

KEYWORD: Financial; Criminal Conduct; Personal Conduct

DIGEST: Applicant is an employee of a defense contractor. He has a 1999 arrest for second degree battery reduced to disturbing the peace. He had delinquent debts that he is trying to resolve through a Chapter 13 bankruptcy proceeding. Applicant failed to disclose his delinquent debts and arrest on his security clearance application. Applicant mitigated the criminal conduct security concern, but did not mitigate the financial considerations and personal conduct security concerns. Clearance is denied.

CASENO: 03-22281.h1

DATE: 01/30/2006

DATE: January 30, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-22281

**DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

Eric H. Borgstrom, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is an employee of a defense contractor. He has a 1999 arrest for second degree battery reduced to disturbing the peace. He had delinquent debts that he is trying to resolve through a Chapter 13 bankruptcy proceeding. Applicant failed to disclose his delinquent debts and arrest on his security clearance application. Applicant mitigated the criminal conduct security concern, but did not mitigate the financial considerations and personal conduct security concerns. 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. On October 27, 2004, DOHA issued a Statement of Reasons<sup>(1)</sup> (SOR) 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 writing on December 6, 2004. Applicant requested her case be decided on the written record in lieu of a hearing.

On April 25, 2005, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed a response to the FORM on June 1, 2005, within the 30 day time allowed that would have expired on June 8, 2005. The case was assigned to me on September 20, 2005.

### **FINDINGS OF FACT**

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 44 years old, a veteran, married, and works as a project manager for a defense contractor. He completed his security clearance application (SCA) on March 28, 2002. In that SCA he failed to make several material and substantial required disclosures. (Exhibits 3 and 4)

Applicant deliberately failed to disclose his arrest in 1999 for second degree battery in answer to Question 26. That question asked if Applicant had been arrested, charged with, or convicted of any offense in the past seven years not otherwise disclosed on the SCA. He pled guilty to disturbing the peace and was fined \$100. He thought he did not have to disclose that arrest because the amount was under \$150, but that \$150 limit in the question only applied to traffic offenses. (Exhibits 3 and 4)

Applicant did not disclose his delinquent debts in response to Question 38 (delinquent debts more than 180 days in the past seven years) and Question 39 (delinquent debts then older than 90 days), but answered "no" to both questions. Applicant claims he failed to make full disclosure through ignorance and misunderstanding the level of detail needed in response to the questions. He disclosed his delinquent debts to the government investigator after being reminded of them. (Exhibits 3-5)

Applicant does not owe child support for his children by his former wife. He paid it in full. His account statement from the states in which his former wife and children live show a zero balance due from Applicant. The child support listed in the Chapter 13 bankruptcy is owed by his current wife to her former husband, and is owed to states other than the two states Applicant admits he owed his child support, so he has no obligation on that debt. (Exhibits 5, 9, Response)

The delinquent debt for \$7,718.55 to a hospital alleged in SOR subparagraph 1.b. is included in Applicant's Chapter 13 bankruptcy filing on August 13, 2004. The delinquent debt owed to a bank for two credit card debts consolidated for a total amount of \$1,887 is included in the Chapter 13 bankruptcy. The radiologist's medical bill in the amount of \$30 is included in the Chapter 13 bankruptcy. These debts and other debts are listed in the three credit bureau reports from March 2005, July 2003, and February 2002. Applicant also listed the credit card debts and the hospital debt in his financial history attached to his statement of March 2002. Applicant also has a car loan not included in the Chapter 13 bankruptcy that is listed in the 2002 and 2003 credit bureau reports. This car loan is not listed in the 2005 credit bureau report, but there are other car loans listed. Applicant surrendered this vehicle in 1996 and forgot about the debt. This credit bureau report also lists 13 medical bills owed, with the amounts under \$500 each. Applicant is paying the monthly amounts into his Chapter 13 bankruptcy as shown on the bankruptcy trustee reports up to March 2005 and his wage statement as of June 2, 2005. (Exhibits 5-9, FORM Response attachments)

## **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 has 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 the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with 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.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

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. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 pertinent 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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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 that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. ay 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden

shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "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* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline F: Financial Considerations: *The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.* E2.A6.1.1

Guideline J: Criminal Conduct: *The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.* E2.A10.1.1

Guideline E: Personal Conduct: *The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.* E2.A5.1.1

## CONCLUSIONS

Applicant has a history of not meeting financial obligations (Disqualifying Condition (DC) 1 (E2.A6.1.2.1)). DC 3 (Inability or unwillingness to satisfy debts) applies also. Five debts are listed in the SOR. Applicant owes four of them currently.

Applicant listed three of the delinquent debts in his Chapter 13 bankruptcy. The child support obligation that he had has been satisfied, as shown by the court document he submitted with his response to the FORM. The auto loan debt was on two credit bureau reports, but not the latest one from 2005. There may be several reasons for that absence, but regardless of the reasons, Applicant admitted its validity, but failed to include it on the Chapter 13 bankruptcy. His Answer states

he forgot this 1996 voluntary surrender of this automobile. The only Mitigating Condition (MC) applicable here is MC 6 is MC 6 (The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts E2.A6.1.3.6), and it only applies to the debts listed in the Chapter 13 bankruptcy. Chapter 13 bankruptcy, a court ordered and protected installment payment plan, is a good-faith effort to repay his debts. The auto loan remains unpaid and unresolved. Therefore, I conclude this guideline against Applicant.

Regarding the Criminal Conduct security concern, Applicant has a single arrest in 1999 for second degree battery. That charge was later reduced to disturbing the peace to which Applicant pled guilty. DC 1 (Allegations or admissions of criminal conduct, regardless of whether the person was formally charged E2.A10.1.2.1) and DC 2 (A single serious crime or multiple lesser offenses E2.A10.1.2.2) apply.

The MC applicable are MC 1 (The criminal behavior is not recent E2.A10.1.3.1) and MC 2 (The crime was an isolated incident E2.A10.1.3.2). Therefore, I conclude this guideline for Applicant.

Finally, the personal conduct security concern relates to Applicant's failure to disclose his 1999 arrest and his delinquent debts in his SCA. DC 2 (The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, or similar form used to determine security clearance eligibility or trustworthiness E2.A5.1.2.2) applies.

Applicant claims he misunderstood the questions and did not realize the details he needed to provide concerning his delinquent debts. However, the questions 26, 38, and 39 are worded simply and directly. If Applicant cannot understand that disclosure is the requirement that cannot be obviated by later assertions he did not know the amounts he owed, then I am not persuaded by his post-investigations protests. There is a pattern here of non-disclosure from Applicant on any unfavorable information. Applicant knew or should have known his delinquent debt situation when he completed the SCA in February 2002. He should have made disclosure that he had debts that remained unpaid, even if he did not have an exact total of each. He also should have disclosed his arrest because it was within seven years of completing the SCA, and was not a traffic offense. I am not persuaded by his explanations as to why he could not recall his debts or his arrest. Later disclosure was not sufficient because it was not made before the investigator confronted him. Therefore, no MC apply and I conclude this security guideline against Applicant.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Paragraph 2. Guideline J: FOR APPLICANT

Subparagraph 2.a: For Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Subparagraph 3.b: Against Applicant

Subparagraph 3.c: 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 continue a security clearance for Applicant. Clearance is denied.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).