

DATE: August 5, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-26690

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Sabrina E. Redd, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has failed to mitigate the Guideline E (personal conduct), Guideline F (financial considerations), and Guideline J (criminal conduct) security concerns stemming from his excessive delinquent debt, and his deliberate false statements to the government, which also violate federal law. Clearance is denied.

STATEMENT OF THE CASE

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to give Applicant a security clearance. On April 20, 2004, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline E (personal conduct) and Guideline J (criminal conduct). Applicant timely answered the SOR (Answer), and essentially denied all of the allegations therein.⁽²⁾ He also requested a hearing.

The case was assigned to me on November 22, 2004, and I convened a hearing January 28, 2005. The parties appeared as scheduled and the government presented five exhibits (GE 1 through 5), which were admitted without objection. Applicant testified in his own behalf. I left the record open after hearing to allow Applicant time to submit additional information I deemed relevant and material to the issues herein. Applicant timely submitted one exhibit, which I have admitted as Applicant's Exhibit (AE) A. DOHA received the transcript (Tr) on February 4, 2005. Issuance of this decision has been delayed by an unusually large caseload.

PROCEDURAL ISSUE

On November 4, 2004, the government moved in writing to amend the SOR, adding a third paragraph containing three allegations raising security concerns under Guideline F (financial considerations). The written motion (a copy of which is attached in the case file to the SOR) was mailed to Applicant on November 10, 2004, but he did not respond to it. At hearing, Applicant admitted he had received the motion nearly two months before and admitted to the new allegations

added to the SOR as paragraph 3, and subparagraphs 3.a, 3.b, and 3.c. I granted the government's motion.⁽³⁾

During the hearing, I further amended the SOR *sua sponte* by changing subparagraph 3.c to change the date "July 2004" to "November 2002" to conform to the evidence presented at hearing.⁽⁴⁾

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is 25 years old and employed by a defense contractor as a procurement technician. He is also in his third year of college and takes courses at night and on weekends.

In April 1998, Applicant was charged with second degree trespassing, a misdemeanor, after police found him and a friend in a local park after it was closed. He received a ticket, appeared in court, was given 10 days in jail (suspended) and paid a fine. This is the only time Applicant has been charged with a crime.

Between 1999 and 2001, Applicant was enrolled as a full-time college student in a different state. During that time, he received and accepted unsolicited offers from credit card companies, opening two accounts, both of which are now delinquent in the amounts of \$1,330 and \$989. The accounts are now held by the same collection agency. Applicant appears to have settled the latter debt by paying \$500.⁽⁵⁾ He last paid towards the larger card debt in February 2002.

In the summer of 2002, Applicant was injured in a car accident. He was driving a new car he had just bought through financing a few months before, and he suffered a severe leg injury that kept him from working for about 10 weeks. He had no way to earn income and, by the time he was able to work again, he had missed two car payments. He had paid his car loan each month before the accident, and he resumed his monthly payments when he returned to work. However, he was never able to pay the arrearage and the car was repossessed in November 2002. After it was re-sold, Applicant was notified he still owed a deficiency on the car loan of about \$11,000.

Applicant also owes about \$1,500 to a jeweler. The account has been delinquent since November 2002. Applicant has tried to contact this creditor, but the jeweler has gone out of business. His plan to satisfy this and his other debts centers in large measure on his as yet unfulfilled intention to find a second job and/or get more overtime.

Applicant submitted an SF 86 in January 2002. In response to question 26, which asks if Applicant was arrested in the previous seven years for offenses not addressed by other questions, Applicant answered "no." However, Applicant was required by the plain language of question 26 to disclose his 1998 misdemeanor trespassing charge. Further, in response to questions 38 and 39, inquiring about debts more than 180 days and 90 days, respectively, Applicant also answered "no" when he should have disclosed the debts discussed above.

In February 2002, Applicant was interviewed by an agent of the Defense Security Service (DSS). When asked if he had ever been arrested or otherwise adversely involved with law enforcement in the previous seven years, Applicant said he had not. He also denied being delinquent or late in paying his debts. It was not until he was confronted by the results of a DSS criminal and financial records check that he admitted he had been charged with trespassing and that he was delinquent on several debts as discussed above.

Applicant appears to be living within his means. After paying rent, food, utilities, and extra medical expenses (he is a diabetic), he has about \$200 left over. However, he is not making any payments to any of the delinquencies listed in the SOR, and he is in deferment on student loans he estimates will total about \$14,000 when he finishes college in another 18 months. This will add about \$160 in monthly payments to his expenses. Applicant received a \$7,000 raise in his annual salary in January 2005.⁽⁶⁾

POLICIES

The Directive sets forth adjudicative guidelines⁽⁷⁾ to be considered in evaluating an Applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of both disqualifying and mitigating

conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are Guideline H (illegal drugs) and Guideline E (personal conduct).

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽⁸⁾ for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for the Applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it establishes that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.⁽⁹⁾ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁽¹⁰⁾

CONCLUSIONS

Under Guideline E, a security concern arises where it is shown an applicant has exhibited questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Such conduct may indicate the person may not properly safeguard classified information.⁽¹¹⁾ Here, the government questions Applicant's trustworthiness because it appears he deliberately omitted from his SF 86 facts about a previous criminal charge (SOR ¶1.a). The government also alleged Applicant deliberately lied to a DSS agent during his subject interview when he denied any prior arrests or adverse involvement with law enforcement. (SOR ¶1.b) The SOR also contains similar allegations of falsification about his finances through his SF 86 and the subject interview. (SOR ¶¶1.c and 1.d)

Applicant denies intentionally omitting this information from his SF 86.⁽¹²⁾ However, it is clear from all of the evidence available on this issue that Applicant knew about his delinquent debts at the time he submitted the SF 86. As for his failure disclose his trespassing charge, it may be that Applicant had forgotten about it as a minor affair as he was only issued the equivalent of a traffic ticket. Yet, as this was his only such interaction with the law and the courts, it stands to reason he would not easily forget such an event. Further, when interviewed by DSS two months after submitting the SF 86, he initially denied having delinquent debts or any arrest record only to admit these facts when confronted with his credit report and his arrest record.

Were it not for Applicant's reluctance to be forthright about these issues when interviewed, Applicant's defense of forgetfulness and difficulty with the SF 86 form might be plausible. On the whole, however, these facts reasonably support a conclusion Applicant's omissions were undertaken deliberately. Therefore, Guideline E disqualifying condition (DC) 2⁽¹³⁾ and DC 3⁽¹⁴⁾ apply. Further, on the facts of this case, none of the listed mitigating conditions under Guideline E is applicable. Accordingly, I conclude Guideline E against the Applicant.

Criminal conduct, as addressed under Guideline J, is a security concern because it may indicate an unwillingness to abide by rules and regulations, and may show the applicant to be lacking in reliability and trustworthiness.⁽¹⁵⁾ Having concluded above that Applicant deliberately made false statements to the government about matters within its jurisdiction, I also conclude this conduct violates federal law under Title 18 U.S.C. §1001 as alleged in SOR ¶2.a. Guideline J DC 1⁽¹⁶⁾ applies here. By contrast, Applicant has failed to present sufficient information to show he has refuted, extenuated, or mitigated this security concern. I conclude Guideline J against the Applicant.

The security concern under Guideline F is that someone who is financially overextended through delinquent debt and

poor personal financial management may be at risk of engaging in illegal acts to generate funds to resolve their fiscal difficulties. Through the SOR amendment, the government has alleged Applicant owes \$939 to a credit card company (SOR ¶3.a), \$1,519 to a jeweler (SOR ¶3.b), and \$11,168 for the remainder after re-sale when his car was repossessed. (SOR ¶3.c) The government has presented sufficient information to support these allegations, thereby establishing a case for disqualification under Guideline F. Applicant admits his credit card debts resulted from his abuse of easily available credit when he was in college, and he has acknowledged he still owes the other debts as alleged. In light of the foregoing, Guideline F disqualifying condition (DC) 1 [\(17\)](#) and DC 3 [\(18\)](#) apply here.

Having reviewed the Guideline F mitigating conditions, only MC 3 [\(19\)](#) applies in light of the fact he fell behind on his car payments after he was injured and unable to work. However, those events took place over two years ago and Applicant has taken no apparent action to pay or otherwise resolve the largest of his debts. Nor has he addressed the delinquent jewelry account; however, the creditor has gone out of business and it is unclear how he would pay this if he were able. He has settled the debt in SOR ¶3.a, but his remaining liabilities are still significant given he will soon have to pay off student loans and does not appear to have a verifiable plan in place to pay his past debts while keeping up with his current expenses and obligations. Based on the entire record on the issue of Applicant's debts, I cannot conclude Applicant has presented sufficient evidence to overcome the adverse security concerns raised by the government's information. On balance, I conclude Guideline F against the Applicant.

I have carefully weighed all of the available evidence, and I have applied the appropriate disqualifying and mitigating conditions. Further, I have tried to make a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. Reasonable doubts persist about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Absent substantial information to mitigate these doubts, which Applicant has failed to provide, I cannot conclude he has overcome the government's case.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline E (Personal Conduct): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Paragraph 2, Guideline J (Criminal Conduct): AGAINST THE APPLICANT

Subparagraph 2.a: Against the Applicant

Paragraph 3, Guideline F (Financial): AGAINST THE APPLICANT

Subparagraph 3.a: For the Applicant

Subparagraph 3.b: Against the Applicant

Subparagraph 3.c: 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 the Applicant. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Applicant stated in his Answer he admitted the allegations "with prejudice." When I asked him at hearing what he meant, he stated he was acknowledging the allegation but denying the security significant gravamen of the allegation.
3. Tr., p. 16 - 20.
4. Tr., p. 64.
5. GE 3.
6. AE A.
7. Directive, Enclosure 2.
8. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
9. *See Egan*, 484 U.S. at 528, 531.
10. *See Egan*; Directive E2.2.2.
11. Directive, E2.A5.1.1.
12. SOR 1.a and 1.c cite to an SF 86 dated December 13, 2001; however, GE 1 is an SF 86 dated January 25, 2002. Applicant does not deny he answered "no" to the questions as alleged in the SOR and has not contested the evidence submitted on this point.
13. Directive, E2.A5.1.2.2. The deliberate omission, concealment, or 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;
14. Directive, E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination;
15. Directive, E2.A10.1.1.
16. Directive, E2.A10.1.2.1. Allegations or admission of criminal conduct, regardless of whether the person was formally charged;
17. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;
18. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;
19. Directive, E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, *unexpected medical emergency*, or a death, divorce or separation);