

DATE: November 30, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-23901

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant deliberately falsified his SF 86 by listing only one of his five alcohol- or drug-related arrests, and by failing to disclose his use of illegal drugs. He also deliberately falsified information about those same issues when he gave a sworn statement to a Defense Security Service (DDS) agent. In March 2005, Applicant was discharged through Chapter 7 bankruptcy of the delinquent debts he had accrued through 2002. His financial standing is now much improved and the security concerns about his past debt are mitigated. However, Applicant failed to mitigate the concerns about his criminal and personal conduct. 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 January 10, 2005, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline F (financial considerations), Guideline E (personal conduct), and Guideline J (criminal conduct). On June 21, Department Counsel submitted a Motion to Amend, whereby the government sought to add, as subparagraph 3.e, an additional allegation under Guideline F; to wit, that on March 18, 2005, Applicant was discharged of \$56,952 in bad debt through a Chapter 7 bankruptcy petition he filed on November 30, 2004. Applicant timely responded to the original SOR, admitted only the allegations in SOR ¶¶ 1.c through 1.k, and requested a hearing. At the hearing, Applicant waived objection to the motion to amend and admitted the new allegation.

The case was assigned to me on July 18, 2005, and I convened a hearing on August 18, 2005. The parties appeared as scheduled and the government presented 14 exhibits (GE 1 through GE 14), which were admitted without objection. Applicant testified in his own behalf and presented four exhibits (AE A through D), which were admitted without objection. DOHA received the transcript (Tr) on August 29, 2005.

FINDINGS OF FACT

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

Applicant is 40 years old and has been employed since March 2002 as a computer programmer by a defense contractor. He requires a security clearance as part of his job. Applicant served in the U.S. Air Force from 1985 until his discharge in 1988 as an Airman First Class (paygrade E-3). He held a secret-level security clearance while in the military. After leaving the military, Applicant held a variety of jobs while he studied for his associates degree in information technology (IT), which he received in 1996. From March 1994 to the present, he has worked in the IT field.

Applicant was married from 1988 until 1997, when he and his wife, also an Air Force enlisted member, divorced. They had one child, a son, who is now 15 years old. The couple re-united in 1999, and bought and furnished a new house, where they lived together until once again breaking up about six months later. Applicant was left with the debts, including mortgages, from the original marriage and from their short-lived reconciliation.

Applicant is a devoted father whose own father was not around when he was growing up. After his marriage ended, Applicant remained in the midwest United States near where he and his ex-wife had been assigned by the Air Force. Applicant felt it so important to be involved in his son's upbringing that he moved to the east coast in 2002, when his ex-wife was transferred, to be close to the child. His ex-wife has since retired from the military, and Applicant recently gained full custody of his son.

Between 1997 and 2002, Applicant was arrested and/or cited 11 times for criminal conduct. In January 1997, as alleged in SOR 1.a and according to an FBI criminal information report, he was arrested for assault; however, there is no other available information about this charge and Applicant has no memory of the event. The allegation in SOR 1.b, based on the same information, is that Applicant was arrested in July 1997, and charged with disturbing the peace. He pled guilty and paid a fine plus court costs. Applicant does not recall this incident but has suggested⁽²⁾ it arose from a dispute with his ex-wife during the last days of their marriage.

As alleged in SOR ¶ 1.d, in July 1999, Applicant was charged with violating a protective order his ex-wife had obtained against him during their divorce. Applicant had also obtained one against his ex-wife, and this charge, which arose from a disagreement over Applicant's visitation with his son, was eventually dismissed. Another arrest related to Applicant's divorce, alleged in SOR ¶ 1.g, occurred in February 2001. Applicant was charged with disturbing the peace and destruction of property. After pleading guilty, he was sentenced to one year probation, fined and assessed court costs, and ordered to pay restitution. Applicant admitted this allegation in response to the SOR, but has no independent recollection of this event. No other information about this charge was introduced at hearing.

As a result of a traffic stop in May 2000, as alleged in SOR ¶ 1.e, Applicant was cited for driving on a suspended license and not having a valid registration. His brother was also in the car and hid in the passenger seat a small amount of marijuana, which the police found during a search incident to the traffic stop. Applicant was charged with possession of marijuana because it was his car and his brother would not admit it was his. When Applicant appeared in court, the drug charge and license violation citation were dismissed. Applicant paid a fine and costs for not having a valid registration.

In October 2001, Applicant became concerned about how the man his ex-wife had just married was treating Applicant's son. He called their home and became belligerent with her ex-wife's new husband. As alleged in SOR ¶ 1.i, he was subsequently charged with disturbing the peace and intimidation by phone. He pleaded guilty to the latter charge, and was assessed a fine plus costs.

As alleged in SOR ¶¶ 1.c, 1.f, and 1.h, Applicant has been arrested three times and charged with driving under the influence of alcohol (DUI). In February 1998, the charge was dismissed for lack of probable cause. In November 2000, he was convicted of the charge, sentenced to 30 days in jail, and placed on probation for one year. In April 2001, Applicant pleaded guilty, was sentenced to 30 days in jail, placed on probation for a year, and assessed a fine and court costs. Applicant was also ordered to undergo a drug/alcohol evaluation, complete a drug/alcohol awareness course and a remedial driving course, and attend four weekly Alcoholics Anonymous (AA) meetings. Lastly, his drivers license was suspended for 60 days.

One condition of Applicant's probation from his April 2001 DUI was that he submit to random drug testing. As alleged

in SOR ¶ 1.j, in March 2002, he tested positive for marijuana and methamphetamine. He was found to have violated his probation and was jailed for 30 days. Thereafter, his only other known adverse contact with law enforcement also occurred in March 2002, when, as alleged in SOR ¶ 1.k, Applicant was cited for driving on a suspended license and for an outstanding warrant. Apart from the FBI report, there is no available information about what the warrant was for, but Applicant's license was not in fact suspended and he was able to resolve the matter at the motor vehicle administration the next day.

Applicant submitted a security clearance application (SF 86) on September 24, 2002. As alleged in SOR ¶ 2.a, in response to question 24, which asks if the respondent has "ever been charged with or convicted of any offense(s) related to alcohol or drugs," Applicant answered "yes" and listed a January 2000 "DWI" arrest for which he served 23 days in jail. Applicant did not list his DUI arrests in 1998 or 2001, or his May 2000 possession of marijuana charge. As alleged in SOR ¶ 2.b, in response to question 27, which asks if the respondent has used illegal drugs in the prior seven years, he answered "no," notwithstanding the fact he had used marijuana and methamphetamine while on probation in 2001.

On August 27, 2003, Applicant was interviewed by a Defense Security Service (DSS) agent. As alleged in SOR ¶ 2.c, Applicant again denied any other criminal conduct other than the 2000 arrest. When he was interviewed again in August 2004, Applicant stated he did not disclose the other arrests because he was concerned he would not be able to get his security clearance if his conduct were investigated. In that same interview, Applicant also denied using illegal drugs in the prior seven years.

As alleged in SOR ¶ 3, Applicant incurred about nearly \$18,000 in delinquent debt in the form of a furniture store account (SOR ¶ 3.a), a delinquent credit card account (SOR ¶ 3.b), a remainder after re-sale of a car repossessed for non-payment (SOR ¶ 3.c), and the unpaid portion of a mortgage loan (SOR ¶ 3.d). As alleged in SOR ¶ 3.e, Applicant filed for Chapter 7 bankruptcy protection on November 30, 2004, and was discharged of the aforementioned debts and other liabilities on March 18, 2005.

Applicant first became aware of the full extent of his debt when DSS interviewed him in August 2003. He had been assigned the debts after his divorce, but had made little progress paying them as well as funding his legal fees and child support. He stopped paying altogether when he lost his job after being jailed for probation violation in 2002. Applicant now has a job that pays him about \$15,000 more than the job he held before he moved to his current residence. Now that he has full custody of his son, he receives monthly support from his ex-wife that he is able to put into savings for his son's college education. Applicant carries no current debt he does not pay on time and lives well within his means.

By all accounts, Applicant has turned the corner financially and has demonstrated himself to be an outstanding father. He is also described by friends and co-workers as a hard-working, reliable, dedicated, and professional.

POLICIES AND BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽³⁾ 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.⁽⁴⁾ 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.⁽⁵⁾

To that end, the Directive sets forth adjudicative guidelines⁽⁶⁾ for consideration when evaluating an Applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of 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 E (personal conduct), Guideline F (financial), and Guideline J (criminal conduct).

CONCLUSIONS

The government has submitted sufficient evidence to support the allegations in SOR 3.a through 3.e. The facts established therein raise security concerns addressed in the Directive under Guideline F. Specifically, an applicant 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. Failure to reasonably attend to personal finances may also indicate poor judgment and reliability in other facets of one's conduct.⁽⁷⁾ The available information here supports application of Guideline F disqualifying condition (DC) 1⁽⁸⁾ and DC 3.⁽⁹⁾ Applicant had accrued a significant amount of unpaid debt during and after his marriage. Until he was discharged of that debt through bankruptcy in March 2005, he had made little or no progress in paying his debts and it did not appear he would be able to do so. These circumstances placed him in an untenable position within the context of his suitability to hold a clearance.

Having reviewed the Guideline F mitigating conditions (MC), I conclude only MC 3⁽¹⁰⁾ might be applicable here. Applicant's debts were the remnants of his divorce and, for a time, he did not have the means to resolve them due in large measure to the expenses associated with that split. Further, while no other mitigating conditions are on all fours with these facts here, I am persuaded by the totality of Applicant's current circumstances that he has stabilized his finances and is unlikely to again find himself in such financial straits. I conclude Guideline F for the Applicant.

Under Guideline J, a history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. A person who is willing to ignore the law, thereby risking criminal sanctions including fines and incarceration, may also be willing to disregard rules, regulations, and procedures intended to protect classified information. With the exception of SOR ¶¶ 1.a, 1.e, and 1.k, the government has presented sufficient information to support the allegations of criminal conduct alleged in SOR ¶ 1. Applicant pled guilty to failing to appear in court in September 1998 (SOR ¶ 1.c) Applicant also drove while under the influence of alcohol at least twice, in November 2000 and April 2001 (SOR ¶¶ 1.f and 1.h). He also violated his probation in 2002 when he used illegal drugs (SOR ¶ 1.j). Applicant's July 1999 conviction for intimidation by phone (SOR ¶ 1.i), a 1997 conviction for disturbing the peace (SOR ¶ 1.b), and a February 2001 conviction for damage to property (SOR ¶ 1.g) all constitute criminal conduct. Lastly, as discussed below, Applicant's criminal conduct extends to a violation of federal law⁽¹¹⁾ against making false statements to the government. As alleged in SOR ¶ 1.1, Applicant deliberately falsified facts about his criminal record and drug use when he submitted his SF 86 in September 2002, and when he gave a sworn statement to DSS in August 2003.

As to SOR ¶¶ 1.a, 1.e, and 1.k, there is insufficient evidence to show any actual criminal conduct. Applicant denied SOR ¶ 1.a and there is no other available information to support the allegation. As to SOR ¶ 1.e, the only criminal charges (possession of marijuana and driving on a suspended license) were dismissed. All that remained of SOR ¶ 1.e was a traffic violation. Regarding SOR ¶ 1.k, the suspended license charge was in error and there is no supporting information about the outstanding warrant. I resolve these allegations for the Applicant.

Based on the foregoing, Guideline J DC 1⁽¹²⁾ and DC 2⁽¹³⁾ apply. By contrast, a review of the listed mitigators shows none apply. Had his conduct ended in 2002, the point at which he moved to the east coast to be near his son, it is possible MC 1⁽¹⁴⁾ and MC 6⁽¹⁵⁾ would apply. However, Applicant's deliberate falsifications of his SF 86 responses and his statements to DSS, discussed below, bring current the government's concerns about his judgment and willingness to protect the government's information. I conclude Guideline J against the Applicant.

The security concern stated under Guideline E is that 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. ⁽¹⁶⁾ Available information shows Applicant deliberately falsified his responses to the SF 86 because he was afraid of losing his clearance. He perpetuated his falsifications during his August 2003 DSS interview when he insisted the 2000 DUI arrest was the only arrest or charge in his background. Although not alleged in the SOR, it appears Applicant also lied when he denied having used illegal drugs as far back as 1996. At hearing, he admitted he had used marijuana while on probation. Based on the foregoing, Guideline E DC 2 ⁽¹⁷⁾ and DC 3 ⁽¹⁸⁾ apply.

By contrast, I conclude none of the listed mitigators under Guideline E apply. Applicant's falsifications must be considered recent as they occurred during his current background investigation. Applicant made no attempt to correct his September 2002 SF 86 information during the 11 months that elapsed before his August 2003 DSS interview. When he finally had an opportunity to fully disclose the facts about his criminal conduct, Applicant not only deliberately continued his false representations about his arrest record, he denied using drugs when in fact he had done so as recently as March 2002. Applicant was trying to protect his clearance and admitted at hearing he was trying to minimize how bad his record of conduct might appear. On balance, I conclude Guideline E 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. No single fact or adjudicative factor is dispositive of my decision in this case; rather, I have considered Applicant's suitability in light of the record evidence in its entirety. It was apparent at the hearing that Applicant has made a significant effort to straighten out his life and to be a responsible father and co-worker. Nonetheless, the government's compelling interest in maintaining the integrity of its personnel security program mandates a finding Applicant is not currently a suitable risk for access to classified information. While his financial problems no longer appear to be of security concern, reasonable doubts persist about Applicant's criminal conduct and his lack of candor about that conduct. These doubts, in turn, undermine the government's confidence in 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 J (Criminal Conduct): AGAINST THE APPLICANT

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: For the Applicant

Subparagraph 1.f: Against the Applicant

Subparagraph 1.g: Against the Applicant

Subparagraph 1.h: Against the Applicant

Subparagraph 1.i: Against the Applicant

Subparagraph 1.j: Against the Applicant

Subparagraph 1.k: For the Applicant

Subparagraph 1.1: Against the Applicant

Paragraph 2, Guideline E (Personal Conduct): AGAINST THE APPLICANT

Subparagraph 2.a: Against the Applicant

Subparagraph 2.b: Against the Applicant

Subparagraph 2.c: Against the Applicant

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

Subparagraph 3.a: For the Applicant

Subparagraph 3.b: For the Applicant

Subparagraph 3.c: For the Applicant

Subparagraph 3.d: For the Applicant

Subparagraph 3.e: For 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. GE 3.
3. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
4. *See Egan*, 484 U.S. at 528, 531.
5. *See Egan*; Directive E2.2.2.
6. Directive, Enclosure 2.
7. Directive, E2.A6.1.1.
8. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;
9. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;
10. 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);
11. Title 18 U.S.C. § 1001.
12. Directive, E2.A10.1.2.1. Allegations or admission of criminal conduct, regardless of whether the person was formally charged;

13. Directive, E2.A10.1.2.2. A single serious crime or multiple lesser offenses.

14. Directive, E2.A10.1.3.1. The criminal behavior was not recent;

15. Directive, E2.A10.1.3.6. There is clear evidence of successful rehabilitation.

16. Directive, E2.A5.1.1.

17. 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;

18. 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;