

KEYWORD: Financial; Personal Conduct; Criminal Conduct

DIGEST: Applicant has failed to successfully mitigate the security concern stemming from her history of not meeting financial obligations. In addition, she has failed to mitigate the security concern based on her falsification of her security-clearance application when she deliberately omitted or concealed an arrest for assault in January 1999. Clearance is denied.

CASENO: 02-24481.h1

DATE: 03/28/2005

DATE: March 28, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-24481

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Stephanie Hess, Esq., Department Counsel

FOR APPLICANT

Michael E. Veve, Esq

SYNOPSIS

Applicant has failed to successfully mitigate the security concern stemming from her history of not meeting financial obligations. In addition, she has failed to mitigate the security concern based on her falsification of her security-clearance application when she deliberately omitted or concealed an arrest for assault in January 1999. Clearance is denied.

STATEMENT OF THE CASE

On April 10, 2004, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating the reasons why DOHA proposed to deny or revoke access to classified information for Applicant. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F for financial considerations, Guideline E for personal conduct, and Guideline J for criminal conduct related to the falsification allegations under Guideline E.

Applicant replied to the SOR on June 10, 2004, she requested a hearing, and her answer was mixed. She admitted the allegations of financial delinquencies under Guideline F, she denied the falsification allegations under Guideline E except for subparagraph 1.a, and therefore denied the related allegation under Guideline J. At the hearing, Applicant clarified her reply to subparagraph 1.a by denying deliberately providing a false answer to a question about her police record on the security-clearance application. Her clarification is taken as a denial and so, Appellant has denied all falsification allegations under Guideline E.

Department Counsel indicated she was ready to proceed on August 11, 2004, and the case was assigned to me the next day. A notice of hearing was issued on September 2, 2004, scheduling the hearing for October 5, 2004, Applicant appeared with counsel and the hearing took place as scheduled. For unexplained reasons, DOHA did not receive the

transcript until March 17, 2005.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the record, I make the following findings of fact:

Applicant is a 41-year-old unmarried woman who is a native-born U.S. citizen. She has three children, ages 26, 17, and 3. She is currently employed as a management analyst. She has worked for her current employer since September 30, 2003. Previously, she worked for other companies where she was required to hold a security clearance, which she has for several years without an adverse incident or problem.

In January 1999, police arrested Applicant on the misdemeanor charge of second degree assault. The arrest stemmed from a domestic violence incident between Applicant and her then live-in boyfriend. During an argument, the boyfriend struck Applicant and she hit him back. Police were called, and when they arrived they saw a scratch on the boyfriend's face. Applicant was placed under arrest by the police, handcuffed, put in the back of the police car, taken to the police department, had her fingerprints and photo taken, was questioned, and then placed in a holding cell for about two hours before her release. She hired an attorney, and she never appeared in court to answer to the charge, because her attorney told her the charge was *nolle prosequi*, which it was.

Applicant was on maternity leave from her previous employment in December 2000. She was contacted by her employer and told she had to complete a security-clearance application. She went to the office and received the paperwork, which was not the formal security-clearance application, but was instead a worksheet (Exhibit A) based on the application. In response to Module 26 on page 24 of the worksheet, Applicant answered "No" thereby denying being arrested for, charged with, or convicted of any offense(s) within the last seven years not listed in the previous five questions. Also, the worksheet has several questions or modules about finances, and Modules 33 - 39 were left unanswered. She did not provide answers because she did not have sufficient time to obtain the necessary financial records and paperwork to answer the questions. She returned to work on or about January 2, 2001, and the worksheet was shipped to the corporate office at another location that day. Exhibit C is a copy of the shipping document.

After receiving the worksheet, an individual used it to complete the formal security-clearance application. On or about January 4, 2001, Applicant was faxed the signature page of the application. She signed it and returned it to the corporate office the same day. The result of this process was a completed and signed security-clearance application, which Department Counsel introduced as Exhibit 1. Question 26⁽²⁾ in Exhibit 1, which is the same as Module 26 of the worksheet, was answered "No." But the financial questions in Exhibit 1, which are the same as Modules 33 -39 of the

worksheet, were all answered "No." She did not see the completed application that was submitted by her employer to the government. The first time she saw the completed application was in April 2004, after receiving the SOR, when she requested a copy of it from her employer. Exhibit B is the document she received in response to her request. That was the first time she knew the financial questions were answered in the negative as opposed to unanswered as in the worksheet she submitted to her employer.

In February 2001, a credit report was obtained during the background investigation. In summary, it revealed Applicant had two repossessions, ten accounts in a collection/charge off status, and two liens/judgments (Exhibit 3 at p. 2). Also, it revealed Applicant had one account that was 120-days past due.

Applicant was interviewed during the background investigation in July 2001, and the interview produced a sworn statement (Exhibit 2). In it, Applicant explained her financial problems started in about December 1994 when she traded a vehicle on another vehicle. She also addressed debts owed to various creditors. Concerning the financial questions on the security-clearance application, Applicant explained:

I do not know why I did not respond to the credit questions as far as overdue debts are concerned. I must have been rushing through the form too fast and inadvertently incorrectly answered the questions. I had no intent of falsifying, omitting or misleading anyone (Exhibit 2 at p. 4).

She also explained the circumstances surrounding her arrest due to the incident with her boyfriend. Concerning why she did not reveal the arrest in the security-clearance application, Applicant explained:

I did not know I should have listed the above mentioned incident because I did not consider it an arrest because it was thrown out of court. I must have misunderstood the security questionnaire. I would not have intentionally falsified, omitted, or misrepresented any information (Exhibit 2 at p. 5).

In June 2004, when Applicant responded to the SOR, she submitted a one-page memorandum (Exhibit G) that provided an explanation to her one-word admissions or denials. In her memorandum, Applicant addressed her answer to Question 26 as follows:

In regards to question 26 (Your police record), I did not respond incorrectly to this question. In my opinion, [I] was a victim of domestic violence and had absolutely no choice but to defend the safety [of] my minor child and myself.

During her hearing testimony, Applicant addressed Question 26. In response to a question from her counsel about her negative answer to the question, Applicant testified as follows:

My understanding is that everything was dropped and that nothing was against me. I didn't go to court or anything like that. So obviously I feel I did everything correct.

It didn't go as far as convicted, and that's what I went on. I said, 'No.' I didn't go as far as saying, 'Have you been arrested' or whatever. I was arrested for - - I stayed for about an hour or two hours. So that was my judgment. I didn't go through the whole question (Transcript at p. 40).

It appears Applicant was saying she misread the question or did not read the complete question (*See* transcript at p. 77). When confronted by Department Counsel with her "I did not respond incorrectly to this question" statement in her June 2004 memorandum, Applicant replied "I can't explain what I was trying to say" (Transcript at p. 82).

The SOR alleges and Applicant admits she has 14 delinquent debts for about \$7,600.00. Eleven of the debts appear to be medical bills that were not covered under Applicant's medical insurance at the time. As of July 2001, Applicant had 15 accounts for a total of \$1,682.81 for medical bills with a collection agency (Exhibit 7). As of March 2004, Applicant had 17 accounts for a total of \$1,818.55 for medical bills with the same collection agency (Exhibit D). She plans to pay \$20.00 monthly to the collection agency, but had not yet made any payments.

The debt alleged in subparagraph 2.b is based on a judgment for \$2,246.47 taken against Applicant by an automobile credit company. In October 1998, the judgment was satisfied by garnishment of her wages (Exhibits 5 & 6).

The debt alleged in subparagraph 2.c is based on a delinquent credit card account for \$2,200.00 that was charged off as a bad debt. It was settled-in-full in August 2001 (Exhibit E).

The debt alleged in subparagraph 2.d is based on a delinquent credit card account for \$842.00. In her sworn statement in July 2001, Applicant indicated she would start paying on it in August 2001. To date, this debt remains unpaid.

Applicant incurred another debt, not alleged in the SOR, with an automobile credit company. The debt was based on a

deficiency balance after Applicant's car was repossessed sometime in 1998. This debt was settled-in-full in February 2004 (Exhibit F).

To reduce her monthly expenses and free up cash to pay her debts, Applicant and her two minor children have moved in with her adult child. Applicant believes this will save her about \$1,000.00 monthly. She is current with her car loan payments. Her annual salary is about \$38,000.00.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security-clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each applicable guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1. through ¶ 6.3.6. of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

BURDEN OF PROOF

The only purpose of a security-clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽³⁾ There is no presumption in favor of granting or continuing access to classified information.⁽⁴⁾ The government has the burden of proving controverted facts.⁽⁵⁾ The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than the preponderance of the evidence.⁽⁶⁾ The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.⁽⁷⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁸⁾ Once the government meets its burden, an applicant has the burden of presenting evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him.⁽⁹⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁰⁾

As noted by the Court in *Egan*, "it should be obvious that no one has a 'right' to a security clearance," and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹¹⁾ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access

to classified information will be resolved in favor of protecting national security.

CONCLUSIONS

Under Guideline F, a security concern typically exists for two different types of situations--significant unpaid debts and unexplained affluence; this case involves the former. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information.

Here, based on the record evidence as a whole, the government established its case under Guideline F. The numerous delinquent medical accounts, two delinquent credit card accounts, the repossession, and the garnishment to satisfy a judgment demonstrate a history of not meeting financial obligations as well as inability or unwillingness to pay one's just debts. ⁽¹²⁾ Also, the same facts and circumstances demonstrate financial irresponsibility.

I have reviewed the mitigating conditions under the guideline and conclude none apply. Based on the record evidence, I am unable to conclude she has made a good-faith effort to pay or otherwise resolve her indebtedness. ⁽¹³⁾ The evidence does not suggest that Applicant's financial problems are resolved and under control. Although it appears she now owes less than \$3,000.00 in delinquent debt (the medical bills plus the unpaid credit card account), these accounts have been delinquent for years with little to no action taken by Applicant to pay or otherwise resolve them. Applicant says she intends to resolve these matters, but actions speak louder than words. Her financial problems are long standing and until she establishes a long-term track record of good debt management, it is simply too soon to tell if she has established a financially responsible lifestyle. Accordingly, Guideline F is decided against Applicant.

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance or in other official matters is a security concern. It is deliberate if it is done knowingly and willfully. Omission of a past arrest or past drug use, for example, is not deliberate if the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or thought the arrest had been expunged from the record and did not need to be reported.

Here, based on the record evidence as a whole, the government established its case under Guideline E. I am not convinced, however, Applicant deliberately omitted information about her finances in response to four questions on the security-clearance application. After reviewing Exhibits 1, A, B, and C, along with listening to Applicant's explanation

about filling out the worksheet and not answering the financial questions, this appears to be a case of snafu (situation normal all fouled up). Applicant was unaware her employer submitted the security-clearance application (Exhibit 1) with the negative answers to the financial questions. Therefore, subparagraphs 1.b, 1.c, and 1.d are decided for Applicant.

In response to Question 26 about her police record, Applicant was required to report her January 1999 arrest for assault. She did not, and so, the issue is whether her negative answer to the question was deliberately false. I am persuaded it was. Applicant has provided several explanations for her answer and her explanations are inconsistent. Her inconsistencies undermine and undercut her credibility on this point. Based on her deliberately false answer about her police record, DC 2-[\(14\)](#) applies against Applicant.

I have reviewed the mitigating conditions under the guideline and conclude none apply. Falsification of a security-clearance application is a serious matter, and it is not easily mitigated or explained away. Accordingly, Guideline E is decided against Applicant.

Likewise, Applicant's falsification of her security-clearance application violates 18 U.S.C. § 1001, which is a federal criminal law. No mitigating conditions apply. Accordingly, Guideline J is decided against Applicant.

To conclude, Applicant has failed to meet her ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I have considered the record evidence as a whole, the whole-person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive.

FORMAL FINDINGS

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

SOR ¶ 1-Guideline E: Against the Applicant

Subparagraph a: Against the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

SOR ¶ 2-Guideline F: Against the Applicant

Subparagraphs a - n: Against the Applicant

SOR ¶ 3-Guideline J: Against the Applicant

Subparagraph 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. Clearance is denied.

Michael H. Leonard

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Question 26 asks "In the last seven years, have you been arrested for, charged with, or convicted of any offense(s) not listed in" the previous five questions?"
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.

5. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
6. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).
7. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
8. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
9. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
10. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.
11. *Egan*, 484 U.S. at 528, 531.
12. E2.A6.1.2.1. A history of not meeting financial obligations;" and E2.A6.1.2. 3. Inability or unwillingness to satisfy debts.
13. E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.
14. E2.A5.1.2.2. The deliberate omission, concealment, of 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.