

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant admitted delinquent debts of approximately \$15,286.00 on 20 accounts with 10 separate creditors, including approximately \$7,000.00 for child support. Twelve medical bills, all but one for less than \$200.00, as well as debts for utilities, cable television, a revolving charge account, and payments to a collection agency, have been delinquent for several years, some for more than six years. Applicant has been fired from three jobs, two for absenteeism and one for drug use. He took no action to satisfy the debts until his background investigation began. He is undergoing credit counseling but has produced no evidence of his progress. He failed to disclose arrests for and convictions of domestic abuse and domestic battery on his security questionnaire, and he offered no evidence to mitigate his failure to disclose them. Clearance is denied.

CASENO: 03-15817.h1

DATE: 09/13/2004

DATE: September 13, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-15817

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant admitted delinquent debts of approximately \$15,286.00 on 20 accounts with 10 separate creditors, including approximately \$7,000.00 for child support. Twelve medical bills, all but one for less than \$200.00, as well as debts for utilities, cable television, a revolving charge account, and payments to a collection agency, have been delinquent for several years, some for more than six years. Applicant has been fired from three jobs, two for absenteeism and one for drug use. He took no action to satisfy the debts until his background investigation began. He is undergoing credit counseling but has produced no evidence of his progress. He failed to disclose arrests for and convictions of domestic abuse and domestic battery on his security questionnaire, and he offered no evidence to mitigate his failure to disclose them. Clearance is denied.

STATEMENT OF THE CASE

On May 10, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. This action was taken 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 (Directive). The SOR alleges security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct) of the Directive.

Under Guideline F, the SOR alleges that Applicant has 20 delinquent debts (para. 1.a - 1.t). Under Guideline E, the SOR alleges that Applicant falsified material facts on his security clearance application by failing to disclose that he had been terminated from a job (para. 2.a) and failing to disclose two arrests and convictions (para 2.b).

Applicant answered the SOR on May 19, 2004. He admitted all the delinquent debts and his failure to disclose his two arrests and convictions. He denied that he deliberately failed to disclose his termination of employment. He requested his case be decided without a hearing. (Government Exhibit 3)

Department Counsel submitted the Government's written case on June 30, 2004. Applicant received a complete copy of the file of relevant material (FORM) on July 7, 2004, and he was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not respond or submit any additional materials. The case was assigned to me on August 13, 2004.

FINDINGS OF FACT

Applicant's admissions are incorporated into my findings of fact. I also make the following findings:

Applicant is a 37-year-old field supervisor for a defense contractor. He has worked for his present employer since December 2000. (Government Exhibit 4, pp. 1-2.)

Applicant owes a total of approximately \$15,286.00 on 20 accounts with 10 separate creditors. His delinquent debts include approximately \$7,000.00 in child support. (Government Exhibit 11, p. 3) His wages have been garnished to pay the child support since May 1999. (Government Exhibit 11, p. 2)

Twelve of Applicant's debts are for medical expenses. Eleven are for amounts less than \$200.00, and four are for amounts less than \$100.00. One medical bill has been delinquent since May 2001. The remaining medical bills became delinquent between March 1998 and August 1999.

Applicant's other debts include a revolving charge account delinquent since 1991; bills for cable television delinquent since 1996; a debt to a collection agency for \$4,177.00 delinquent since 1997; and utility bills delinquent since 1998.

On March 20, 2003, Applicant told a Defense Security Service (DSS) investigator that he intended to seek credit counseling. (Government Exhibit 11, p. 9) However, Applicant did not meet with a credit counselor until more than seven months later, on October 29, 2003. (Government Exhibit 13, p. 3) Seventeen of Applicant's 20 debts are now being handled by a consumer credit counseling agency. (Government Exhibit 3, pp. 1-2)

As of October 23, 2002, Applicant's monthly income was \$1,960.00 and his expenses were \$1,560.00. His net monthly remainder available for paying debts was \$400.00. (Government Exhibit 13, p. 4)

On November 21, 2001, in response to Question 20 on his security clearance application (SF 86), Applicant disclosed that he had been fired in August 2000 for "poor attendance." (Government Exhibit 4, p. 7) On March 20, 2002, he told a DSS investigator that he had not been terminated by any employers other than the one listed on his SF 86. (Government Exhibit 11, p. 2) However, Applicant had been fired from two more jobs, one for in 1988 for failing a drug test and the other in 1990 for absenteeism. (Government Exhibit 12, p. 2)

Applicant was arrested for and convicted of domestic abuse in February 1995. (Government Exhibit 11, p. 4) He was arrested for and convicted of domestic battery in October 1996. (Government Exhibit 10, p. 1) He did not disclose these two arrests and convictions in his response to Question 26 on his SF 86. (Government Exhibit 4, p. 8)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander-in-Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information 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." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1 through ¶¶ 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (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 applicant'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. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec 19, 2002); *see* 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). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

Financial Considerations

Under Guideline F (Financial Considerations), "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Directive ¶ E2.A6.1.1. Two disqualifying conditions (DC) under Guideline F could raise a security concern and may be disqualifying in this case. DC 1 applies where an applicant has a history of not meeting his or her financial obligations. Directive ¶ E2.A6.1.2.1. DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3.

Applicant has admitted the debts. His admissions are consistent with his credit reports. Thus, I conclude that DC 1 has been established.

Applicant's financial statement for October 2002 reflects a net monthly remainder of \$400.00, which is available for unexpected expenses and repayment of past due debts. Applicant has offered no excuse for not using these funds to pay off at least some of his smaller debts. Applicant took no action to resolve his financial problems until an investigation into his background was initiated. I conclude that DC 3 has been established.

A mitigating condition (MC 3) applies when the financial difficulties resulted from events "largely beyond the person's control." Directive, ¶ E2.A6.1.3.3. Applicant's employment history reflects that he has lost his job three times. However, each loss of employment was Applicant's own fault, being based on his misconduct or absenteeism. I conclude that MC 3 is not established.

MC 4 applies when "[t]he 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." Directive ¶ E2.A6.1.3.4. MC 4 has two prongs: (1) counseling, and (2) "clear indications" of progress. In his statement to a DSS investigator on March 20, 2002, Applicant expressed his intention to contact a credit counseling agency and set up a repayment plan, (Government Exhibit 11, p. 9) but he did not meet with a credit counseling until more than seven months later, on October 29, 2003 (Government Exhibit 13, p. 3) In his response to the SOR, Applicant stated that 17 of his 20 delinquent debts are being handled by the credit counseling agency. However, Applicant has not produced any evidence showing his progress in reducing the indebtedness. He has admitted that, as of April 5, 2004, none of the debts have been satisfied. (Government Exhibit 3, pp. 1-3) The burden is on Applicant to establish a mitigating condition. Directive ¶ E3.1.15. I conclude that Applicant has not carried his burden of showing "clear progress" in resolving his financial problems.

MC 6 applies when the Applicant has "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Directive ¶ E2.A6.1.3.6. Although Applicant's October 2002 statement to the DSS investigator expressed his intention to pay his creditors, Applicant has produced no evidence of his progress. I conclude that he has not carried his burden with respect to MC 6.

Falsification

Under Guideline E (Personal Conduct), "Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, [or] dishonesty . . . could indicate that the person may not properly safeguard classified information." Directive ¶ E2.A5.1.1. A "deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire" can raise a security concern and may be a disqualifying condition (DC 2). Directive ¶ E2.A5.1.2.2. Under DC 2 there must be "a showing that the applicant acted with intent to mislead or deceive the government by not disclosing the information." ISCR Case No. 00-0302, 2001 DOHA LEXIS 337 at *5 (App. Bd. Apr. 23, 2001).

Employment Record

In response to Question 20 on his SF 86, Applicant disclosed that he had been fired from one job but did not disclose that he also had been fired from two other jobs. On March 20, 2002, he told a DSS investigator he had not been terminated by any employers other than the one listed on his SF 86. (Government Exhibit 11, p. 2) However, on March 21, 2002, he admitted that he did not list a termination in 1988 for failing a drug test and a termination in "the early 1990s" for absenteeism. He told the DSS investigator that he thought disclosure of employment history more than seven years old was not required. (Government Exhibit 12, p. 2)

Applicant executed his SF 86 on November 21, 2001. Question 20 asks if the applicant has been fired "in the last 10 years." [\(1\)](#)

The SOR alleges that the termination for absenteeism was in the "mid-1990s." There is no evidence of the specific date. Applicant's assertion that this termination occurred in the "early 1990s" is not contradicted by any evidence in the record. Based on Applicant's denial of deliberate falsification and the absence of evidence that this termination was "in the last 10 years" preceding Application's completion of the SF 86, I conclude that deliberate falsification of Applicant's employment history is not established.

Arrest and Conviction Record

Question 26 on SF 86 asks if the Applicant has been arrested, charged, or convicted of any offenses not listed elsewhere in the application. In response to this question, Applicant disclosed an arrest for disturbing the peace in September 1999, but he did not disclose arrests for and convictions of domestic abuse in February 1995 and domestic battery in October 1996. In an interview with a DSS investigator on March 20, 2002, Applicant admitted the February 1995 arrest and conviction, asserting that he failed to disclose them on his SF 86 because he had forgotten about them. (Government Exhibit 11, p. 4) In a second interview with the same investigator on March 21, Applicant admitted the October 1996 arrest and conviction, asserting that he did not disclose them on the preceding day or on his SF 86 because he had forgotten about them. (Government Exhibit 12, p. 1)

Proof that Applicant omitted this information from his SF 86 shifted the burden to him to explain the omissions sufficiently to negate a finding of knowing and deliberate falsification. *See* ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004). I find Applicant's claims of memory lapses unpersuasive. Accordingly, I conclude that Applicant has not rebutted the evidence of deliberate falsification of his answer to Question 26.

Applicant made no effort to correct the omission of material information until he was confronted with it by the DSS investigator. I conclude that no mitigating conditions are established with respect to Applicant's falsification of his arrest and conviction record.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1, Guideline F AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: Against Applicant

Subparagraph 1.n.: Against Applicant

Subparagraph 1.o.: Against Applicant

Subparagraph 1.p.: Against Applicant

Subparagraph 1.q.: Against Applicant

Subparagraph 1.r.: Against Applicant

Subparagraph 1.s.: Against Applicant

Subparagraph 1.t.: Against Applicant

Paragraph 2, Guideline E AGAINST APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.(1): Against Applicant

Subparagraph 2.b.(2): Against 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 a security clearance to Applicant. Clearance is denied.

LeRoy F. Foreman

Administrative Judge

1. The drug-related 1988 termination was not alleged in the SOR. Applicant was not required to disclose it, because it had not occurred "in the last 10 years."