

KEYWORD: Personal Conduct; Financial; Criminal Conduct

DIGEST: Applicant's long-standing financial difficulties, and his failure to disclose them on a Security Clearance Application (SCA), preclude a finding that it is clearly consistent with the national interest to grant him access to classified information. Clearance is denied.

CASENO: 03-14542.h1

DATE: 01/26/2005

DATE: January 26, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-14542

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jason Perry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's long-standing financial difficulties, and his failure to disclose them on a Security Clearance Application (SCA), preclude a finding that it is clearly consistent with the national interest to grant him access to classified information. Clearance is denied.

STATEMENT OF THE CASE

On October 27, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on November 10, 2003, and elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's written case (FORM) on or about April 20, 2004. Applicant filed a response to the FORM on May 13, 2004. The case was assigned to me on June 8, 2004.

FINDINGS OF FACT

Applicant is a 36 year old employee of a defense contractor.

SOR Allegation 1a: Applicant is indebted to this creditor in the approximate amount of \$13,924.00. This home equity debt, which arose after applicant's house was foreclosed upon, was charged off as a bad debt in March 2001. In his

response to the FORM, applicant stated that as of May 2004, he had set up a payment plan to repay this debt.

SOR Allegation 1b: Applicant was indebted to the State of Virginia in the approximate amount of \$1,165.00 for past-due child support. This debt was satisfied on or before April 19, 2004.

SOR Allegation 1c: Applicant is indebted to this creditor in the approximate amount of \$7,162.00 as a result of a judgment entered against him in or before arch 2002. In his response to the FORM, he stated he set up a payment plan to repay this debt.

SOR Allegation 1d: Applicant was indebted to this creditor in the approximate amount of \$223.00. This debt was placed for collection in 1998. As of April 2004, this debt had been reduced to \$59.00.

In a signed, sworn statement he gave to the Defense Security Service (DSS) in April 2003, applicant stated, "Right now I'm doing alright financially. I feel that I am living within my means."

On August 13, 2001, applicant completed an SCA that he knew was going to be used by DoD to assess his security-worthiness. Applicant intentionally provided false, material information on the SCA. Specifically, in response to Question 24, which asked, "Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?" applicant stated "yes," and then listed just one charge: a 1997 DUI charge. He failed to list at least one additional DUI charge that occurred in February 1999. ⁽¹⁾ Apparently after consulting with someone at his place of employment, applicant executed a new SCA three days later, and on the second SCA, he disclosed the 1999 DUI. It is not clear from the evidence what prompted applicant to provide the complete information about his DUI history on the second SCA.

On the second SCA he executed on August 16, 2001, applicant lied about his financial history. In response to both Question 38, which asked, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" and Question 39, which asked, "Are you currently over 90 days delinquent on any debt(s)?" applicant stated "no." These responses were false because, as noted above, at the time he executed the SCA, he had been delinquent on at least one debt for years, and on another debt for at least 90 days. Applicant's responses to the SOR and FORM are not models of clarity. However, it appears he is claiming he did not lie about his finances because he was unaware that the debts listed in the SOR existed when he executed the 2001 SCA. Unfortunately, even if that were true, an August 2001 credit report (Exhibit 7) indicates that applicant was at least 90 days delinquent on many other debts when he executed the SCA, and it is inconceivable he was unaware of all of these delinquencies. In his April 2003 signed, sworn statement to DSS, he provided an additional explanation for his "no" responses on the SCA. In that statement he stated: "I had paid off my delinquent debts and did not realize I had to list delinquent debts that I had paid off."

CONCLUSIONS

With respect to Guideline F, the evidence establishes that applicant is still indebted to three of the creditors listed in the SOR for past-due debts in the total amount of approximately \$21,145.00, and that he is indebted to at least three other creditors for past-due debts. Applicant's failure to honor his financial obligations reflects adversely on his judgment and reliability, and suggests he cannot be relied upon to safeguard classified information. With respect to the Financial Considerations guideline, Disqualifying Conditions E2.A6.1.2.1 (*a history of not meeting financial obligations*) and E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*) are applicable.

Once the Government established a *prima facie* case under Guideline F, the burden shifted to applicant to show he has reformed. Applicant failed to meet his burden. Other than his uncorroborated statements that he is doing all right financially, and that he feels he is living within his means, he offered no credible evidence that he (1) is in a position to significantly reduce his past-due indebtedness anytime soon, or (2) is unlikely to experience additional financial difficulties. Applicant does not qualify for any Mitigating Condition.

With respect to Guideline E, applicant's falsifications of material facts on the SCAs concerning his alcohol-related criminal history and his debts are extremely troubling. The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. When such an individual intentionally falsifies material facts on a security clearance application, it is extremely difficult to conclude that he or she nevertheless possesses the good judgment, reliability and trustworthiness required of clearance holders. In this case, the recency and extent of applicant's dishonesty, together with the lack of any evidence from individuals who know him well (e.g., family, friends, co-workers, supervisors) indicating that applicant is a reliable and trustworthy individual, precludes a finding that it is now clearly consistent with the national interest to grant him access to classified information. Disqualifying Condition E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . .*) is applicable. No Mitigating Conditions apply to applicant's dishonest conduct. (2) Based on the foregoing, Guideline E is found against applicant.

With respect to Guideline J, applicant's intentional falsifications of material facts on the SCAs he completed in 2001 constitute felonies under 18 U.S.C. 1001. Disqualifying Condition E2.A10.1.2.2 (*a single serious crime or multiple lesser offenses*) is applicable. No Mitigating Factors are applicable.

FORMAL FINDINGS

PARAGRAPH 1: AGAINST THE APPLICANT

PARAGRAPH 2: AGAINST THE APPLICANT

PARAGRAPH 3: AGAINST 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 applicant.

Joseph Testan

Administrative Judge

1. It is not clear that the incident occurring in April 1999 resulted in an alcohol-related charge.
2. Mitigating Condition E2.A5.1.3.2 doesn't apply because the falsification was not an isolated event. Mitigating Condition E2.A5.1.3.3 doesn't apply because there is no credible evidence that applicant's prompt correction of his original falsification occurred before he was confronted with the facts.