

KEYWORD: Financial; Personal Conduct; Criminal Conduct

DIGEST: Applicant failed to mitigate security concerns relating to failure to resolve delinquent debts and to report those delinquent debts on his application for security clearance (SF 86). Applicant admitted failing to report the debts in fear of jeopardizing his ability to obtain a clearance. Applicant mitigated failure to report criminal charges filed against him in two incidents in 1997, but failed to mitigate concerns over failure to report driver's license suspensions on an employer's form. Clearance is denied.

CASENO: 03-21966.h1

DATE: 08/26/2005

DATE: August 26, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-21966

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate security concerns relating to failure to resolve delinquent debts and to report those delinquent debts on his application for security clearance (SF 86). Applicant admitted failing to report the debts in fear of jeopardizing his ability to obtain a clearance. Applicant mitigated failure to report criminal charges filed against him in two incidents in 1997, but failed to mitigate concerns over failure to report driver's license suspensions on an employer's form. Clearance is denied.

STATEMENT OF CASE

On December 8, 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.

On January 5, 2005, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to me on April 4, 2005. A notice of hearing was issued on June 20 2005, for a hearing on June 21, 2005, and held that day. Applicant waived the lack of formal printed notice and acknowledged that he had received two weeks oral notice. Both the government and Applicant offered 13 exhibits each into evidence and all were accepted. One technical amendment to the SOR was made by the government. The transcript was received on July 5, 2005.

FINDINGS OF FACT

Applicant admitted SOR allegations 1.a. and b. and 2.b.2. and 3. and denied the remainder. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 27-year-old employee of a defense contractor performing engineering duties having obtained a degree in welding technology. He incurred several debts over the past years cited in the SOR totaling a little over \$23,000.00 of which over \$19,000.00 was for school tuition. Until the investigative interview for this matter was conducted, Applicant had not made payment on these debts and did not have adequate records of them. Since that time he has started to make payments of over \$100.00 per month on the student loan and paid all of the rest plus others not cited in the SOR.

Two charges were brought against Applicant in 1997 when he was 19 years old. The first was while he was in college and involved removing a female from his dorm room whom he had asked to leave. The charge was harassment and the matter was dismissed when the complaining witness did not appear. The second was an arrest and charge with altering price tags and concealment involving changing a price tag in a store to reduce the price and then paying the lower price for the goods (Exh. 10). The charge was dismissed upon Applicant's agreement to perform 50 hours of community service which he accomplished. He believed that the matter had been expunged from his record after completion of the service.

Applicant completed a Driver's Disclosure and Authorization form for his employer but did not disclose five driver's license suspensions during the period 1998 to 2000 (Exh. 11).

Applicant did not list the criminal charges and delinquent debts in answer to Questions 26, 38, and 39 on his application for security clearance (SF 86). In his statement to the Defense Security Service investigator of April 30, 2003, he acknowledged that, in answering Question 38 and 39, he only focused on current debts and not his older debts as he was afraid to do so would adversely affect his ability to obtain a security clearance (Exh. 9).

Applicant is married and has one child. His monthly take home pay is in excess of \$4,000.00 and he has had disposable income after expenses of over \$1,000.00 per month for several years. In addition to his work for his employer he has

invested in housing and is renovating homes that he will sell and has been successful financially in this effort.

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 it is clearly consistent with the national interest to grant or continue a security 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 adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

Applicant's delinquent debts prompted the allegation of security concerns under Guideline F in that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of inability or unwillingness to satisfy debts. (E2.A6.1.2.3.) Mitigating Conditions (MC) might include the fact that the conditions that resulted in the behavior were largely beyond the person's control (E2.A6.1.3.3.) and the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.) Applicant has been in a position for several years to pay all of the debts in full, except possibly the tuition debt, but has made no effort to do so until very recently. His efforts to find the creditors and pay the smaller debts and work out a payment schedule for the largest debt is commendable but does not resolve the issue raised by the security concerns stated in the SOR. No mitigating conditions are applicable.

Applicant's failure to report his police record for arrests or convictions at Question 26 on his SF 86 raises issues under Guideline E that 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.) He believed that the charge relating to the price tag offense had been expunged after his community service and that the dorm room incident was not on his record in view of the court disposition of it. I conclude that withholding the information was not deliberate. Applicant's failure to report the delinquent debts was deliberate by his own admission that he feared to reveal them might jeopardize his ability to obtain a security clearance.

His failure to report his driver's license suspensions to his employer is also alleged as a security concern under Guideline E. Applicant contended that he did not receive any of the notices of the suspensions since, during the period in question, he was in school and had a variety of addresses. However, the record indicates all were mailed (Exh. 12) and it is difficult to believe that at least some of the five notices did not reach him providing some notice of their existence. No mitigating conditions are applicable.

Guideline J (Criminal Conduct) is alleged but only as a violation of 18 U.S.C. ¶ 1001 by failing to answer questions 26, 38, and 39. The allegation could be mitigated by the facts that the criminal behavior was not recent (E2.A10.1.3.1), the crime was an isolated incident (E2.A10.1.3.2.), and that there is clear evidence of successful rehabilitation (E2.A10.1.3.6.). One SOR allegation (2.a.2.) was modified at the hearing to reflect only a charge and not an arrest. I conclude Applicant had a reasonable basis for his belief that his two 1997 charges were not required to be reported but his admission of the reason for withholding the information as to the debts preclude a finding in his favor on those omissions.

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.

The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Applicant has a promising future with his employer and his entrepreneurship in his home renovation business at a young age. He has undertaken to pay the delinquent debts, but too late to overlook the fact that the debts were overdue and that he failed to reveal them on his SF 86.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude it is premature to grant a security clearance at this time.

FORMAL FINDINGS

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

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

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: 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 renew a security clearance for Applicant. Clearance is denied.

Charles D. Ablard

Administrative Judge