

KEYWORD: Personal Conduct; Criminal Conduct

DIGEST: Applicant is a 44 year old employee of a defense contractor who, when he completed his SF 86, had delinquent debts from his private business of over \$50,000.00. He did not report the debts on questions 38 and 39 concerning financial delinquencies of over 90 and 180 days. He acknowledged he deliberately withheld the information because he regarded it as a private matter not relevant to his holding a security clearance and he did not want to reflect adverse information on his application. Clearance is denied.

CASENO: 03-19029.h1

DATE: 09/22/2004

DATE: September 22, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-19029

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 44 year old employee of a defense contractor who, when he completed his SF 86, had delinquent debts from his private business of over \$50,000.00. He did not report the debts on questions 38 and 39 concerning financial delinquencies of over 90 and 180 days. He acknowledged he deliberately withheld the information because he regarded it as a private matter not relevant to his holding a security clearance and he did not want to reflect adverse information on his application. Clearance is denied.

STATEMENT OF CASE

On February 12, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement dated March 3, 2004, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on May 25, 2004. A complete copy of the file of relevant material (FORM) was provided to the Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted no additional information, and the case was assigned to me July 19, 2004.

FINDINGS OF FACT

Applicant is a 44-year-old employee of a defense contractor. He admitted all of the allegations concerning personal conduct for failing to list his debts on his security clearance application (SF 86). He denied the allegation concerning criminal conduct. After a complete and thorough review of the information in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant completed his SF 86 on March 25, 2003, at which time he had delinquent debts from his private business of over \$50,000.00. He did not report the debts in answer to questions 38 and 39 dealing with financial delinquencies of over 90 and 180 days.

Later in 2003, he either paid most of the debts or arranged for a payment program for some of the larger debts. Applicant acknowledged he deliberately withheld the information because he regarded it as a private matter not relevant to his holding a security clearance and he did not want to reflect adverse information on his application.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the 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 *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to all allegations set forth in the SOR:

Under Guideline E, Applicant's failure to report his delinquent debts might indicate questionable judgment, unreliability, and unwillingness to comply with rules and regulations and could indicate that the person may not properly safeguard classified information. (E2.A5.1.1.) Specifically, the deliberate omission, concealment, or falsification of relevant and material facts from a personnel security application could raise a security concern and be disqualifying. (E2.A5.1.2.2.) Applicant's excuses for failure to report the debts do not absolve him of a finding in support of the allegation. He knew the information would be regarded as adverse and he had no sound reason to believe such information was not relevant to his holding a security clearance since it was clearly requested on the form. No mitigating conditions are applicable.

Allegations of criminal conduct raise a number of Disqualifying Conditions (DC) under Guideline J relating to a single serious crime or multiple lesser offenses (E2.A10.1.2.2.) and allegations or admissions of criminal conduct, regardless of whether the person was formally charged (E2.A10.1.2.1.). Applicant's admission that he deliberately failed to truthfully report required information on his SF 86 is a violation of 18 U.S. Code, Section 1001, a criminal statute about which he was warned on the SF 86 form. No mitigating conditions are applicable.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is not clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline E: AGAINST APPLICANT

Subparagraph 1.a. 1-14: Against Applicant

Paragraph 2. Guideline J: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

DECISION

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge