

KEYWORD: Personal Conduct; Financial

DIGEST: Applicant has carried significant delinquent debt since at least 2001. Despite recent efforts to resolve his delinquencies, his personal circumstances and failure to timely address his debts continue to hamper any reasonable chances of resolving his financial problems in the near future. Additionally, Applicant deliberately withheld information about his finances from a security clearance application (SF 86) because he was concerned about the adverse impact of that information on his chances for obtaining a clearance. Clearance is denied.

CASENO: 03-14793.h1

DATE: 05/31/2005

DATE: May 31, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-14793

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has carried significant delinquent debt since at least 2001. Despite recent efforts to resolve his delinquencies, his personal circumstances and failure to timely address his debts continue to hamper any reasonable chances of resolving his financial problems in the near future. Additionally, Applicant deliberately withheld information about his finances from a security clearance application (SF 86) because he was concerned about the adverse impact of that information on his chances for obtaining a clearance. 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 February 12, 2004, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline E (personal conduct) and Guideline F (financial considerations). Applicant timely answered the SOR (Answer), admitted all but one⁽²⁾ of the allegations, and requested a hearing.

The case was assigned to me on September 1, 2004, and I convened a hearing October 19, 2004. The parties appeared as scheduled and the government presented eight exhibits (GE 1 through 8), which were admitted without objection. Applicant testified in his own behalf. I left the record open after hearing to allow Applicant time to submit additional information I deemed relevant and material to the issues herein. Applicant timely submitted a seven-page exhibit, which I have admitted over Department Counsel's objection⁽³⁾ as Applicant's Exhibit (AE) A. DOHA received the transcript (Tr) on October 27, 2004.

FINDINGS OF FACT

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

Applicant is 36 years old and employed by a defense contractor as a network systems operator on a contract under which he teaches network systems maintenance to Army personnel. He seeks to retain a security clearance he has held since he was in the Army. Applicant served in the Army from 1986 until receiving an honorable discharge in February 2000. He served as a network systems operator in the Army and was hired by his current employer in April 2000 to perform the same work as a civilian contractor.

Applicant was married from 1991 until he and his wife separated in 1998. The couple sought a divorce at that time and Applicant thought it was final in 1999. However, a technicality stemming from the fact Applicant was transferred overseas while the divorce was pending nullified the divorce. To this date, the marriage has not been legally ended because Applicant does not know where his wife is and cannot afford the cost of an ex parte divorce. The couple had one child for whom Applicant now pays monthly support of about \$380. While he was still in the military, Applicant's estranged wife ran up large credit card bills in military exchange stores and may have bounced several checks. These events put Applicant in a financial hole from which he is still trying to climb.

After Applicant separated from his wife, he met a woman who was also in the Army and with whom he had another child. He pays monthly child support of about \$350 for his second child. The combined weight of child support and a reduction in income when he left the military in 2000 caused Applicant to fall farther behind in paying his debts. His child support payments for his first child eventually had to be garnished directly from his pay by a state social services agency.

Applicant submitted a security clearance application (SF 86) on June 6, 2001. He disclosed the aforementioned garnishment, but did not (as required by questions 38 and 39) disclose the fact he was also delinquent on several other accounts. When asked about his omissions in an April 2003 subject interview, Applicant stated he "did not want to own up to these debts." At hearing, Applicant stated he was "scared" to reveal his debts on the form due to continued denial of his debt problem and because he was worried he would lose his job.

The SOR lists 12 delinquent debts totaling nearly \$20,000. (SOR ¶¶1.a - 1.l) Applicant has paid off two of those debts (SOR ¶¶1.b and 1.f) which total about \$1,150. Also, Applicant claims the debt listed at SOR ¶1.j and ¶1.l are the same; however, the credit reports provided by the government list one in collection and one as simply delinquent and Applicant has provided no corroboration of his claim. Even allowing for Applicant's payment of two of the debts, Applicant is still nearly \$18,000 in arrears.

Applicant approached a credit counseling and debt repayment service sometime in 2002 or 2003. They proposed a debt

payment plan that would have alleviated his debts by 2007. However, the plan would have left him with less than \$50 to live on each month, so he declined. After the hearing, Applicant entered into a similar debt repayment plan with a much lower monthly payment, but it is unclear which debts are included in the plan or how long it will take to complete the plan.

When Applicant was interviewed in April 2003, a personal financial statement (PFS) he submitted showed he had a negative monthly cash flow without making payments to any of his delinquent debts. (SOR ¶1.m) Applicant currently takes home about \$1,200 each month after paying his child support obligations. From that he must pay about \$1,000 in living expenses each month and has tithed 15% of his pay to his church. Applicant acknowledges he has no money left over each month.

POLICIES

The Directive sets forth adjudicative guidelines⁽⁴⁾ for consideration when evaluating an Applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of both 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) and Guideline F (financial considerations).

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽⁵⁾ for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden it establishes a *prima facie* case 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.⁽⁶⁾ 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.⁽⁷⁾

CONCLUSIONS

The security concern under Guideline F is that someone 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. Here, the government's concerns about Applicant's suitability to hold a clearance are based on his record of delinquent debts totaling approximately \$18,000. The government has presented sufficient information to support these allegations, thereby establishing a *prima facie* case for disqualification under Guideline F. Applicant has been in financial difficulty since before his military discharge in 2000. Although he has paid two of the debts alleged in the SOR, his liabilities are still significant in light of his inability to generate enough income to pay or otherwise resolve them. Guideline F disqualifying condition (DC) 1⁽⁸⁾ and DC 3⁽⁹⁾ apply here.

Upon leaving the service, his debts grew but his income shrank. In the past four years, Applicant's prospects for improved financial condition have not materialized, while his obligations remain in place and are not likely to abate in the near future. Chief among his obligations are the two young children he must support for at least the next ten years. Guideline F mitigating condition (MC) 3 applies here, albeit with limited effect. Even allowing for the adverse impact Applicant's failed marriage and his estranged wife's careless spending have had on his finances, the simple fact is that Applicant does not have the means to correct a financial situation that presents an unacceptable risk to the government. Applicant also began a credit counseling program; however, he did not take this action until after his hearing and there is too little information available about this program or its likelihood for success to support application of Guideline F MC 4⁽¹⁰⁾ or MC 6.⁽¹¹⁾ Lastly, Applicant's problems are ongoing, he has incurred multiple debts at different times since 200, and his situation must be considered recent; thus, MC 1⁽¹²⁾ and MC 2⁽¹³⁾ do not apply. On balance, I conclude Guideline F against the Applicant.

Under Guideline E, a security concern arises where it is shown an applicant has exhibited questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Such conduct may indicate the person may not properly safeguard classified information.⁽¹⁴⁾ Here, the government questions Applicant's trustworthiness because it appears he deliberately omitted from his SF 86 facts about his financial difficulties. Applicant has admitted he deliberately falsified his SF 86 because he was in denial about his debt problem and he did not want to lose his job, which requires a security clearance. Guideline E DC 2⁽¹⁵⁾ applies. Falsifying answers to questions from the government indicates Applicant is willing to place his interests ahead of the government's. This conduct is wholly inconsistent with the fiduciary nature of access to classified information. The government has a compelling interest in ensuring those who have access to classified information will act in the government's best interests in protecting that information. Someone who will lie to protect their own interests is not likely to do so. Further, on the facts of this case, none of the listed mitigating conditions under Guideline E is applicable. Accordingly, 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. Reasonable doubts persist about 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 F (Financial): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: For 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: Against the Applicant

Subparagraph 1.l: Against the Applicant

Subparagraph 1.m: Against the Applicant

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

Subparagraph 2.a: Against the Applicant

Subparagraph 2.b: 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 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. Applicant denied the allegation of delinquent debt in SOR ¶1.j.
3. AE A is information concerning efforts Applicant took after the hearing to dispute information in his credit history and to establish a debt consolidation and repayment plan. Specifically, Department Counsel objects to the fact these actions occurred after the hearing. I interpret the objection to go to the weight of the evidence as opposed to its admissibility and have elected to consider it in reaching my decision.
4. Directive, Enclosure 2.
5. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
6. *See Egan*, 484 U.S. at 528, 531.
7. *See Egan*; Directive E2.2.2.
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.A6.1.3.4. The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;
11. Directive, E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.
12. Directive, E2.A6.1.3.1. The behavior was not recent;

13. Directive, E2.A6.1.3.2. It was an isolated incident;

14. Directive, E2.A5.1.1.

15. 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;