

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 45-year-old environmental technician for a defense contractor. He resolved his \$25,000 in delinquent debts by obtaining a discharge in bankruptcy in 2003. However, he intentionally omitted nine of ten debts from his 2002 security clearance application, and has not adequately explained the omission. Mitigation has not been demonstrated. Clearance is denied.

CASENO: 02-28917.h1

DATE: 02/02/2005

DATE: February 2, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-28917

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 45-year-old environmental technician for a defense contractor. He resolved his \$25,000 in delinquent debts by obtaining a discharge in bankruptcy in 2003. However, he intentionally omitted nine of ten debts from his 2002 security clearance application, and has not adequately explained the omission. Mitigation has not been demonstrated. Clearance is denied.

HISTORY OF THE CASE

On March 10, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On April 22, 2004, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The case was assigned to me on June 17, 2004. A Notice of Hearing was issued on August 10, 2004, setting the hearing for September 2, 2004. The SOR was based on five exhibits, which were marked and admitted as Government's Exhibits (GX) 1 - 4 Applicant testified and introduced two exhibits, which were marked and admitted as Applicant's Exhibits (AX) A and B. Applicant also timely submitted seven additional exhibits, which are described in detail on Department Counsel's cover sheet and admitted as marked (AX C - I). The transcript was received at DOHA on September 16, 2004.

FINDINGS OF FACT

Applicant is a 45-year-old environmental technician for defense contractor. The SOR contains eight allegations under Guideline F (Financial Considerations) and one allegation under Guideline E (Personal Conduct). In his response, Applicant admits all eight Guideline F allegations (1.a. - 1.h.) and denies the single Guideline E allegation (2.a.). Applicant's factual admissions, as cited above, are adopted as Findings of Fact.

After considering the totality of the evidence derived from Applicant's testimony and all exhibits, I make the following additional FINDINGS OF FACT as to each SOR allegation:

Guideline F (Financial Considerations)

As alleged in the March 16, 2004 SOR, Applicant:

1.a. - had filed for Chapter 7 bankruptcy protection in 1991 and the covered debts were discharged in the summer of 1991.

had delinquent debts owed to the following creditors in the approximate amounts shown:

1.b. - Military Exchange B - \$3,512.00;

1.c. - Bank C - \$1,317.58;

1.d. - Gasoline Company D - \$938.00;

1.e. - Dentist E - \$131.00;

1.f. - Collection Agency F - \$1,318.00;

1.g. - Company G - \$922.00;

1.h. - Telephone Company H - \$482.00.

Applicant filed a second Chapter 7 bankruptcy in 2002 and the debts were discharged in February 2003. In his March 2004 response to the SOR, Applicant denies any knowledge of the debt cited in 1.h., and claims all of the other debts cited in the SOR were discharged in this most recent bankruptcy, which is documented (GX 4 at page 1). All debts cited in the SOR are included by creditor's name and amount in the bankruptcy filing, and have therefore been discharged, including the debt cited in 1.h.

Between 1991 and 1999, the family "was paying all our bills" (Tr at 28). There is no suggestion of extravagant spending by Applicant and his family. I find the problem has been one of simply debt incurred to care for his family that was more than his earnings. Since the 2003 discharge, the family has been able to keep current with its debts, while living frugally (Tr at 30 - 35). No debts are past due (Tr at 34).

Guideline E (Personal Conduct)

2.a. Applicant falsified material facts on his March 21, 2002 security clearance application (SF 86). In response to Question **38. Your Financial Delinquencies- 180 days**, "In the last seven years, have you been over days delinquent . . .," Applicant answered "Yes" and cited a 1999 debt of \$500.00 owed to Gasoline Company D (SOR 1.d.). He intentionally omitted any mention of the delinquent debts cited in SOR 1.b., 1.c., 1.e., 1.f., 1.g., and 1.h., above.

Although it is not cited in the SOR, Applicant also answered "No" to Question **39. Your Financial Delinquencies - 90 days**, "Are you currently over 90 days delinquent on any debt(s)?" even though the debts cited in 2.a. were still delinquent at the time the SF 86 was completed. His explanation, that he thought these debts were included within the previous question is not credible and is not a valid excuse for his false answer. [\(1\)](#)

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Because each security case presents its own facts and circumstances, it should not be assumed that the factors cited above exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion 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 emotionally unstable behavior.

Eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. In reaching the fair and impartial overall common sense determination based on the Directive's "whole person" concept, I am not permitted to speculate, but can only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses.

In the defense industry, the security of classified information is entrusted to civilian workers who must be counted on to safeguard classified information and material twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an applicant for a security clearance, in his or her private or work life, may be involved in conduct that demonstrates poor judgment, untrustworthiness, or unreliability. These concerns include consideration of the potential, as well as the actual, risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by an applicant's admissions or by other evidence) and establishes conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

CONCLUSIONS

I have considered the evidence in light of the appropriate legal standards and factors, and have assessed Applicant's credibility based on the entire record. I conclude the totality of the evidence establishes a *prima facie* or initial case as to all SOR allegations, and the proven misconduct in turn establishes a nexus or connection with Applicant's security clearance eligibility. The issue remains whether Applicant had established mitigation of all or any of the allegations.

Financial Considerations

The record shows that Applicant has had two Chapter 7 bankruptcies. The first was in 1991 and resulted from a 1988 house fire that required massive replacement of belongings and a variety of medical, dental and other expenses that overwhelmed his family's ability to keep current. The second was filed in November 2002 and about \$25,213 in liabilities were discharged in February 2003. Applicant serving in the military for 20 years, until continuing medical problems (Tr at 20, 21) forced his retirement and he was not able to find a comparable paying full-time job in the private sector. Family income was reduced by 50%, significant family medical expenses were incurred, and the debts once again "piled up" (Response to SOR and Tr at 20 - 26).

In the present case, all of the cited debts were resolved almost two years ago by a discharge in bankruptcy. Bankruptcy is a legally recognized means of terminating debts. It does not become a factor in security clearance adjudications unless and until the circumstance surrounding the bankruptcy or bankruptcies indicate questionable or poor judgment by a misuse of the process, for example by planning to file for bankruptcy at the time the debts are incurred. One indicator of this misuse may be multiple filings.

In this case, there are two Chapter 7 filings, eleven or twelve years apart, the last filing being in 2002. After a thorough

evaluation of the entire record, I conclude that the two bankruptcies are not the result of planning or even negligence but, rather, a reflection of the kind of family and personal problems that are unfortunately not uncommon. Since the debts cited in the SOR have now been resolved by the 2002 bankruptcy, Applicant no longer has any significant debts and none that are delinquent. On this basis, the stated concern under Guideline F is no longer applicable. Nor is the secondary concern, evidence of financial misconduct in amassing the debt in the first place or in failing to resolve that debt.

On the basis of the entire record, I conclude that the following specific adjudicative guidelines to be most pertinent to this case:

Disqualification and Mitigation - *The Concern*: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

On the basis of the entire record, I conclude that the following specific adjudicative guidelines to be most pertinent to this case:

Disqualification and Mitigation - *The Concern*: 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:

1. A history of not meeting financial obligations;
3. Inability or unwillingness to satisfy debts.

Conditions that could mitigate security concerns:

3. The conditions that resulted in the behavior were largely beyond the person's control (loss of employment, . . . unexpected medical emergency, . . .);

6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

GUIDELINE E (Personal Conduct)

I have carefully considered Applicant's explanations for the omissions alleged in SOR 2.a., which I conclude are confusing, sometimes contradictory, and ultimately not credible. Question 38 asked about debts over 180 days delinquent in the last seven years. He answered Yes, but cited only one debt, the one found in SOR 1.d., but for \$500 instead of the \$938.00 stated in the SOR. Although it is conceivable that a person completing a SF 86 may be unclear about the exact amount owed, his citation of the debt indicates he was aware of the debt and that it was delinquent. Nothing he said or can be found elsewhere in the file, suggests he was not aware of the other debts, those cited in SOR 1.b., 1.c., 1.e., 1.f., 1.g., and 1.h.

In his response to the SOR, Applicant explains that the computer generated SF 86 required information he did not have as to dates, account numbers etc., and he didn't know what to do, so he omitted any mention of the other debts. Considering that he did cite the \$500 debt, his explanation is entirely unconvincing. Along with intentionally answering improperly, he failed to add timely add an explanation that would alert the DSS agent examining the SF 86 until confronted with the facts at his interview with DSS. Only Applicant knows exactly what he was thinking, but the record suggests an effort to deceive and the hope that his omissions would not be discovered.

His explanations for answering No to Question 39 are even less convincing. Looking at all his explanations, he appears to be saying that he did not answer "Yes" to a question about current delinquent debts more than 90 days old because he thought they were covered by the previous question about debts more than 180 days old incurred within the last seven years. The problem is that he did not disclose six of the seven cited debts in responding to the previous question. Whatever Applicant may have meant, his conduct and statements raise a serious question about his intent, which in turn raises a doubt about his judgment, reliability, and trustworthiness. It is basic to the adjudication process that any doubts must be construed against the granting or renewal of a security clearance.

Disqualification and Mitigation - *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;

Condition that could raise a security concern and may be disqualifying:

2. Deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, or similar forms used to conduct investigations

Conditions that could mitigate security concerns:

None that are established under the facts of this case.

Overall, Applicant has mitigated his financial irresponsibility by resolving the cited debts two years ago, and remaining current on his present debts. However, his willful falsification of his SF 86 raises serious questions that remain unresolved. The Directive allows a reapplication to be submitted one year after a denial of a security clearance becomes final. Applicant may wish to take advantage of this period to strengthen his case for eligibility.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline F (Financial Considerations) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

Subparagraph 1.f. For the Applicant

Subparagraph 1.g. For the Applicant

Subparagraph 1.h. For the Applicant

Guideline E (Personal Conduct) Against the Applicant

Subparagraph 2.a. 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 Applicant.

Barry M. Sax

Administrative Judge

1. This evidence has been evaluated only in the context of how seriously to consider the evidence as to 2.a.