

KEYWORD: Financial; Criminal Conduct; Personal Conduct

DIGEST: Applicant is a library tape manager for a defense contractor. He was required to pay child support for two children but made only a few of the required payments. He contests his paternity of one of the children but he has made no effort to resolve the paternity. Applicant did not pay his federal and state taxes on time one year, but has since paid his state taxes for the year in question and has made arrangements to pay his federal taxes. He falsified his security clearance application concerning his delinquent child support. Clearance is denied.

CASENO: 03-18213.h1

DATE: 03/21/2005

DATE: March 21, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-18213

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Richard Murray, Esq.

SYNOPSIS

Applicant is a library tape manager for a defense contractor. He was required to pay child support for two children but made only a few of the required payments. He contests his paternity of one of the children but he has made no effort to resolve the paternity. Applicant did not pay his federal and state taxes on time one year, but has since paid his state taxes for the year in question and has made arrangements to pay his federal taxes. He falsified his security clearance application concerning his delinquent child support. Clearance is denied.

STATEMENT OF THE CASE

On August 23, 2004, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to 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 August 27, 2004. The SOR alleges security concerns under Guideline F (Financial Considerations), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on September 8, 2004. He denied all the allegations in the SOR and requested a hearing before an administrative judge. The request for a hearing was received by DOHA on September 13, 2004, and Department Counsel was prepared to proceed with the case on December 8, 2004. The case was assigned to me on December 9, 2004, and a notice of hearing was issued on January 5, 2005. The hearing was held on February 10, 2005. Eight government exhibits, eight Applicant exhibits, and the testimony of the Applicant and two Applicant witnesses were received during the hearing. The transcript was received on February 22, 2005.

FINDINGS OF FACT

Applicant is a 38 year old tape library manager for a defense contractor. He had a security clearance while serving on active military duty. He submitted a security clearance application to upgrade his clearance in 2003. After leaving active duty in 1990, Applicant worked for a series of telecommunication companies and was promoted steadily within those companies. Unfortunately for Applicant, these companies closed making him unemployed and seeking a new position. Applicant had periods of unemployment between jobs placing a strain on his finances. Even after finding employment, he usually was being paid less than the job he lost. His finances suffered during these times and Applicant did not pay all of his bills. His last period of unemployment, before finding his present position with the defense contractor, lasted approximately two years. [\(1\)](#)

Applicant has been married three times and has four children. He had two children from his first marriage but he is contesting his paternity of one of the children. He was ordered to pay child support for the children by the divorce decree. Applicant had twins from the second marriage and he is required to pay child support for those children. Applicant is separated from his third wife. There are no children from this marriage.

The SOR alleges four significant debts of about \$59, 800 for Applicant. Debt 1.a in the SOR was a bill for his third wife's medical care provided by a local hospital. Applicant and his wife thought the bill was paid by insurance. As soon as they were informed the bill had not been paid by the insurance company, Applicant paid the bill. [\(2\)](#)

Debt 1.b in the SOR is a cell phone bill incurred by his third wife and charged off as a bad debt. After he learned of the bill, Applicant contacted the telephone company. The phone company was unable to provide information since the bill is old and in the company archives. He is making arrangements with the phone company to pay the bill. However, he has no documentary information to support his payment plan for this debt. [\(3\)](#)

Debt 1.c in the SOR is the largest of Applicant's bill and is for past due child support payments totaling \$58,118. The child support of approximately \$320 per month is for the two children from Applicant's first marriage. Applicant filed for and was granted a divorce from his first wife in State A. He was required to pay child support to state B for both children as a result of the divorce decree. When his first wife would not let Applicant exercise his visitation rights, Applicant stopped payment of the child support for both children. The children are in State B and the child support payments ordered by the court in State A are being enforced by the child services agency in State B and debt 1.c in the SOR is a debt to the child support agency in State B. Applicant has made very few of the required child support payments in the approximately 15 years the child support payments have been in effect. [\(4\)](#)

Applicant's first wife eventually permitted him to exercise his visitation rights and see the children. In fact, child # 1, whose paternity he acknowledges, came to live with Applicant for approximately a year. He contests his paternity of child # 2 and his requirement to pay support for

that child. Applicant has not paid the required child support for either of the children because he does not want it to appear he is acknowledging any paternity for child # 2. (5) A blood test is required to disprove paternity but Applicant has made little effort to secure such testing. (6) Applicant was advised by his mother and his financial counselor to set aside the child support payment for child # 1. Applicant started to do that, but when he became unemployed, he used the funds to pay other bills and stopped setting aside funds. (7) Applicant has twins by his second wife. He does not contest the paternity of the twins and is current on his child support payments for those children. (8)

Debt 1.d in the SOR is for a credit card past due over 120 days. Applicant's third wife took out the card in Applicant's name. Applicant contacted the credit card company, was released from the debt, and the debt was removed from his credit report. (9)

Initially, Applicant's monthly expenses exceeded his monthly income. (10) A subsequent monthly income and expense statement shows Applicant has sufficient monthly income to meet his monthly expenses. (11) Applicant stated that at the end of the month, he usually has limited financial resources available. This was attributed to his paying larger than normal payments on his bills. (12)

Applicant did not file or pay his federal and state income taxes on time for tax year 2001. Before the time to file the taxes, Applicant contacted the Internal Revenue Service and was informed that if he has been receiving a refund in the past there is no rush to file a return on time. For years in the past, Applicant and his wife had received refunds on their taxes. Applicant and his wife waited until after the required filing time to file both their federal and state tax returns for 2001. (13) The federal and state criminal statutes (14) pertaining to filing tax returns requires a willful failure to file returns on time. Applicant and his wife paid their federal and state taxes on time in the tax years both before and after 2001. When the taxes for 2001 were finally calculated, Applicant and his wife owed both federal and state taxes rather than due a refund. The state taxes for 2001 have been paid. (15) Arrangements are being made to pay the federal taxes for 2001. (16)

When Applicant submitted his security clearance application, he answered "NO" to question 39 asking if, in the last 7 years, he has ever been delinquent over 180 days on any debts. (17) At the time, Applicant was past due over 180 days on the debts discussed above listed in the SOR as debts 1.a to 1.d. Applicant stated that at the time he completed the form, he did not know of debts 1.a, 1.b, and 1.d. He did know that he owed some child support as listed in debt 1.c and that it was past due over 180 days. He acknowledge to security investigators he owed some child support but that he was working to have the debt resolved. (18)

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." (19) 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 judgement, 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." (20) 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 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."⁽²¹⁾ 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 Conditions: A security concern exists for an individual who is financially irresponsible. An individual who is financial irresponsibility 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 J - Criminal Conduct: A history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness.

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 mitigated security concerns, pertaining to the adjudicative guideline, 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 allegation in the SOR:

The government has established its case under Guideline F. Applicant's delinquent debts bring the matter within Financial Considerations Disqualifying Conditions Directive ¶ E2.A6.1.2.2 (*a history of not meeting financial obligations*); and Directive ¶ E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*). Applicant has sufficiently explained three of the four allegations of debt in the SOR as either paid in full or incurred by his wife and not him. However, the child support debt, which is the overwhelming dollar value of his debts, is still outstanding. I conclude the aforementioned Financial Consideration Disqualifying Conditions have been established as to debt 1.c of the SOR.

The Financial Considerations Mitigating Conditions that apply here 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 . . .)*); and Directive ¶ E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). While Applicant and his wife lost good paying jobs not through their fault, there were sufficient financial resources to pay recurring expenses. Applicant was advised to set aside funds for his child support payments. He initially did but used the funds for other purposes. He has made few child support payments since the requirement was imposed over 15 years ago. He is in arrears for almost the entire amount. While Applicant states he is contesting the paternity of one of the children, he has made little if any effort to challenge paternity and get relief from the payments. He acknowledges he owes for one of the children but he has not even made those payments. I conclude the loss of employments that was beyond the control of Applicant did not hinder his making child support payments. He has made no effort to make the child support payments. I conclude Applicant was able to make child support payments and did not make a good-faith effort to do so. He has not mitigated the security concerns under Guideline F for allegation 1.c.

The government has not established its case under Guideline J. The Criminal Conduct Disqualifying Conditions that may apply to Applicant's case are Directive ¶ E2.A10.1.2.1 (*allegations or admission of criminal conduct, regardless of whether the person was formally charged*); and Directive ¶ E1.A10.1.2.2 (*a single serious crime or multiple lesser offenses*). Applicant did not file his 2001 federal and state income taxes on time. Applicant checked with the federal tax officials and believed he need not file on time since he expected a refund as he received in past years. He was confused by the advise from the Internal Revenue Service between the requirement to file tax returns on time with the assessment of interest and fees only on taxes that are owed. There was no allegation by the Internal Revenue Service or admission by Applicant of criminal conduct. There is no indication of a willful failure to file tax returns especially since Applicant had previously filed tax returns on time before and after 2001.

The government has established its case under Guideline E. Applicant's answer of "NO" to question 38 concerning debts past due over 180 days in the last 7 years brings the matter under Directive ¶ E2.A5.1.3.3 (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire*). Applicant admitted he knew his child support debts were past due over 180 days when he completed his security clearance application.

The Personal Conduct Mitigating Conditions that apply here are Directive ¶ E2.A5.1.3.2 (*the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*); and Directive ¶ E2.A5.1.3.3 (*the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*). Applicant did not tell security investigators he owed child support payments until questioned by the agents. He also told them he was taking steps to have the question of paternity for one of the children resolved. He did not provide the information voluntarily or make a prompt good-faith effort to provide correct information before being confronted with the past due child support debt. Applicant has not mitigated the security concerns under Guideline E.

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

FORMAL FINDINGS

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

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraph 1a.: For Applicant

Subparagraph 1b.: For Applicant

Subparagraph 1c.: Against Applicant

Subparagraph 1d.: For Applicant

Paragraph 2, Guideline J: FOR APPLICANT

Subparagraph 2a.: For Applicant

Subparagraph 2b.: For Applicant

Paragraph 3, Guideline E: AGAINST APPLICANT

Subparagraph 3a.: 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 security to grant or continue a security clearance for Applicant. Clearance is denied.

Thomas M. Crean
Administrative Judge

1. Tr. 29-32.
2. Tr. 34-35; Applicant Exhibit A (Receipt, dated Sep. 2, 2003).
3. Tr. 35-36, 106-107; Applicant Exhibit B (Phone company letter, dated Sep. 1, 2004).
4. Tr. 59-61; Applicant Exhibit C (Letter from attorney in State B, dated Mar. 21, 1991).
5. Tr. 55-58.
6. Tr 37-41.
7. Tr. 51.
8. Tr. 56-57.
9. Tr. 41, 103; Applicant Exhibit D (Credit card company letter, dated Sep. 17, 2004).
10. Government Exhibit 2 (Applicant's statement, dated Jul. 3, 2003) at 9.
11. Tr. 42, 120-124; Applicant Exhibit E (Financial statement, undated).
12. Tr. 69.
13. Tr. 45-47.
14. Government Exhibit 6 (26 USC ¶ 7203); Government Exhibit 7(State Code ¶ 10-804).
15. Applicant Exhibit G (Letter from state comptroller, dated Sep. 28, 2004).
16. Applicant Exhibit F (Internal Revenue Service Letter, dated Jun. 21, 2004).
17. Government Exhibit 1 (SF 86, dated Jan. 7, 2003).
18. Government Exhibit 2 (Statement, dated Jul. 3, 2003) at 4.
19. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
20. Exec. Or. 12968, *Access to Classified Information* § 3.1 (b) (Aug. 4, 1995).
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.