 21 years ago and so it was not recent. *See* MC E2.A10.1.3.1. However, in light of his continuing criminal conduct, including lying about the very offense in 2002, I am unable to find for Applicant on ¶ 2.a.

Applicant engaged in a single serious offense (a violation of 18 U.S.C. § 1001) and multiple lesser offenses (the two DUIs). DC E2.A10.1.2.2. Applicant failed to mitigate security concerns raised by his criminal conduct. I find against Applicant on ¶ 2.

### **Guideline E-Personal Conduct**

In the SOR, DOHA alleged Applicant falsified his SCA by failing to list his felony arrest for child fondling and lascivious assault in November 1983 (¶ 3.a). Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government established a potentially disqualifying condition under Guideline E. Applicant deliberately omitted relevant and material facts from his SCA-his arrest for child fondling and lascivious assault. DC E2.A5.1.2.2. An applicant's criminal record is relevant and material to a determination of his security worthiness. Applicant did not disclose this incident until over 90 days after the deliberate omission, during an interview with a DSS agent. None of the mitigating conditions apply. I find against Applicant on ¶ 3.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: 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: Against Applicant

Subparagraph 1.f: Against Applicant

Paragraph 2. Guideline J: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

### **DECISION**

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

James A. Young

Administrative Judge

1. Required by Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).

2. Normally, an Applicant's refusal to provide *full and frank* answers to investigators questions would result in an unfavorable clearance action or administrative termination of further processing for security eligibility. Directive ¶ E2.A5.1.1.2,. However, I will not apply this rule as the Government did not allege it in the SOR.