

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 44-year-old employee of a defense contractor who seeks a security clearance. In 1995, he was arrested and charged with attempting to purchase cocaine from an undercover police officer. He deliberately omitted that information from his security clearance application. He also had some financial difficulties, including substantial debts delinquent for more than 90 days, and a subsequent bankruptcy. Applicant falsely omitted some delinquent debts on his security clearance application. Applicant failed to mitigate the security concerns arising from his financial difficulties and his personal conduct. Clearance is denied.

CASENO: 03-02410.h1

DATE: 08/27/2004

DATE: August 27, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-02410

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Nygina T. Mills, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 44-year-old employee of a defense contractor who seeks a security clearance. In 1995, he was arrested and charged with attempting to purchase cocaine from an undercover police officer. He deliberately omitted that information from his security clearance application. He also had some financial difficulties, including substantial debts delinquent for more than 90 days, and a subsequent bankruptcy. Applicant falsely omitted some delinquent debts on his security clearance application. Applicant failed to mitigate the security concerns arising from his financial difficulties and his personal conduct. Clearance is denied.

STATEMENT OF THE CASE

Applicant is an employee of a defense contractor. He submitted a security clearance application on June 25, 2002. Pursuant to 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"), the Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On January 5, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision: security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on March 2, 2004, and admitted some of the factual allegations. He also filed a supplemental response on April 5, 2004. Applicant elected to have the case decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on June 15, 2004. 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 disqualifying conditions. Applicant received the FORM on July 1, 2004, but did not provide additional materials for consideration. The case was assigned to me on

August 13, 2004.

FINDINGS OF FACT

Applicant admitted some of the factual allegations contained in the SOR, but did not admit to matters which would constitute disqualifying conditions. After a complete and thorough review of the evidence in the record, I make the following findings of fact:

Applicant is 44 years old and is married. Item 4, Security Clearance Application, dated June 25, 2002, at 1, 2. He seeks a security clearance to work for a defense contractor.

In June 1995, Applicant attempted to purchase "crack" cocaine from an undercover police officer. Item 2, Answer to SOR, dated March 2, 2004, at 1, 7. He was arrested and charged with attempted possession of a controlled dangerous substance. *Id.* He was sentenced to community service for the offense. Item 5, Applicant's Statement, dated November 7, 2002, at 3.

Applicant did not pay his federal income taxes for 1997, which were due on April 15, 1998. Item 8, *supra*, at 18. Applicant's tax liability was \$2,564.00. *Id.* Applicant did not pay his federal income taxes in full for calendar years 1998 or 1999. Item 2, *supra*, at 8. Later, Applicant entered into an agreement with the Internal Revenue Service to pay his back taxes. *Id.* Applicant subsequently paid his tax liability for 1997, and is making payments toward his liabilities for 1998 and 1999. *Id.*

Applicant's financial difficulties worsened in September 2000. Item 5, *supra*, at 3. The financial problems were exacerbated by a reduction in Applicant's hours of employment from 40 to 24 hours each week. *Id.* Also, his wife was unemployed for about five months in early 2000. *Id.*

In June 2002, Applicant began working for a defense contractor. On June 25, 2002, he submitted the SF 86, Security Clearance Application, discussed above. Item 4, *supra*, at 1. Question 24 on that form asked if Applicant had "ever been charged with or convicted of any offense(s) related to alcohol or drugs?" Item 4, *supra*, at 5. Applicant falsely answered "No" to this question. *Id.* Question 39 on the form was, "Your Financial Delinquencies - 90 Days. Are you currently over 90 days delinquent on any debts?" *Id.* at 6. Applicant answered "No" to the question. *Id.*

By July 11, 2002, just over two weeks after filing the security clearance application at issue, Applicant was behind in payments for several accounts. Item 11, Credit Report, dated July 11, 2002, at 4-6. Specifically, he was delinquent on the following debts: (1) eight months behind in payments on a military exchange credit card account totaling about \$827.00; (2) two years late on payments to a telephone services company on a debt of about \$495.00; (3) six months overdue on payments to a credit card company on a debt for about \$1,106.00; (4) six months late on payments to a credit card company on a debt for about \$767.00; (5) and about 30 days late in payments due on a gasoline credit card debt for about \$275.00. *Id.*

Applicant petitioned for Chapter 7 bankruptcy in May 2003. Item 8, Bankruptcy Petition, dated 23 May, 2003, at 1. Applicant listed 15 creditors holding unsecured nonpriority claims. *Id.* at 20. Applicant's total assets were valued at \$655.00, and his total liabilities were \$54,159.00. *Id.* at 13. Applicant's debts were discharged in bankruptcy in September 2003. *Id.* at 37.

Since Applicant's discharge in bankruptcy, he fell behind in payments on a debt for about \$149.00 due a cable services company. Item 2, *supra*, at 1. Applicant paid off the debt, and now has a current account with the cable services company. *Id.* at 4.

POLICIES

In Executive Order 12968, *Access to Classified Information* § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

In order to be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

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

Guideline E - Personal Conduct: 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. Directive, ¶ E2.A5.1.1.

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

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 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. *Id.*

Initially, the Government must establish, by substantial evidence, conditions which disqualify, or may disqualify, the applicant from being eligible for access to classified information. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive, ¶ E3.1.15. 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 (App. Bd. Dec. 19, 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.

CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline F, Financial Considerations.

The government's documentary matters constitute substantial evidence of potentially disqualifying conditions under Guideline F of the Directive. Under ¶ E2.A6.1.2.1, it may be disqualifying if an applicant has a history of not meeting financial obligations. Also, under E2.A6.1.2.3, inability or unwillingness to satisfy debts could raise a security concern.

The record reveals several instances when Applicant did not meet his financial obligations or was unable to satisfy his debts. Applicant did not pay his federal income tax assessment of about \$2,564.00 for calendar year 1997 when it was due on April 15, 1998 (SOR, ¶ 1.a.). Item 8, *supra*, at 18. The debt was still unpaid when Applicant sought relief in bankruptcy in May 2003. *Id.*

The security concerns arising from financial difficulties can be mitigated under certain circumstances. For example, it may be mitigating where the behavior was not recent. Directive, ¶ E2.A6.1.3.1. In this case, Applicant's unpaid federal taxes are recent. While the problem arose in 1998, it continued even after he submitted the application for a security clearance. It may be mitigating where the financial problem was an isolated incident. Directive, ¶ E2.A6.1.3.2. Here, however, Applicant's financial problem in April 1998 was not an isolated event or restricted to a limited period of time; rather it continued through the time he applied for a clearance and included other debts. It may also be mitigating where the conditions that caused the financial difficulties were beyond the person's control. Directive, ¶ E2.A6.1.3.3. Applicant offered no information indicating why he did not pay these taxes, however. Finally, it may also be mitigating where an applicant initiated good-faith efforts to repay creditors or otherwise resolve his debts. Directive, ¶ E2.A6.1.3.6. Applicant has initiated a payment plan for his back taxes, and paid off the balance due for 1997.

I considered all the circumstances, including the security concerns and the mitigating conditions. I conclude Applicant has not mitigated the security concerns arising from his failure to pay his 1997 federal income taxes.

Applicant's financial difficulties became so great he filed for bankruptcy in 2003, with total assets of \$655.00 and liabilities of \$54,159.00 (SOR, ¶ 1.b.). Item 8, *supra*, at 13. The fact that he filed for bankruptcy is not disqualifying; instead, the question is whether the financial problems that led up to the bankruptcy generate security concerns. It appears that most of Applicant's financial difficulties arose in 2000, when his hours were reduced and his wife was out of work for several months. This mitigates the seriousness of his financial difficulties to some extent. Directive, ¶ E2.A6.1.3.3. However, it must also be noted that he had some bad debts-including unpaid federal taxes-even before the unforeseen circumstances in 2000. Also, Applicant's debts did not become so overwhelming that bankruptcy was required until May 2003, almost one year after he began working in his present position. Considering all the circumstances, I conclude Applicant has not mitigated the security concerns arising from his financial difficulties.

The SOR, ¶ 1.c, alleged that as of December 30, 2003, Applicant was delinquent on a debt for emergency medical services totaling \$482.00. Applicant replied that the debt was discharged in bankruptcy. Item 2, *supra*, at 1, 7. All or a

substantial part of the debt to the emergency medical service appears to be the same as the debt discharged in the bankruptcy petition. Therefore, the substantial evidence does not support the allegation in the SOR, ¶ 1.c, that the debt remained unpaid as of December 30, 2003.

Even after his discharge in bankruptcy, Applicant was delinquent on a debt for about \$149.00 to a cable services provider. (SOR, ¶ 1.d.). Applicant later paid off the debt, and currently has service with the cable service provider. Item 2, *supra*, at 1, 3-4. It may be mitigating where an applicant initiated good-faith efforts to repay creditors or otherwise resolve his debts. Directive, ¶ E2.A6.1.3.6. Considering the relatively small amount of the debt, the short period of the delinquency, and Applicant's repayment, I conclude Applicant has mitigated the financial concern arising from the failure to pay this debt.

The SOR, ¶ 1.e, also alleged the Applicant was delinquent on a \$157.00 debt to a hospital which remained unpaid on December 30, 2003. Applicant replied the bill was discharged in the bankruptcy proceeding. Item 2, *supra*, at 1, 6. The bankruptcy proceedings indicate that a bill to a hospital was included in the debts discharged. It appears the alleged debt predates the bankruptcy proceeding. Unfortunately, the lack of identifying creditor information or account numbers makes it impossible to determine whether the debt in question remains open. I conclude the substantial evidence does not demonstrate the debt is unpaid.

Finally, the SOR, ¶ 1.f, alleged Applicant was unable or unwilling to satisfy his delinquent debts, including those discussed above. However, it appears Applicant has paid off his 1997 tax debt and his debt to the cable service provider. It was not established that the debts to the hospitals remain open. Lastly, there is no substantial evidence Applicant is not otherwise paying his bills at this time. For these reasons, I conclude Applicant has mitigated the security concerns arising from this financial condition.

Although Applicant has mitigated some of the concerns arising from his financial problems, some remain. For these reasons, I conclude Applicant's financial considerations demonstrate security concerns.

Guideline E, Personal Conduct.

The documentary matters in the case file and Applicant's factual admissions are substantial evidence of matters raising security concerns under Guideline E, Personal Conduct, of the Directive. Specifically, under ¶ E2.A5.1.2.1 it may be disqualifying where there is reliable, unfavorable information demonstrating questionable judgment, untrustworthiness, unreliability lack of candor, dishonesty, or unwillingness to comply with rules and regulations.

Applicant attempted to purchase "crack" cocaine from an undercover police officer in 1995, resulting in his arrest and criminal charges. (SOR, ¶ 2.a.) Applicant admitted that he did attempt to purchase cocaine. Item 2, *supra*, at 1. I conclude the information is reliable, and it shows highly questionable judgment and unwillingness to comply with the law.

I considered possible mitigating factors, including the circumstances surrounding the event, the frequency and recency of the conduct, Applicant's motivation for the conduct and the likelihood of recurrence. *See* Directive, ¶ E2.2.1. Applicant asserted that he was intoxicated and only wanted to experiment with drugs. He also noted this occurred some time ago, and that he has curbed his drinking since then. On the other hand, I note that attempting to purchase cocaine is a serious offense, Applicant was about 34 years old at the time, and he committed the offense voluntarily despite his intoxication. Considering everything, I conclude Applicant has not mitigated the security concerns arising from his attempted purchase of illegal drugs.

It may also be disqualifying where an applicant deliberately omits, conceals or falsifies "relevant and material facts from any personnel security questionnaire . . . or similar form used to conduct investigations" or to "determine security clearance eligibility." Directive, ¶ E2.A5.1.2.2. The SOR, ¶ 2.b, alleged Applicant falsified material facts on his Security Clearance Application when, in response to Question 24, he denied ever being charged with or convicted of any offenses related to alcohol or drugs. Applicant denies intentionally omitting the information; he asserts it was a mistake because he believed he was not required to list matters more than 7 years old. Item 2, *supra*, at 1, 7.

I considered carefully Applicant's response to the allegation. Question 24 on the Security Clearance Application does not limit the reporting period to seven years. On the other hand, several questions, including questions about using illegal drugs, contain the seven year limitation. I also note that, in response to Question 21, Applicant correctly provided information about a felony conviction more than seven years old, indicating that he recognized the differing time frames in the various questions. Additionally, Applicant was aware of several other misdemeanor arrests on his record, and therefore had reason to consider the required questions carefully. Finally, I note that his arrest and charging for the attempted possession of cocaine was just within seven years. Considering all the circumstances, I conclude Applicant deliberately omitted relevant and material facts from the security clearance application.

The SOR, ¶ 2.c, alleged Applicant falsified material facts on the security clearance application by failing to disclose that he was over 90 days delinquent to a number of creditors, including 15 specific instances. Applicant admitted owing the first seven listed debts. Item 2, *supra*, at 7. He denied knowing any of the debts were over 90 days delinquent, stating his wife handled all the bills. *Id.* Fourteen of the listed debts were discharged in bankruptcy. Item 8, *supra*, at 37.

The government's documents do not establish that all 15 listed debts were over 90 days delinquent on the date Applicant submitted the security clearance application. Applicant submitted his security clearance application on June 25, 2002. The 15 listed delinquent debts were apparently taken from Applicant's list of nonsecured creditors filed as part of his bankruptcy proceedings submitted in May 2003, almost one year later. Item 8, *supra*, at 20. Of course, the fact that a creditor is listed in a bankruptcy filing is not evidence that Applicant was ever 90 days delinquent on the account. Moreover, the fact that Applicant filed for bankruptcy in May 2003 is not evidence that he was over 90 days delinquent

on his debts in June 2002. To the contrary, a credit report issued just over two weeks after Applicant submitted his security clearance application indicates Application was not over 90-days delinquent for the following debts listed in the SOR, ¶ 2.c: (4); (5); (6); (7); and (10). That same credit report does not substantiate the allegations regarding the debts listed as (3), (8), (9), (13), and (14). The substantial evidence is insufficient to support the allegation with regard to these specific debts.

The government documents show that some of the debts listed in the SOR, ¶ 2.c, were more than 90 days delinquent in June 2002, when Applicant signed the security clearance application. The debt to the Internal Revenue Service for 1997 federal income taxes (SOR, ¶ 2.c.(1)), became due on April 15, 1998 and remained unpaid in June 2002. Item 8, *supra*, at 18. The credit report dated July 11, 2002 indicates the following debts were delinquent for more than 90 days before June 2002: a bad debt to a military exchange credit company for about \$821.00 (SOR, ¶ 2.c.(2)); a bad debt to a credit card company for about \$1,106.00 (SOR, ¶ 2.c.(11)); a bad debt to a credit card company for about \$737.00 (SOR, ¶ 2.c.(13)); and a bad debt to a telephone services company for about \$495.00 (SOR, ¶ 2.c.(15)).

Applicant submits that he was unaware that these debts were over 90 days delinquent because his wife took care of the bills. Item 2, *supra*, at 7. I considered the nature of the dates (including federal income taxes and telephone services), the substantial amount of the debts, the identities of the creditors (including the U.S. Government), and the length of time they were past due. I conclude Applicant's denial is not credible.

I also carefully considered possible mitigating factors. Directive, ¶ E2.A5.1.2.6. The omitted information was pertinent to a determination of judgment, trustworthiness, or reliability (¶ E2.A5.1.3.1), the falsification was not an isolated incident, and it was recent (¶ E2.A5.1.3.2). There is no indication Applicant made a good-faith effort to correct the falsification before being confronted with the facts (¶ E2.A5.1.3.3). I conclude Applicant has not mitigated the security concerns arising from his personal conduct alleged in the SOR.

I carefully considered all the circumstances in light of the "whole person concept." I conclude Applicant is not eligible for access to classified information.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.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.

Michael J. Breslin

Administrative Judge