

DATE: August 17, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31190

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Sabrina E. Redd, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has failed to mitigate the Guideline E (personal conduct), Guideline F (financial considerations), and Guideline J (criminal conduct) security concerns stemming from his excessive delinquent debt, on-the-job drug and alcohol use, and multiple deliberate false statements to the government, which also violate federal law. Clearance is denied.

STATEMENT OF THE CASE

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to give Applicant a security clearance. On August 11, 2004, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline E (personal conduct), Guideline F (financial considerations), and Guideline J (criminal conduct). Applicant timely answered the SOR (Answer), and denied the allegations under Guidelines E and J that he had deliberately made false statements to the government in his security clearance questionnaire (SF 86).⁽²⁾ He also requested a hearing.

The case was assigned to me on December 8, 2004, and I convened a hearing February 1, 2005. The parties appeared as scheduled and the government presented six exhibits (GE 1 through 6), which were admitted without objection, and Applicant testified in his own behalf. DOHA received the transcript (Tr) on February 9, 2005. Issuance of this decision has been delayed by an unusually large caseload.

FINDINGS OF FACT

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

Applicant is 45 years old and employed as a courier by a defense contractor. He has held his current job since March 2002. From May 1976 until April 2000, Applicant was a bus driver for a major metropolitan area transit company.

Between 2000 and 2002, he held various odd jobs including construction laborer and funeral home chauffeur.

Applicant used marijuana from 1976 until at least 2000. While working as a bus driver, he twice tested positive for marijuana in his system and was reprimanded according to company and union procedures. In April 2000, he reported to work in the early morning hours after a night of drinking. He was given a urine test and found to have an unacceptably high level of alcohol in his system. As it was his third violation of the bus company's drug and alcohol policies, the company moved to terminate his employment. Applicant challenged his dismissal and was eventually allowed to retire instead. (SOR ¶2.a)

Applicant submitted an SF 86 on March 25, 2002. In response to questions 20 and 27, which seek information about adverse employment terminations and prior drug use, respectively, Applicant failed to disclose the dismissal action and related drug use. (SOR ¶¶2.b and 2.c) When he was interviewed by a Defense Security Service (DSS) agent in June 2002, Applicant falsely stated he last used marijuana in 1997. (3)

Since 1985, Applicant has accrued nearly \$60,000 in unpaid debts. His obligations consist of child support arrearages, the remaining deficiencies from two car repossessions, unpaid local taxes and liens to collect those debts, judgments to collect unpaid loans, and delinquent credit card accounts charged off as business losses. (SOR ¶¶1.a through 1.i) The only action taken to pay or otherwise resolve his debts is a garnishment of his income to repay one of his three child support arrearages through a payroll deduction. Once that obligation is satisfied, his pay will likely be garnished to pay his tax liens.

When he filled out his SF 86 in March 2002, Applicant disclosed only that he owed a deficiency of about \$4,000 for a defaulted auto loan. He failed to disclose two of his cars had been repossessed, or that at least two tax liens had been levied against him. Further, Applicant omitted the fact there was still one unpaid judgment against him, and that he owed several other debts that were greater than 90 days or 180 days past due. (SOR ¶¶2.d through 2.g)

Aside from his stated intention to obtain a second job to generate additional income, Applicant has no plan to repay or otherwise satisfy his debts. He has not sought any financial counseling or consolidated loan repayment assistance. He currently supports his girlfriend and their two young children.

POLICIES

The Directive sets forth adjudicative guidelines⁽⁴⁾ to be considered in evaluating an Applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of 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 F (financial considerations), Guideline E (personal conduct), and Guideline J (criminal conduct).

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽⁵⁾ for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for the Applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it establishes 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.⁽⁶⁾ 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

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doubt about an Applicant's suitability for access in favor of the government.

CONCLUSIONS

The security concern under Guideline F is that someone who is financially overextended through delinquent debt or other financial problems may be at risk of engaging in illegal acts to generate funds to resolve their fiscal difficulties. The government has shown that Applicant owes nearly \$60,000 in delinquent debts, but has yet to take any action to repay or otherwise resolve any of his debts. Further, the record shows his financial condition is not likely to improve. In light of the foregoing, Guideline F disqualifying condition (DC) 1⁽⁸⁾ and DC 3⁽⁹⁾ apply here. I have also reviewed the Guideline F mitigating conditions and find there is no basis on which to apply any of them. I conclude Guideline F against the Applicant.

Under Guideline E, a security concern arises when it is shown an applicant has exhibited questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Such conduct may indicate the person may not properly safeguard classified information.⁽¹⁰⁾ Here, the government questions Applicant's trustworthiness because it appears he deliberately omitted from his SF 86 facts about his drug use, financial problems, and his retirement in lieu of termination from a job he had held for more than 20 years.

Applicant has denied he intentionally tried to mislead the government when he omitted these facts from his SF 86. Instead, Applicant claims he misunderstood the questions. I do not believe his explanation. In response to Department Counsel's cross-examination on this issue, Applicant admitted he was aware of his debts, repossessions, tax liens, adverse job termination, and recent drug use when he completed the form. He also testified he took the form home to fill it out so he could take his time and understand the questions.⁽¹¹⁾ Further, he clearly lied about his drug use during his DSS interview. Taken as a whole, the only reasonable conclusion to be drawn from the available information is that Applicant deliberately withheld important facts about his background. He did so when he completed his SF 86 and in his statement to a DSS agent. Therefore, Guideline E DC 2⁽¹²⁾ and DC 3⁽¹³⁾ apply. Additionally, on the facts of this case, none of the mitigating conditions under Guideline E apply. Accordingly, I conclude Guideline E against the Applicant.

Criminal conduct, as addressed under Guideline J, is a security concern because it may indicate an unwillingness to abide by rules and regulations, and may show the applicant to be lacking in reliability and trustworthiness.⁽¹⁴⁾ Having concluded above that Applicant deliberately made false statements to the government about matters within its jurisdiction, I also conclude this conduct violates federal law under Title 18 U.S.C. §1001 as alleged in SOR ¶3.a. Guideline J DC 1⁽¹⁵⁾ applies here. By contrast, Applicant has failed to present sufficient information to show he has refuted, extenuated, or mitigated this security concern. I conclude Guideline J against the Applicant.

I have carefully weighed all of the available evidence, and I have applied the appropriate disqualifying and mitigating conditions. Further, I have made a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. Reasonable doubts persist about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Absent substantial information to mitigate these doubts, which Applicant has failed to provide, I cannot conclude he has overcome the government's case.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline F (Financial): 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

Subparagraph 1.g: Against the Applicant

Subparagraph 1.h: Against the Applicant

Subparagraph 1.i: Against the Applicant

Subparagraph 1.j: Against the Applicant

Subparagraph 1.k: Against the Applicant

Subparagraph 1.l: Against the Applicant

Paragraph 2, Guideline E (Personal Conduct): 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

Subparagraph 2.e: Against the Applicant

Subparagraph 2.f: Against the Applicant

Subparagraph 2.g: Against the Applicant

Paragraph 3, Guideline J (Criminal Conduct): AGAINST THE APPLICANT

Subparagraph 3.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 the Applicant. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. In his Answer to SOR ¶¶2.b through 2.g, which alleged Applicant falsified answers to his SF 86 by omitting his drug use and most of his debts, he admitted to the underlying conduct, but did not directly address whether he deliberately falsified his answers in the SF 86. At hearing, I asked Applicant to clarify his position regarding those allegations and determined he wished to enter a denial as to those allegations and to the allegation in SOR ¶3.a that his falsifications also violate 18 U.S.C. 1001. Accordingly, I entered same on his behalf
3. Tr., p. 73 - 74.

4. Directive, Enclosure 2.
5. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
6. *See Egan*, 484 U.S. at 528, 531.
7. *See Egan*; Directive E2.2.2.
8. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;
9. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;
10. Directive, E2.A5.1.1.
11. Tr., p. 52 - 53.
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;
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.A10.1.1.
15. Directive, E2.A10.1.2.1. Allegations or admission of criminal conduct, regardless of whether the person was formally charged;