

DATE: June 13, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-29631

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has presented insufficient evidence in mitigation, explanation and extenuation to overcome the deliberate omissions of his May 2002, security clearance application (SCA). Clearance is denied.

STATEMENT OF CASE

On January 15, 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, amended April 4, 1999, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons 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 determine whether clearance should be denied or revoked.

Applicant furnished his answer to the SOR on February 5, 2004. Applicant elected to have his case decided on a written record. The Government provided Applicant a copy of the File of Relevant Material (FORM) on August 12, 2004. Applicant received the FORM on August 18, 2004. His response to the FORM was due by September 19, 2004. No response was received. The case was assigned to me on October 7, 2004.

FINDINGS OF FACT

The SOR alleges personal conduct and criminal conduct. In his answer, Applicant admitted subparagraph 1.a. While he acknowledged in his answer the three past due debts in subparagraph 1.b., he did not admit or deny he deliberately omitted the debts from the SCA he signed in May 2002. Applicant is 40 years old and has been employed since May 2002 as a missile technician for a defense contractor. He seeks a secret clearance.

The personal conduct allegations are based on the Applicant's omission of an alcohol-related incident from Question 24 and his omission of three overdue debts from Questions 38 and 39 of his SCA dated May 13, 2002. Applicant admitted

a wilful omission of his alcohol-related driving incident from the SCA. ⁽¹⁾ In his sworn statement dated August 15, 2002, Applicant explained the circumstances of his driving while under the influence of alcohol (DUI) in October 1995. He had been drinking, was stopped and arrested by the police after failing a field sobriety test. He pled guilty to DUI; he was fined and required to complete an alcohol education class. He successfully completed the class. He did not disclose the offense on his SCA because he did not want to jeopardize his chances of being hired by his current employer. Also, he did not reveal the alcohol-related offense because it occurred about seven years ago.

In his answer to the SOR, Applicant admitted he was indebted to the creditors identified in 1.b.(1), 1.b.(2) and 1.b.(3). He stated in his sworn statement (August 15, 2002) that he fell behind in his payments to the credit card creditor (1.b.(1)) in 2000, and then stopped payments completely. He also stated he would set up a payment plan to repay this creditor. He was unaware of the collection bureau debt (1.b.(2)), and there is no reference in his statement or the credit bureau report that he owed the department store. (1.b.(3), see also, GE 5 and 6)

In his answer to the SOR, Applicant discussed the reasons for his indebtedness. His wife has been ill many times in recent years. In 2002, Applicant and his wife became the primary support structure for his mother-in-law, whose serious medical condition required in-patient medical care on several occasions. Following her passing in 2003, Applicant provided monetary support for his wife's siblings so they could graduate from college. Applicant's wife recently had eye surgery and has been on leave without pay. Applicant planned to contact his delinquent creditors and/or a debt management agency to remedy his financial problems. However, he provided no evidence demonstrating his plan had been put in motion.

POLICIES

Enclosure 2 of the Directive sets forth guidelines. Under each guideline are conditions which must be given binding consideration in making security clearance decisions. These conditions must be considered in every case, however, the conditions are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts and circumstances, it should not be assumed that the conditions exhaust the entire realm of human experience or that the conditions apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses and/or their statements.

Personal Conduct

Questionable judgment, untrustworthiness, and dishonesty could indicated the person may not properly safeguard classified information.

Criminal Conduct

A history or pattern of criminal conduct may create doubt about a person's judgment.

Burden of Proof

The Government has the burden of proving controverted facts with substantial evidence. After the burden of proof is established, the burden shifts to the applicant to rebut, refute, explain, mitigate, or extenuate the facts. An applicant has the ultimate burden of persuasion to demonstrate he qualifies for a security clearance. Any doubt concerning an applicant's security clearance access should be resolved in favor of national security. *Department of the Navy v. Egan*, 484 U.S. 518, at 531.

CONCLUSIONS

An applicant has a duty to be honest and forthright during the security investigation. Deliberately omitting information on a security form or in a sworn statement raises security concerns about the applicant's judgment and reliability. If he chooses not to be entirely honest during the security investigation, then there is an unacceptable chance he may demonstrate the same attitude toward security regulations he chooses not to comply with, particularly those that conflict with his personal interests or objectives.

The circumstances of this case invoke disqualifying condition (DC) 2 E2.A5.1.2.2. (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire used to determine security clearance eligibility or trustworthiness.*) On May 13, 2002, Applicant filled out a SCA. Even though he knew he had pled guilty and was fined for a DUI in October 1995, he answered "no" to question 24 requiring information about charges or convictions for offenses related to alcohol or drugs. It is important to note questions 24, 38 and 39 do not include the language "unless you believe this information will reduce your chances of being hired" or "unless the offense occurred seven years ago." Applicant was aware of his alcohol-related offense in October 1995, yet did not disclose the information. The Government has established a case under subparagraph 1.a.

Questions 38 and 39 (subparagraph 1.b.) refer to debts over 180 days delinquent or over 90 days delinquent. In his August 2002, sworn statement, Applicant explained he had fallen behind on the debt to 1.b.(1) in 2000 and eventually stopped paying the creditor altogether. Applicant deliberately withheld the information from question 38 even though he knew the debt was more than 180 days delinquent. A finding in Applicant's favor under 1.b.(2) and 1.b.(3) is based on a lack of evidence supporting a deliberate omission of either debt from his SCA.

There are three conditions available to mitigate Applicant's deliberate omission of his DUI and the credit card debt from his SCA. Mitigating condition (MC) 1 (E2.A5.1.3.1., *the information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability*) will not mitigate the circumstances of this case as the DUI has been substantiated by Applicant and a government records repository. In addition, an applicant's criminal record and indebtedness are always pertinent to judgment and trustworthiness. MC 2 (E2.A5.1.3.2., *the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*) applies to an isolated falsification that is not recent. MC 2 is not applicable to these circumstances because of the recency of the omissions. MC 3 (E2.A5.1.3.3., *the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*) is not applicable either as Applicant was confronted with information about his alcohol-related incident and indebtedness before he came forward with the pertinent information.

While Applicant disclosed the reason he concealed the alcohol-related offense and the credit card debt, the subsequent disclosures do not excuse the earlier, deliberate omissions of his SCA. An applicant is obligated to furnish honest and forthright information during all parts of the security investigation.

Subparagraphs 1.a.(1) and 1.b.(1) also constitute felonious criminal conduct under of 18 United States Code (U.S.C.) 1001. Applicant's deliberate omissions of 1.a.(1) and 1.b.(1) fall within DC 1 (E2.A10.1.2.1., *allegations of criminal conduct regardless of whether the person was formally charged*) of the criminal conduct guideline. Applicant's deliberate omissions were material in that they had the potential of influencing a security clearance decision by the Government.

Though mitigating conditions 1, 2, and 6 are potentially useful to mitigate DC 1, there is insufficient evidence to overcome the deliberate falsification of Applicant's SCA. MC 1 (E2.A10.1.3.1., *the criminal behavior was not recent*) is unavailable as the deliberate concealment occurred less than three years ago. C 2 (E2.A10.1.3.2., *the crime was an isolated incident*) may have mitigated DC 1 had Applicant presented sufficient evidence under DC 6 (E2.A10.1.3.6., *there is clear evidence of successful rehabilitation*) to show his respect for the law and his recognition of the importance of being honest during the security investigation. The medical and financial problems do not excuse Applicant's deliberate omission of relevant and material information from his SCA in May 2002.

Even though I have found against Applicant under the personal conduct and criminal conduct guidelines, I have to examine the deliberate omissions under the whole person concept of the Directive. (Enclosure 2 of the Directive, page 16) After reviewing the circumstances under the whole person factors, I reach the same decisions as under both guidelines. Applicant was not a young adult when he filled out the SCA. Rather, he was over 35 years old when he deliberately omitted material information about his driving record and debt history. The serious illnesses suffered by his wife and mother over the last two years are tragic. Applicant is commended for providing the much needed care his mother-in-law certainly appreciated. His devotion to his wife during her serious medical challenges also earns Applicant considerable admiration. However, the commitment he has shown to his loved ones does not mitigate the deliberate falsifications of his SCA. Accordingly, I find against Applicant under the whole person concept.

FORMAL FINDINGS

Paragraph 1 (foreign preference, Guideline B):AGAINST THE APPLICANT.

a. Against the Applicant.

1.a.(1) Against the Applicant.

b. Against the Applicant.

1.b.(1) Against the Applicant.

1.b.(2) For the Applicant.

1.b.(3) For the Applicant.

Paragraph 2 (criminal conduct, Guideline J): AGAINST THE APPLICANT.

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 Applicant a security clearance.

Paul J. Mason

Administrative Judge

1. The offense is reported in the Federal Bureau of Investigation (FBI) record repository. (Item 7)