

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 29-year-old technical writer for a defense contractor. Shortly after graduating from college, he became financially overextended on two credit card accounts and his student loans. Applicant presented evidence that he paid off one credit card account, substantially reduced the balance on a second account, and brought his payments up to date on his student loan. He erroneously answered "no" to a question on his security clearance application whether he had been more than 180 days delinquent on any debt. He asserted that his negative answer was an honest mistake. No deliberate falsification is found. Furthermore, even if there was deliberate falsification, it was mitigated. Clearance is granted.

CASENO: 02-20705.h1

DATE: 08/23/2004

DATE: August 23, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-20705

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 29-year-old technical writer for a defense contractor. Shortly after graduating from college, he became financially overextended on two credit card accounts and his student loans. Applicant presented evidence that he paid off one credit card account, substantially reduced the balance on a second account, and brought his payments up to date on his student loan. He erroneously answered "no" to a question on his security clearance application whether he had been more than 180 days delinquent on any debt. He asserted that his negative answer was an honest mistake. No deliberate falsification is found. Furthermore, even if there was deliberate falsification, it was mitigated. Clearance is granted.

STATEMENT OF THE CASE

On August 13, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR), detailing the basis for its decision to not grant a security clearance to Applicant. This action was taken under Executive Order 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). The SOR alleges security concerns under Guideline F (Financial Considerations) of the Directive. It alleges that Applicant has past due debts on a credit card account and student loans. (SOR, paras. 1.a, 1.b) The SOR also alleges, under Guideline E, that Applicant deliberately falsified material facts on a security clearance application when he gave a negative answer to a question whether, in the last seven years, he had been more than 180 days delinquent on any debts. (SOR, para. 2.a)

Applicant answered the SOR in writing on September 16, 2003. He admitted the debts but described his efforts to pay them. He denied deliberately falsifying material facts on his security clearance application, asserting that his negative answer was an honest mistake. He elected to have his case decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on January 27, 2004. Department Counsel agreed that Applicant "may have begun paying on some of the debts alleged in the SOR," but argued that the amount of delinquent debt "may preclude complete mitigation of Guideline F concerns at this juncture. Regarding Applicant's negative answer to the question regarding delinquent debts, Department Counsel asserted that Applicant's claim of an honest mistake and his complete disclosure when confronted about the negative answer are persuasive but not dispositive.

Applicant was provided a complete copy of the file of relevant material (FORM). He was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on March 3, 2004. He responded on April 27, 2004, after requesting and receiving additional time to respond. The case was assigned to me on July 27, 2004.

FINDINGS OF FACT

Applicant's admissions of the facts alleged in the SOR are incorporated into my findings of fact. I also make the following findings:

Applicant is a 29-year-old technical writer for a defense contractor. He graduated from college in May 2000. (FORM, Item 4, p. 1) While he was a college student, he was employed by a department store from June 1997 until January 1999. (FORM, Item 4, p. 2) He made an agreement with his employer that excused him from working on Sunday for religious reasons. However, when the department store was sold, the new owner fired Applicant for refusing to work on Sunday. Applicant filed an equal-opportunity complaint and received an award of \$1,400.00. (FORM, Item 4, pp. 5-6; Item 5, p. 1)

Applicant also worked as a writing tutor while he was a college student. That job ended when he graduated in May 2000. (FORM, Item 4, pp. 1-2)

It took Applicant longer than he expected to find a job after graduating from college. He relied on his credit card to pay expenses, became financially overextended, and missed payments "for months at a time" on three accounts, including the credit card account and student loans listed in SOR, paras. 1.a and 1.b. (FORM, Item 3, p. 1)

Applicant's credit card account was turned over to a collection agency in June 2000, shortly after his graduation from college. Applicant's student loan account also was turned over to a collection agency on a date not reflected in the

record. The student loan account was more than 120 days delinquent in December 2001. (FORM, Item 6, p. 16) This delinquent debt had increased to about \$8,500.00 in February 2002. (FORM, Item 5, p. 1; Item 7, p. 2)

After working for approximately three months with another company, Applicant began working as a technical writer for his present employer in November 2000. (FORM, Item 4, p. 2) On February 26, 2002, Applicant executed a Standard Form 86 (SF 86), Security Clearance Application. Question 38 of SF 86 asks, "In the last 7 years, have you been over 180 days delinquent on any debt?" Applicant answered this question in the negative. (FORM, Item 4, p. 8)

On May 20, 2002, Applicant was questioned by a Defense Security Service (DSS) investigator about his financial situation, but he was not questioned about his answer to Question 38. Applicant fully disclosed his three delinquent debts, including the two listed in the SOR. He admitted that he owed \$6,493.00 on the credit card account, \$8,500.00 on his student loans, and \$1,700.00 on the third account not listed in the SOR. He promised to contact his creditors within 30 days and set up payment plans. (FORM, Item 5, pp. 1-2) By July 2, 2003, Applicant had fully paid the delinquent debt not listed in the SOR. (FORM, Item 6, p. 8)

In September 2002, Applicant began making regular payments on the credit card account listed in the SOR, para. 1.a. By July 7, 2003, he had reduced the debt from \$6,493.90 to \$5,247.87. (FORM, Item 6, p. 7) By September 16, 2003, when he responded to the SOR, his credit card debt had been reduced to \$4,343.90. (Response to SOR, p. 4) By April 27, 2004, when he responded to the FORM, the debt had been reduced to \$3,847.47. (Response to FORM, p. 10)

Applicant also began making regular payments on his delinquent student loans listed in the SOR, para. 1.b. By April 3, 2004, he had made 13 consecutive timely payments, reducing the debt to \$5,865.87. The lender declared the loan "rehabilitated" and notified the national credit bureaus to delete the record of default from Applicant's credit record. (Response to FORM, pp. 6-7) Because the student loans were no longer in default, Applicant was able to reduce his monthly payments from \$300.00 per month to \$83.23, thereby making it possible for him to increase his payments on the credit card debt. (Response to FORM, pp. 11-12)

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 restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from

conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines in the Directive.

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1 through ¶¶ 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (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 applicant'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 ¶¶ E2.2.1.1 through E2.2.1.9.

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.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. ISCR Case No. 01-20700 at 3 (App. Bd. Dec 19, 2002). "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence." ISCR Case No. 98-0761 at 2 (App.Bd. Dec. 19, 2002). "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700, *supra*; *see* Directive ¶ E3.1.15. 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, *supra*. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

Financial Considerations

Under Guideline F (Financial Considerations), "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Directive ¶ E2.A6.1.1. Two disqualifying conditions (DC) under Guideline F could raise a security concern and may be disqualifying in this case. DC 1 applies where an applicant has a history of not meeting his or her financial obligations. Directive ¶ E2.A6.1.2.1. Starting with the DSS interview in May 2002, Applicant has repeatedly admitted the delinquent debts. His admissions are consistent with his credit reports. Thus, I conclude that DC 1 has been established.

DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3. During the DSS interview, Applicant acknowledged that he was financially overextended, but declared his intention to pay his debts. He has made substantial progress. He has paid off one creditor completely, brought his student loan debt out of delinquency, and is making regular progress paying off the credit card debt. The evidence establishes Applicant's willingness to meet his financial obligations. It also establishes that Applicant has rehabilitated his financial situation to the extent that he is now able to meet those obligations. Accordingly, I conclude that DC 3 is not established.

Two mitigating conditions (MC) are relevant in this case. MC 3 applies when the conditions that resulted in the behavior were largely beyond the applicant's control. Directive ¶ E2.A6.1.3.3. MC 6 applies when an applicant has initiated a good-faith effort to pay his debts or otherwise resolve them. Directive ¶ E2.A6.1.3.6. Based on the evidence, I conclude that no other mitigating conditions are applicable.

Applicant was wrongfully fired from his job at a department store, a condition beyond his control. He was unemployed while searching for a job after graduation. While not the sole cause of Applicant's financial distress, being wrongfully fired was a contributing factor. I conclude that MC 3 applies to this case.

Applicant's significant progress in paying off his debts, set out above in my findings of fact, reflects a good faith effort which has been successful to date. I conclude that MC 6 also applies.

Applying the adjudicative guidelines set out in the Directive to the evidence in this case, I have considered the serious nature of Applicant's financial mismanagement. Directive ¶ E2.1.1. His financial irresponsibilities occurred during a single, relatively brief episode that began four years ago and ended two years ago. Directive ¶ E2.1.3. Although Applicant was an adult at the time, he was relatively young. Directive ¶ E2.1.4. His behavior since the spring of 2002

strongly suggests rehabilitation, making recurrence unlikely. Directive ¶¶ E2.2.1.6 and E2.2.1.9.

Although Applicant is on a tight budget, his debts have become manageable. I conclude that he is no longer "financially overextended" within the meaning of Guideline F. Thus, the potential for pressure, coercion, exploitation, or duress based on his financial condition has greatly diminished. Directive ¶ E2.2.1.8. Based on the above considerations, I conclude that Applicant has mitigated the concerns raised by his previous history of not meeting financial obligations.

Falsification

Under Guideline E (Personal Conduct), "Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, [or] dishonesty . . . could indicate that the person may not properly safeguard classified information." Directive ¶ E2.A5.1.1. A "deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire" can raise a security concern and may be a disqualifying condition (DC 2). Directive ¶ E2.A5.1.2.2. Under DC 2 there must be "a showing that the applicant acted with intent to mislead or deceive the government by not disclosing the information." ISCR Case No. 00-0302, 2001 DOHA LEXIS 337 at *5 (App. Bd. Apr. 23, 2001).

Applicant admits that he should have answered Question 38 in the affirmative. The issue is whether he deliberately omitted or falsified a material fact. Proof that Applicant omitted information about his delinquent debts from his SF 86 shifted the burden to him to explain the omissions sufficiently to negate a finding of knowing and deliberate falsification. ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004).

In his sworn response to the SOR, Applicant denies that he deliberately misrepresented his financial status. He asserts that his negative response to the question regarding delinquent debts was not an attempt to deceive, but an honest mistake. He states, "Either I misread the question or I accidentally marked the wrong box." (FORM, Item 3, p. 2) In his response to the FORM, he again asserts, under oath, that his negative response was an honest mistake. He states he is familiar with the security clearance process, and he knows that "[a]nyone with the proper information can log on to the internet and print my entire credit history within moments." He asserts, "I am not so foolish as to knowingly omit information relating to my credit when I fully expect the government to examine my credit history in relation to my application for clearance." (Response to FORM, p. 3)

Applicant's denials of intent to conceal or mislead are relevant, but not conclusive or binding. They must be considered and weighed in the light of the record as a whole. ISCR Case No. 00-0302, *supra*.

In contrast to Question 38, Applicant answered Question 20 truthfully, admitting that he had been fired from a job in the past. The fact that he answered Question 20 truthfully, even though it had potentially negative implications, suggests lack of intent to conceal derogatory information.

It is noteworthy that the interrogatories dated April 10, 2003 (FORM, Item 6, p. 1), asked Applicant only to explain his financial situation. There was no mention of falsification. Similarly, Applicant's sworn statement to the DSS investigator discusses only his financial affairs. There is no discussion of the negative answer to Question 38, strongly suggesting that Applicant was not questioned about it. (FORM, Item 5, pp. 1-4) The record reflects that Applicant was first confronted regarding his answer to Question 38 when he received the SOR. By that time, he had fully disclosed his financial problems and had initiated actions to resolve them.

In his response to the FORM, Applicant submitted several letters from a former business partner, a process engineering manager for Applicant's employer, Applicant's pastor for more than 25 years, the president of a local theater and acting group, and a personal friend who has known him for more than 20 years. The letters attest to Applicant's high moral character, reliability, and honesty. (Response to FORM, Enclosures D-H)

FORMAL FINDINGS

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

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraphs 1.a and 1.b: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is granted.

LeRoy F. Foreman

Administrative Judge