

KEYWORD: Criminal Conduct, Financial

DIGEST: Applicant is a 38-year-old male, working as an antenna design engineer for a federal defense contractor since 1997. He was arrested twice. The first charge, for aggravated assault with a deadly weapon in April 2000, was dismissed. His October 2001 arrest for driving while intoxicated resulted in a conviction and included supervised probation, community service, and payment of a fine. He has been alcohol free since 2001. Applicant has over 10 delinquent debts totaling approximately \$22,788. He offered no evidence in support of his contention that some of these debts were consolidated and being paid off. He has not mitigated the criminal conduct or financial considerations security concerns. Clearance is denied.

CASENO: 03-22679.h1

DATE: 02/17/2006

DATE: February 17, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-22679

DECISION OF ADMINISTRATIVE JUDGE

JACQUELINE T. WILLIAMS

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 38-year-old male, working as an antenna design engineer for a federal defense contractor since 1997. He was arrested twice. The first charge, for aggravated assault with a deadly weapon in April 2000, was dismissed. His October 2001 arrest for driving while intoxicated resulted in a conviction and included supervised probation, community service, and payment of a fine. He has been alcohol free since 2001. Applicant has over 10 delinquent debts totaling approximately \$22,788. He offered no evidence in support of his contention that some of these debts were consolidated and being paid off. He has not mitigated the criminal conduct or financial considerations 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 under Executive Order 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 (the Directive). On January 10, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision: criminal conduct under Guideline J and financial considerations under Guideline F. Applicant answered the SOR on March 28, 2005 and requested a decision without a hearing.

Department counsel submitted the government's written case on July 15, 2005. Department Counsel provided a complete copy of the file of relevant material (FORM) to Applicant, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the allegations. Applicant received the FORM on May 3, 2005. He did not respond to the FORM by the due date. On July 15, 2005, Department counsel submitted Applicant's response to the FORM. The government did not object to this document being submitted out of time. The case was assigned to me on June 15, 2005.

FINDINGS OF FACT

Applicant admits all the allegations stated in the SOR, with the exception of the allegations in ¶ 2.a, a debt he believes may not be his responsibility; he believes it belongs to his wife, from whom he is separated.⁽¹⁾ Those admissions are incorporated herein. After a complete and thorough review of the record evidence as a whole, I find it sufficient to establish the conduct alleged in the SOR. I make the following additional findings of fact:

Applicant is a 38-year-old male, working as an antenna design engineer for a federal defense contractor since 1997.⁽²⁾ He was married in 1991 and is now separated from his wife.

From 1985 to 1988 he served in the U.S. Army as a Corporal (E-4). From 1988 to 1993, he was in the U.S. Army Reserve as a sergeant (E-5).⁽³⁾ He has held a security clearance since 1988, until the initiation of this instant action.

He attended a Junior College from 1989 until he graduated in June 1993. From 1993 to 1995 he attended a university and graduated in August 1995 with a BEE degree.⁽⁴⁾

Applicant was arrested on April 9, 2000 and charged with Aggravated Assault with a Deadly Weapon, a felony. In a letter dated March 3, 2005, his attorney in this incident, stated "the charge was never prosecuted because of lack of supporting evidence against [Applicant] and the statute of limitation has expired."

In October 2001, he was arrested for driving while intoxicated (DWI). He pled *nolo contendere* and was sentenced to 180 days in jail, suspended, two years' supervised probation, 100 hours of community service, and ordered to attend a victim's impact panel and to pay fines and court costs of \$953. The two-year probation began in July 2004. He attended DWI training and a victim's impact panel session. He has completed about 70 hours of the 100 hours of community service. He has paid all the fines and fees. Since this incident in 2002, he has not consumed alcoholic beverages.⁽⁵⁾

Applicant allegedly owes a total of approximately \$22,788 for 10 different debts incurred by him over the course of several years. He admits all of these debts, except one for \$6,183, and he is uncertain as to whether this debt is, in fact, his responsibility. He thinks this might belong to his wife from whom he is separated.⁽⁶⁾

Applicant disputes a \$79 cable bill because he contends he did not authorize the service.⁽⁷⁾ He is seeking a deferment on a debt for tuition to a university he attended for \$1,964. There are two bank debts outstanding; one is \$1,194 and the other is \$5,892.⁽⁸⁾ He contends he made several attempts to resolve these two accounts through a payment program, which was not accepted. There are a number of other debts that he says were consolidated with his bank back in September-October 2004 and allegedly have been paid off. These debts are: bank debts for \$1,992, \$1,713, \$2,384, and \$596. Moreover, he indicated that another debt for \$791 has also been consolidated with his bank. He offered no evidence corroboration that such a consolidation does in fact exist.

POLICIES

Each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, and the whole-person concept, along with the factors listed in the Directive. Specifically, these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation, and (6) the probability that the circumstances or conduct will continue or recur in the future.⁽⁹⁾ Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽¹⁰⁾ The government has the burden of proving controverted facts.⁽¹¹⁾ The burden of proof in a security clearance case is less than a preponderance of the evidence.⁽¹²⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him.⁽¹³⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁴⁾

No one has a right to a security clearance⁽¹⁵⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁶⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹⁷⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹⁸⁾ 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.

Based upon consideration of all the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline J - Criminal Conduct: a security concern exists when a person has a history or pattern of criminal activity which creates doubt about a person's judgment, reliability, and trustworthiness.

Guideline F - Financial Considerations: a security concern exists when a person has significant delinquent debts. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns pertaining to the adjudicative guidelines, are set forth and discussed in the conclusions below.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR.

Criminal Conduct

Based on all the evidence as a whole, Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1 (*allegations or admission of criminal conduct, regardless of whether the person was formally charged*) and CC DC E2.A10.1.2.2 (*a single serious crime or multiple lesser offenses*), both apply in this case. Applicant has committed two serious offenses. Based on E2.A10.1.2.1 I find that he was convicted of two offenses, aggravated assault with a deadly weapon and DWI. The mere fact that the aggravated assault charge was dismissed, does not mean that he did not commit a heinous crime. Moreover, he admitted committing both offenses. I conclude that E2.A10.1.2.1 applies. Similarly, one allegation was a felony, while the other was a DWI. A felony is a serious crime as is a DWI. Thus, I conclude that CC DC E2.A10.1.2.2 also applies.

I considered all the Criminal Conduct Mitigating Conditions (CC MC) and specifically considered FC MC E2.A10.1.3.1 (*the criminal behavior was not recent*), CC MC E2.A10.1.3.4 (*the person was pressured or coerced into committing the act and those pressures are no longer present in that's person's life*), and CC C E2.A10.1.3.6 (*there is a clear evidence of successful rehabilitation*). The aggravated assault charge occurred in 2000 and was dismissed because of lack of prosecution and supporting evidence; that fact that it was dismissed cannot be used in mitigation under the Directive. Thus, I find that this incident was not recent and since 2000 there is no evidence in the record of any other assault charges. Similarly, the DWI charge occurred in 2001, almost four years ago. Not only is he on supervised probation, he has been sober-free since that incident in 2001. I conclude that FC MC E2.A10.1.3.1 applies here. Since there have not been any other assault charges and since Applicant has been sober-free for more than four years, I conclude that FC MC E2.A10.1.3.4 and FC MC E2.A10.1.3.6 apply here.

Financial Considerations

The security concern arising from financial difficulties is that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." The Directive sets out several potentially disqualifying conditions under this guideline. Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 arises where there is a "*history of not meeting financial obligations*." Similarly, FC DC E2.A6.1.2.3 applies where the information shows an "*inability or unwillingness to satisfy debts*," Applicant has a history of not meeting his financial obligations. He was delinquent on several debts, which continues to date. He did not provide credible proof that some of his bills were consolidated and being paid off. I conclude FC DC E2.A6.1.2.1 and FC DC E2.A6.1.2.3 apply.

Various conditions can mitigate the security concerns arising from financial difficulties. I conclude that none of the mitigating conditions under Guideline F, financial considerations, apply in this case.

I considered all the evidence in this case and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. Applicant is a mature individual who encountered financial difficulties, including the inability to timely pay his delinquent debts. His debts are still outstanding and there has been no movement to show that he is in charge of his derogatory financial situation. I am persuaded by the totality of the evidence in this case that Applicant has mitigated the security concerns caused by his criminal conduct. Accordingly, Guideline J, pertaining to criminal conduct, is decided for Applicant. However, Applicant has not mitigated the security concerns caused by his financial difficulties. Accordingly, Guideline F, pertaining to financial considerations, is decided against Applicant.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Criminal Conduct (Guideline J): FOR APPLICANT

Subparagraph 1.a For Applicant

Subparagraph 1.b For Applicant

Paragraph 2, Financial Considerations (Guideline F): 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: Against Applicant

Subparagraph 2.g: Against Applicant

Subparagraph 2.h: Against Applicant

Subparagraph 2.i: Against Applicant

Subparagraph 2.j: 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.

Jacqueline T. Williams

Administrative Judge

1. Item 3, Applicant's Answer, dated March 28, 2005.
2. Security Clearance Application (SF 86), dated February 1, 1999.
3. *Id.* at 6, 31.
4. *Id.* at 2.
5. Item 3, *supra* note 1, at 2.
6. *Id.* at 6.
7. *Id.* at 7.
8. *Id.* at 6, 7.

9. Directive, Enclosure 2, ¶ E2.2.1.
10. ISCR Case No. 96-0277 (July 11, 1997) at 2.
11. ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
12. *Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988).
13. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
14. ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
15. *Egan*, *supra* note 9, at 531.
16. *Id.*
17. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
18. Executive Order 10865 § 7.