

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is an aircraft structural technician for a defense contractor. His self-owned business and marriage failed about the same time. There were delinquent debts from both. He paid off and satisfied most of the past due debts by working two jobs, refinancing his home, and using a credit counseling service. He is still paying some of the debt through the credit counseling service. Applicant omitted some of his delinquent debts past due over 180 days from his security clearance application and admitted to security investigators he deliberately omitted the debts. This was an isolated incident that he corrected voluntarily. Applicant successfully mitigated security concerns under Guidelines F and E. Clearance is granted.

CASENO: 03-18091.h1

DATE: 05/11/2005

DATE: May 11, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-18091

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Juan J. Rivera, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is an aircraft structural technician for a defense contractor. His self-owned business and marriage failed about the same time. There were delinquent debts from both. He paid off and satisfied most of the past due debts by working two jobs, refinancing his home, and using a credit counseling service. He is still paying some of the debt through the credit counseling service. Applicant omitted some of his delinquent debts past due over 180 days from his security clearance application and admitted to security investigators he deliberately omitted the debts. This was an isolated incident that he corrected voluntarily. Applicant successfully mitigated security concerns under Guidelines F and E. Clearance is granted.

STATEMENT OF THE CASE

On May 17, 2004, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on June 3, 2004. The SOR alleges security concerns under Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on July 1, 2004, admitting eight and denying two of the allegations under Guideline F and admitting the allegation under Guideline E. He provided detail information on each allegation under Guideline F and an explanation for his actions leading to the allegation under Guideline E. Applicant provided numerous letters of commendation and recommendation from a range of people attesting to his good character for trustworthiness and his good work ethic. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on January 28, 2005. Applicant received a complete file of relevant material (FORM) on February 7, 2005, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. He submitted a detailed response to the FORM on February 28, 2005. On April 11, 2005, Department Counsel noted he had no objections to the Applicant's response to the FORM. The case was assigned to me April 28, 2005.

FINDINGS OF FACT

Applicant is a 41-year-old aircraft structural technician working for a defense contractor. He is married for the second time with no children. He served ten years , both active and reserve, in the armed forces and held a security clearance. Applicant submitted a security clearance application to work for the defense contractor on January 25, 2002. He was interviewed by an agent of the Defense Security Service on January 31, 2003, concerning his financial situation and his response to delinquent debts on the security clearance application.⁽¹⁾

After leaving the military, Applicant was self-employed running his own company for approximately eight years before the company failed in 2001. At about the same time, Applicant had marital problems and was divorced in 1999. Applicant was financially overextended because of the failed business and divorce, and fell behind paying his credit accounts and his home mortgage.⁽²⁾

After the business failure and the divorce, it took some time for Applicant to improve his financial situation. He started work with the defense contractor and also worked a part-time job. By March 2002, Applicant had sufficient financial resources to work with his mortgage company to restructure his mortgage. Applicant refinanced his mortgage to have additional resources to pay overdue debts.⁽³⁾ He was current on his mortgage by June 2004.⁽⁴⁾ In November 2002, Applicant made arrangements with a credit counseling service to restructure his credit and pay his bills.⁽⁵⁾

The SOR alleges ten delinquent debts. Debt 1.a. and Debt 1.b. in the SOR are delinquent debts from credit card accounts used by he and his ex-wife during their marriage. These debts were managed and paid by the credit counseling service. Applicant made final payment on these accounts and the delinquent debts have been satisfied.⁽⁶⁾

Debt 1.c. in the SOR is a credit card debt Applicant states belongs to his former wife and not him. Applicant contacted the credit card company and the company removed the debt as Applicant's obligation.⁽⁷⁾

Debt 1.d. in the SOR is a debt from the failed business turned over to an agency for collection. Applicant paid this debt in full and it is satisfied.⁽⁸⁾
⁽⁹⁾

Debt 1.e. in the SOR is a credit card debt from the failed business. Applicant paid this debt in full and it is satisfied. Debt 1.f. in the SOR is a credit card debt from the failed business in which all past due amounts have been paid and the debt is current.⁽¹⁰⁾ Debt 1.g. in the SOR is a bill for personal telephone service. It was paid in full and satisfied in November 2001.⁽¹¹⁾ Debt 1.h. in the SOR is for utility service for Applicant's house. This debt was paid in full and satisfied in November 2002.⁽¹²⁾ Debt 1.i. in the SOR is another bill for telephone service used in the failed business which was paid off and satisfied through the credit

counseling service.⁽¹³⁾ Debt 1.j. in the SOR is another personal telephone debt which has been paid off and satisfied.⁽¹⁴⁾

On the security clearance application, Applicant answered "NO" to question 38 asking in the last seven years if he was delinquent over 180 days on any debts.⁽¹⁵⁾ In fact, Applicant had four debts past due over 180 days at the time. In his statement to the DSS agent, Applicant readily admitted he provided a false answer stating "To be honest, I did not list the bad debts I owe on my security questionnaire due to fear of not getting a security clearance and without a clearance I would lose my job and without this job, I felt I would have no choice but to file for bankruptcy and that was not something I wanted to do. In retrospect, I realize that was a bad decision on my part and I regret it. I certainly was not trying to hid the debts because of the efforts I have made to pay my debts."⁽¹⁶⁾ Applicant continues to admit his error and mistake in providing false information on the security clearance application.⁽¹⁷⁾

Applicant presented 17 letter of reference from former and current supervisors, friends, and co-workers concerning his good character and trustworthiness. He presented awards received from his employer for excellent work.⁽¹⁸⁾ Applicant's present financial statement shows he has sufficient income to met his expenses with adequate discretionary income to continue to pay his past due debts.⁽¹⁹⁾

POLICIES

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."⁽²⁰⁾ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.⁽²¹⁾

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 and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a 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.

"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." An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽²²⁾ 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 of recurrence. ⁽²³⁾

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. ⁽²⁴⁾ 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 present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information. ⁽²⁵⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts. ⁽²⁶⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ⁽²⁷⁾ "[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." ⁽²⁸⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." ⁽²⁹⁾

Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline F - Financial Considerations: A security concern exists for an individual who is financially irresponsible. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Guideline E - Personal Conduct: A security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information.

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

CONCLUSIONS

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

The government has established its case under Guideline F. Applicant's delinquent debts brings the matter within Financial Consideration Disqualifying Conditions Directive ¶ E2.A6.1.2.1 (*a history of not meeting financial obligations*); and Directive ¶ E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*). Applicant accumulated delinquent debt as the result of a failed business and a failed marriage. Even though there may be extenuating circumstances, Applicant does have a history of not meeting his financial obligations and an unwillingness or inability to satisfy his debts. I conclude the disqualifying conditions have been established.

The Financial Considerations Mitigating Conditions applicable to Applicant's situation are 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, business downturn, unexpected medical emergency, or a death, divorce or separation)*); and Directive ¶ E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant's financial problems started in 1999 with a divorce and were exacerbated by the failure of his business in 2001. When he was able to secure a good job after his business and marriage failed, Applicant initiated an effort to start repaying his overdue obligations. He worked two jobs, refinanced his house, and worked with a credit counseling service. He has now repaid most of his overdue obligations and is working with the credit counsel service to continue to repay the remaining obligations. Applicant initiated a good-faith effort to repay creditors and satisfy delinquent debt. Applicant mitigated the allegations regarding financial concerns.

The government has established its case under Guideline E. Applicant's failure to list all of his delinquent debts past due over 180 days in the last seven years brings the matter under Personal Conduct Disqualifying Condition Directive ¶ E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from any personal security questionnaire, personal history statement, or similar form used to conduct investigations. . . determine security clearance eligibility or trustworthiness*). Applicant admitted he deliberately omitted listing all his delinquent debts over 180 days on his security clearance application so the disqualifying condition is established. The Personal Conduct Mitigating Condition to consider for Applicant is Directive ¶ E2.A5.1.3.2 (*the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*). Applicant readily and voluntarily admitted he omitted the full facts of his delinquent debts and realizes his mistake. The letters of recommendation attesting to Applicant's trustworthiness shows his conduct of providing an incomplete answer is not recent and his response on the security clearance application was an isolated incident. It was the only time in the security clearance process he omitted all of the correct facts. I conclude Applicant has mitigated the security concerns for personal conduct.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is eligible for access to classified information.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: For Applicant

Subparagraph 1.j.: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

DECISION

In light of all of the circumstances presented in the record of this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Thomas M. Crean

Administrative Judge

1. FORM, Item 5 (Applicant's statement to DSS agent, dated Jan. 31, 2003).
2. FORM, Item 4 (Security clearance application, dated Jan. 25, 2002).
3. Applicant's response to FORM, dated Feb. 28, 2005, Item 8 (Mortgage settlement statement, dated Mar. 2, 2005).
4. *Id.*, Item 5 (Letter from mortgage company and payment history, dated Mar. 18, 2002).
5. *Id.*, Item 6 (Letter of agreement with credit counseling service, dated Nov. 6, 2002).
6. Applicant's answer to the SOR, dated Jul. 1, 2004, Item 3 (Credit counseling service activity balance sheet, dated Jun. 15, 2004); Applicant's answer to FORM, dated Feb. 28, 2005, Item 19 (Cancelled check, dated Mar. 7, 2005), and Item 20 (Cancelled check, dated Mar. 7, 2005).
7. Applicant's answer to FORM, dated Feb. 28, 2005, Item 2 (Letter from credit card company, dated Aug. 25, 2004).
8. *Id.*, Item 3 (check, dated Feb. 22, 2005).
9. *Id.*, Item 4 (check, dated Dec. 9, 2004).
10. Applicant's answer to SOR, dated Jul. 1, 2004, (Letter from bank, dated Jun. 2004).
11. *Id.*, Item 3 (Applicant's statement to DSS agent, dated Jan. 31, 2003).
12. *Id.*, Item 3 (City utility statement, dated Jan. 27, 2003).
13. Applicant's answer to the FORM, dated Feb. 28, 2005, Item 3 (Check, dated Feb. 22, 2005).
14. *Id.*, Item 10 (Payoff letter, dated May 12, 2004).
15. FORM, Item 4 (Security clearance application, dated Jan. 25, 2002).
16. FORM, Item 5 (Applicant's statement, dated Jan. 31, 2003) at 3.
17. Applicant's answer to FORM, dated Feb. 28, 2005, at 9.

18. Applicant's answer to SOR, dated Jul. 1, 2004, Item 3 (Letters, various dates); Applicant's answer to FORM, dated Feb. 28, 2005, Item 15 (Letters, various dates).
19. Applicant's answer to FORM, dated Feb. 28, 2005, Item 16 (Income statement, undated).
20. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
21. Directive ¶ E2.2.1.
22. *Id.*
23. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
24. *See* Exec. Or. 10865 § 7.
25. Directive ¶ E3.1.14.
26. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
27. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
28. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
29. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.