

KEYWORD: Financial; Personal Conduct; Criminal Conduct

DIGEST: Applicant is a 61-year-old employee of a defense contractor who has a history of failing to meet his financial obligations. On his Security Clearance Application (SF 86), Applicant falsely denied that he had been over 180 days delinquent on any debts during the previous 7 years. Applicant failed to mitigate the security concerns arising from his financial instability and his false statement on his security clearance application. Clearance is denied.

CASENO: 02-22366.h1

DATE: 07/26/2004

DATE: July 26, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-22366

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 61-year-old employee of a defense contractor who has a history of failing to meet his financial obligations. On his Security Clearance Application (SF 86), Applicant falsely denied that he had been over 180 days delinquent on any debts during the previous 7 years. Applicant failed to mitigate the security concerns arising from his financial instability and his false statement on his security clearance application. Clearance is denied.

STATEMENT OF THE CASE

Pursuant to 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 (the "Directive"), the Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 26 August 2003, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision: security concerns raised under Guidelines F (Financial Considerations), E (Personal Conduct), and J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on 22 September 2003 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 7 November 2003. Department Counsel provided a complete copy of the file of relevant material (FORM) to Applicant, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on 1 March 2004 but did not submit a response. The case was assigned to me on 20 July 2004.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, I make the following findings of fact:

Applicant is 61 years old and is married. He has worked as a technician for a defense contractor since 1991, and has held a security clearance since 1968. He seeks renewal of his security clearance.

Applicant has a recent history of bad debts, including the following matters listed in the SOR:

- 1) A bad debt to a credit card company for about \$946.00, charged off in about January 2000 (¶ 1.a);
- 2) A bad debt to a credit card company for about \$111.00, charged off in about June 2000 (¶ 1.b);
- 3) A bad debt to a bank for about \$320.00 charged off in about January 2000 (¶ 1.c);
- 4) A bad debt to a telephone services company for about \$275.00 charged off in about January 1998 (¶ 1.d);
- 5) A bad debt to a financial services company for about \$2,233.00 charged off in about October 2000 (¶ 1.e);
- 6) A bad debt to a financial services company for \$2,713.00 placed for collection in about December 2001 (¶ 1.g);
- 7) A bad debt for \$82.00 to an emergency room placed for collection in September 2001 (¶ 1.i).

In his response to the SOR, Applicant admits the seven debts identified above, and that all these debts remained unpaid as of April 16, 2003. With regard to the \$82.00 debt to the emergency room, Applicant adds that his insurance should take care of it. He does not indicate whether he ever took action to have the insurance company pay the debt.

In addition to the bad debts listed above, Applicant had four other bad debts, which form the basis for the additional allegations in paragraph 1 of the SOR. Specifically, Applicant had:

1) A delinquent account to a mail order business for about \$201.00 referred for collection in about February 2001 (¶ 1.f);

2) A delinquent debt to a financial services company for about \$466.00 referred to a collection agency in about July 1999 (¶ 1.h);

3) A delinquent account to a financial services company for about \$228.00 referred to a collection agency in about March 2001 (¶ 1.j);

4) A delinquent account to a retailer for about \$3,992.00 referred for collection in about March 2003 (¶ 1.k).

Applicant provides only a general denial of these debts. He does not indicate whether he denies all liability, or whether he disputes only the amount of the liability or some other particular aspect of the allegation in the SOR. Applicant provides no information showing the debts were paid or that he has entered into a repayment plan. In his reply to financial interrogatories, Applicant indicates all the bad debts would be paid upon the sale of some personal property, however there is no indication that occurred.

Applicant submitted an SF 86, Security Clearance Application. Question 38 on the SF 86 asks: "In the last 7 years, have you ever been over 180 days delinquent on any debts?" On December 11, 2001, Applicant answered "no" to this question.

POLICIES

In Executive Order 12968, *Access to Classified Information* § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only 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." A person granted access to classified information enters into a special relationship with the government. Because of this special relationship, the government must be able to repose a high degree of trust and confidence in

those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

In order to be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline F - Financial Considerations: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive, ¶ E2.A6.1.1.

Guideline E - Personal Conduct: 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. Directive, ¶ E2.A5.1.1.

Guideline J - Criminal Conduct: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. Directive, ¶ E2.A10.1.1.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (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 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. *Id.* Initially, the Government must establish, by substantial evidence, conditions which disqualify, or may disqualify, the applicant from being eligible for access to classified information. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. 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 at 3 (App. Bd. Dec. 19, 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2.

CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

With respect to Guideline F, the government has established its case. Applicant's admissions and the government's documentary matters constitute substantial evidence of two disqualifying conditions under Guideline F of the Directive, specifically ¶ E2.A6.1.2, a history of not meeting financial obligations, and ¶ E2.A6.1.2.3, inability or unwillingness to satisfy debts. These conditions raise security concerns because a person who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive, ¶ E2.A6.1.1.

It is a mitigating condition that the individual initiated a good-faith effort to repay overdue creditor or otherwise resolve his debts. Directive, ¶ E2.A6.1.3.6. Applicant indicates that he was selling some personal property and attempting to refinance his home, however he provides no further information about such efforts. Considering the depth of his financial difficulties and the length of time they have continued, I find Applicant has failed to mitigate the security concerns raised by his financial difficulties.

With respect to Guideline E, the government has established its case. The SOR alleges that Applicant's answer to Question 38 was knowingly false. Applicant's response states generally that he was unaware of this matter. Considering all the facts and circumstances, including the nature and extent of Applicant's bad debts, the duration of his financial difficulties, and the referral of these debts for collection, Applicant's response is unpersuasive.

Applicant's false statement on the security clearance application denying any debts delinquent for more than 180 days within the last 7 years is substantial evidence of a disqualifying condition, specifically, ¶ E2.A5.1.2.2, "the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . . used to conduct investigations . . . [or] determine security clearance eligibility or trustworthiness" The evidence presented in this case raises concerns about Applicant's judgment, trustworthiness, reliability, candor, honesty, and willingness to comply with rules and regulations.

Applicant asserts he is a trustworthy employee who is loyal to his country. He maintains that he has held a security clearance from 1968 until now without any problems. It is a mitigating condition that the falsification was an isolated

incident, was not recent, and the individual has subsequently provided correct information voluntarily. Directive, ¶ E2.A5.1.3.2. Applicant does not meet the requirements of this mitigating condition however. While this may have been an isolated incident, the false statement was recent and he has not subsequently provided correct information voluntarily. The issue is not whether Applicant was disloyal to the United States in the past, but whether he will be a security risk in the future.

With respect to Guideline J, the government has established its case. Applicant's misrepresentation on his SF 86 was a false official statement in violation of the federal criminal code, specifically 18 U.S.C. § 1001, and constitutes a single serious crime under ¶ E2.A10.1.2.2. It is a mitigating condition that the crime was an isolated incident. Directive, ¶ E2.A10.1.3.2. However, in light of the recency of the statement and the materiality of the omission regarding Applicant's eligibility for a security clearance, I find Applicant has not mitigated this disqualifying condition.

For these reasons, I find that Applicant is not eligible for access to classified information.

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

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

DECISION

In light of all of 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. Clearance is denied.

Michael J. Breslin

Administrative Judge