

KEYWORD: Financial; Criminal Conduct; Personal Conduct

DIGEST: Applicant has delinquent debts he has not paid, a history of criminal conduct, and an unwillingness to tell the truth. Clearance is denied.

CASENO: 02-25802.h1

DATE: 04/19/2006

DATE: April 19, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-25802

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez Jr., Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has delinquent debts he has not paid, a history of criminal conduct, and an unwillingness to tell the truth. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. In accordance with Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on 12 March 2004 detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR, in a writing received by DOHA on 16 April 2004, and elected to have a hearing before an administrative judge. The case was assigned to another administrative judge and reassigned to me on 14 February 2006. On 13 March 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 23 March 2006.

FINDINGS OF FACT

Applicant is a 31-year-old IT technician for a defense contractor. He has been working in Afghanistan. He was married from January 1994 until April 2000. He has three children from that marriage who live with his ex-wife. Applicant served in the U.S. Army from 1992-95. He transferred to the Army National Guard, where he served from October 1995 until August 1998, when he transferred to the Air Force Reserve. He obtained a security clearance in approximately January 1996, which he held until 1998.

In September 1998, after experiencing marital difficulties, Applicant began to gamble. He would go to a local casino after arguing with his wife. He maxed out his credit cards and took items from his home and pawned them to get money to gamble.

In February 1999, Applicant was arrested for theft by fraud. He had written two checks for merchandise on an account that had been closed. Applicant pled guilty in April 1999 to one count of misdemeanor theft. Another count was nolle prossed. He was sentenced to 10 days in jail, suspended, and probation for six months.

In December 1999, Applicant was arrested for felony theft. He stole \$884 worth of items and pawned them for cash. He gambled away all the money.

Because Applicant had not other place to live, his ex-wife allowed him to stay in her home. On 26 June 2000, Applicant was arrested for theft of a computer and microwave he stole from his ex-wife. He pawned the items to get cash to pay his gambling debts.

In June 2000, Applicant was caught trying to steal a satellite dish from a department store. In October 2000, he pled guilty to attempted felony theft. He was sentenced to serve six months in jail, suspended, to pay a fine of \$250 or serve 30 days in jail, probation for 12 months, to continue in a gambling after care program, and to make restitution.

In December 2000, Applicant was arrested and charged with felony theft of a motor vehicle. He had pawned his truck, kept a key, and later returned and drove the truck off without paying. Ex. 3. In April 2001, Applicant pled guilty to one count of unauthorized use and was sentenced to pay a fine of \$100 or 60 days in jail, 120 days in jail suspended, and probation for one year. As special terms of probation, Applicant was required to enroll in Gambler's Anonymous (GA) and attend a minimum of two meetings a month, and make full restitution. Another charge of unauthorized use was nolle prossed.

Applicant pled guilty in January 2001 to theft and was sentenced to time already served in jail-27 days.

In July 2001, Applicant was arrested for failing to pay court fines in two cases and was required to serve 90 days in jail. Ex. 2.

On 1 February 2003, Applicant completed a security clearance application (SCA), dated 17 January 2002, by certifying that his statements therein were "true, complete, and correct" to the best of his knowledge and belief, and by acknowledging that a "knowing and willful false statement" could be punished under 18 U.S.C. § 1001 with a fine and/or imprisonment. Question 21 asked if he had ever been charged with or convicted of any felony offense. Applicant answered "yes," and listed a February 2000 felony-theft. Applicant explained "No conviction (dropped)." Question 26 asked if, in the previous seven years, Applicant had been arrested for, charged with, or convicted of any offenses not listed elsewhere on the SCA. Applicant answered "no."

Question 37 asked if, in the previous seven years, Applicant had any judgments against him he had not paid. Question 38 asked if, in the previous seven years, he had been delinquent more than 180 days on any debts. Question 39 asked if Applicant was then delinquent more than 90 days on any debt. Applicant answered "no" to each of these questions.

On 3 May 2002, Applicant completed a signed, sworn statement in which he stated, "I have never had to spend anytime in jail for any of my criminal activities, and have always completed all of my probation, and paid my fines as ordered." Ex. 18 at 3.

The following chart provides a summary of Applicant's delinquent debts:

Debt	Status	Record
1.a-medical bill \$245.	Unpaid; claims care was for sports injury and college should have paid. No documents.	Tr. 11
1.b-medical bill \$201.	Unpaid; claims care was for sports injury and college should have paid. No documents.	Tr. 11
1.c-credit card acct charged off \$1,759.	Same as 1.n. Used card for gambling.	Tr. 12
1.d-bank card charged off \$791.	Unpaid.	Tr. 15-16
1.e-bank card charged off \$1,238.	Unpaid.	Tr. 15-16
1.f-bank credit \$116.	Unpaid.	Tr. 17
1.g-credit card \$2,000.	Unpaid.	Tr. 17
1.h-U.S. Govt. credit card \$269.	Unpaid; claims he contested debt.	Tr. 18-19
1.i-child support \$19,658.	Claims paid, but no corroboration.	Tr. 19
1.j-collection acct \$326.	Unsure of nature of debt; unpaid.	Tr. 20
1.k-charged off acct \$819.	Unpaid.	Tr. 21
1.l-charged off acct \$2,594.	Unpaid.	Tr. 22
1.m-charged off acct \$987.	Unpaid	Tr. 22
1.n-judgment on delinquent credit card	Same debt as alleged in ¶ 1.c; unpaid.	Tr. 12

In addition to the delinquent debts listed above, Applicant took unauthorized cash advances on his government credit card for gambling. He repaid the debt by deduction from his tax refund. Tr. 23-25

Applicant stopped going to GA in 2004 when he stopped gambling. He claims he has matured and no longer feels inclined to gamble. He has not acquired any more delinquent debts. He has \$10,000 in savings and \$4,000 left over each month after he pays his current bills.

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline F-Financial Considerations

In the SOR, DOHA alleged Applicant has three debts totaling more than \$750 in collection status (§§ 1.a, 1.b, 1.j); nine debts totaling more than \$30,000 that were charged off (§§ 1.c-1.i, 1.k-1.m); and an unpaid judgment of more than \$1,400 (§ 1.n). In his Answer, Applicant admitted each of the allegations except §§ 1.h and 1.i. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government established each of the allegations in the SOR, and related disqualifying conditions. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1) and is unwilling to satisfy his debts (DC E2.A6.1.2.3). Applicant's financial problems are linked to gambling (DC E2.A6.1.2.5). Pertinent mitigating conditions include the following: the conditions that resulted in the behavior were largely beyond his control (MC E2.A6.1.3.3); and he has initiated a good-faith effort to repay overdue creditors or otherwise resolve his debts (MC E2.A6.1.3.6). Applicant failed to convince me that his gambling was beyond his control. Although he continued to gamble despite arrests and financial difficulties, the lack of any diagnosis of gambling addiction and his ability to quickly stop gambling without the continued support of GA suggests his gambling was not beyond his control. Even if it was, he failed to make a good-faith effort to resolve his debts once he stopped gambling and found better employment. Although he appears to have more than \$10,000 in savings and his monthly income exceeds his bills by about \$4,000, he has not made any significant effort to pay his overdue debts. I find against Applicant on ¶ 1.

Guideline J-Criminal Conduct

In the SOR, DOHA alleged Applicant was arrested in July 2001 for failing to pay court-ordered fines and was sentenced to 90 days in jail (§ 2.a); was arrested in December 2000 and charged with felony theft for the unauthorized taking of a pickup truck he had previously pawned (§ 2.b); was arrested in June 2000 for felony theft for stealing a computer and a microwave from his ex-wife (§ 2.c); was arrested in December 1999 for felony theft (§ 2.d); was arrested in February 1999 for theft for passing two checks on a closed account (§ 2.e); pled guilty in April 2001 for unauthorized use (§ 2.f); pled guilty in October 2000 to attempted felony theft (§ 2.g); pled guilty to theft in January 2001 (§ 2.h); pled guilty to misdemeanor theft in April 1999 (§ 2.i). In his Answer, Applicant admitted each of the allegations except § 2.b. A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1.

The Government established each of the allegations in ¶ 2. However, the allegations ¶ 2.f-2.i appear to merely reflect the disposition of the allegations alleged in the preceding subparagraphs of ¶ 2. Under the circumstances, I have considered the criminal offense and the subsequent disposition as one criminal act. Therefore, I find for Applicant on §§ 2.f-2.i.

Applicant admits engaging in criminal conduct (DC E2.A10.1.2.1), including serious crimes and multiple lesser

offenses (DC E2.A10.1.2.2). In Applicant's case, the arguably pertinent mitigating conditions are as follows: his criminal behavior was not recent (MC E2.A10.1.3.1); the factors leading to the violations are not likely to recur (MC E2.A10.1.3.4); and there is clear evidence of successful rehabilitation (MC E2.A10.1.3.6).

Applicant correctly notes that his last arrest or court appearance was in 2001, some five years ago. But since then, Applicant deliberately falsified his SCA regarding his criminal and financial problems, and deliberately lied in a signed, sworn statement by denying he had served any time in jail. Such lies are violations of 18 U.S.C. § 1001. These violations of 18 U.S.C. § 1001 were not alleged in the SOR. Therefore, I considered them only as to the applicability of any of the mitigating conditions. Due to Applicant's continuing criminal conduct, I am unable to find any of the mitigating conditions apply. I find against Applicant on ¶ 2.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant committed multiple criminal offenses to acquire funds to support his gambling (¶ 3.a); and falsified material facts on his SCA in answering questions 21 (¶ 3.b), question 26 (¶ 3.c), question 37 (¶ 3.d), question 38 (¶ 3.e), and question 39 (¶ 3.f). In his Answer, Applicant admitted the allegation in ¶ 3.a and denied the others. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government's evidence established each of the allegations in SOR ¶ 3. It is possibly disqualifying for an applicant to engage in a pattern of rules violations (DC E2.A5.1.2.5) to deliberately falsify relevant and material facts on a SCA (DC E2.A5.1.2.2), or to deliberately provide false information concerning relevant matters to an investigator in connection with a personnel security determination. Applicant deliberately failed to fully disclose his criminal history and his delinquent debts on his SCA. Applicant's criminal misconduct amounts to rules violations.

Even when Applicant was confronted with his false statements on the SCA, he was still unwilling to provide the whole truth. He told an investigator that he had never served any time in jail. But Applicant served two stints in jail-one of 10 days and the other of 90. None of the mitigating conditions apply. Under all the circumstances, I find against Applicant on ¶ 3.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a-1.b: Against Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d-1n: Against Applicant

Paragraph 2. Guideline J: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

Subparagraph 2.e: Against Applicant

Subparagraph 2.f: For Applicant

Subparagraph 2.g: For Applicant

Subparagraph 2.h: For Applicant

Subparagraph 2.i: For Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Subparagraph 3.b: Against Applicant

Subparagraph 3.c: Against Applicant

Subparagraph 3.d: Against Applicant

Subparagraph 3.e: Against Applicant

Subparagraph 3.f: Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

James A. Young

Administrative Judge