

KEYWORD: Personal Conduct; Financial; Criminal Conduct

DIGEST: Applicant is a 31-year-old divorced father of three children, employed by a defense contractor since 2000. Applicant has been arrested and convicted of driving on a suspended drivers license numerous times and has been driving without insurance for at least 8 years. Applicant continues to drive on a suspended license and intends to do so in the future. Applicant had a history of financial difficulties and had his debts discharged in bankruptcy in 1999. Applicant continues to have financial delinquencies. Applicant has failed to mitigate the security concerns caused by his criminal conduct, financial concerns, and personal conduct. Clearance is denied.

CASENO: 03-18516.h1

DATE: 01/18/2005

DATE: January 18, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-18516

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Kathryn Trowbridge, Esq., Department Counsel

FOR APPLICANT

Robert M. Martinez, Personal Representative

SYNOPSIS

Applicant is a 31-year-old divorced father of three children, employed by a defense contractor since 2000. Applicant has been arrested and convicted of driving on a suspended drivers license numerous times and has been driving without insurance for at least 8 years. Applicant continues to drive on a suspended license and intends to do so in the future. Applicant had a history of financial difficulties and had his debts discharged in bankruptcy in 1999. Applicant continues to have financial delinquencies. Applicant has failed to mitigate the security concerns caused by his criminal conduct, financial concerns, and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On April 19, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline E, personal conduct, Guideline F, financial concerns, and Guideline J, criminal conduct. Applicant submitted a response to the SOR, dated May 17, 2004, and requested a hearing. In his SOR response, Applicant denied some allegations contained in the SOR, and admitted others while providing explanations in an effort to extenuate and mitigate the security concerns raised by the allegations.

The case was assigned to me on November 29, 2004. A notice of hearing was issued on November 27, 2004, scheduling the hearing for December 16, 2004. The hearing was conducted as scheduled. The government submitted nine exhibits that were marked as Government Exhibits (GE) 1-9. They were admitted without objection into the record. The Applicant testified on his own behalf, and submitted nine exhibits that were marked as Applicant's Exhibits (AE) 1-9. All of Applicant's exhibits were admitted without objection. The transcript was received on January 4, 2005.

PROCEDURAL MATTERS

The government requested to amend the SOR, whereby allegation 3.a. should allege subparagraphs 2.a. through 2.e. vice 1.a. through 1.e. There was no objection and the request was granted.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 31 years old and has been employed by a defense contractor since 2000. He was recently promoted to warehouse production specialist. He is divorced and the father of three children, two from a marriage and one from a previous relationship. He pays child support for all three children.

Applicant was unable to meet his financial obligations and filed for bankruptcy. He had approximately \$9,319.00 in debt discharged in bankruptcy in April 1999. Since that time Applicant has accumulated new debt. The table below presents details about Applicant's current debts, their current status, and cites to relevant parts of the record.

Debt	Nature & Amount	Current Status	Record
SOR 1a.	Past due, collection account \$106.00	Applicant's answer to the SOR claims he paid off, testimony at hearing admits owes, says trying to contact. No verification. Not paid.	Answer; Tr. pp. 30-31, 56-57, 73-75.
SOR 1.b.	Collection account \$80.00	Admits, claims paid, but not until SOR. No verification.	Answer; Tr. pp. 31, 75.
SOR 1.c.	Collection account \$233.00	Admits, not paid	Answer, Tr. pp. 31-32, 76.
SOR 1.d.	Collection accounts to Court, \$1,988.00	After received SOR took loan to pay. Could not get full amount to pay. Amount increased due to interest and penalties. Balance owed: \$2,300.00, amount has increased and still owes on balance.	Answer, Tr. 78-80, 91-95, AE 3.
SOR	Judgment \$408.00	Claims discharged in bankruptcy. No verification provided.	Answer, Tr.

1.e.			pp. 52-53, 79.
SOR 1.f.	Collection account \$56.00	Unaware of debt, no information, disputes.	Answer, Tr. pp. 53-54, 81-82.
SOR 1.g.	Bad debt, charged off, collection account, \$293.00	Claims it is ex-wife's debt. No verification provided.	Answer, Tr. pp.54-56, 82-83.

Applicant owns two vehicles. He recently bought a used truck and paid \$800.00. He does not owe any money on that purchase. Applicant titled the vehicle in his sister's name. He pays half of the car insurance.

Applicant has eight credit cards, several from the same company. He owes approximately \$2,200.00 on his credit cards. He pays approximately \$120.00 a month, total, dispersed among the credit cards. Applicant lists his monthly expenses, including child support (\$560.00/month) as approximately \$2,3350.00. He also has a lump sum of \$437.00 that he owes to a pawn shop that he must pay by February 2005 or forfeit the items. Applicant receives \$1,928.00 a month in take home pay. Applicant's taxes, child support and contribution to a 401k are deducted from his pay prior to him receiving it. Applicant has approximately \$2,000.00 in a 401k account.

Applicant's license was suspended sometime before 1994. Applicant was arrested in July 1994, for driving on a suspended license and having no insurance. He was fined for driving on a suspended license and the other charge was dismissed. He did not pay the fine.

Applicant was arrested in January 1995, and charged with driving on a suspended license, fictitious plates, and no evidence of financial responsibility. He pled guilty and was fined. He did not pay the fine.

Applicant continued to drive on a suspended license from June 1995 through August 1998. He was arrest in August 1998, and charged with driving on a suspended license, failure to pay a fine, speeding, no insurance and failure to appear. Applicant pled guilty and was fined \$1,292.00 or ordered to perform community service. If Applicant completed the community service the fine would be dismissed. Applicant failed to complete the community service within the time prescribed and failed to pay the fine.

Applicant continued to drive on a suspended license and was arrested again on Sept 25, 2002, and charged with driving on a suspended license and having no insurance. Applicant pled guilty and was fined. Applicant did not pay the fine.

Applicant has been driving on a suspended license since sometime before 1994. Applicant continues to drive on a suspended license. Applicant intends to drive in the future on a suspended license, although he claims only in emergency situations. Applicant admits he did not have insurance on his vehicle for eight years.

Applicant testified that he is paying his debts, that he has never been in trouble before and that he doesn't plan on doing anything that will jeopardize his job. Applicant has taken educational classes so he could better himself and make more money. Applicant provided statements from coworkers who state he is a valuable, dependable and reliable employee.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are Disqualifying Conditions (DC) and Mitigating Conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²⁾ The government has the burden of proving controverted facts.⁽³⁾ The burden of proof is something less than a preponderance of evidence,⁽⁴⁾ although the government is required to present substantial evidence to meet its burden of proof.⁽⁵⁾ Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.⁽⁶⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

No one has a right to a security clearance⁽⁹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹¹⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹²⁾ 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.

CONCLUSIONS

Considering the evidence as a whole, Guideline F pertaining to financial considerations, Guidelines E, pertaining to personal conduct, and Guideline J pertaining to criminal conduct, with their respective DC and MC, are most relevant in this case.

Under Guideline F, a security concern exists when a person has significant unpaid debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation 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.

Based on all the evidence, under Guideline F, I find Disqualifying Condition (DC) 1: *A history of not meeting financial obligations*, and DC 3: *Inability or unwillingness to satisfy debts*, apply in this case. I have considered all the mitigating conditions under Guideline F, and find none apply. Applicant had \$9,319.00 of delinquent debt discharged in bankruptcy in 1999. Bankruptcy is a legitimate means to resolve overwhelming financial difficulties. Applicant has accumulated new debt since his bankruptcy. Applicant's explanations are, he is unaware of the claims, he does not owe them, (but provided no proof of payment), they were discharged in bankruptcy (but provided no verification), or they are his ex-wife's debt (again, no proof or verification provided). Applicant does admit that two of the debts are delinquent and he has not paid them. Applicant took out a loan to partially satisfy his debt to the court system for fines he owes.

Applicant's monthly expenses are greater than his monthly take home pay. After his bankruptcy, Applicant obtained numerous credit cards that he pays a minimum balance to each month. In spite of his bankruptcy and clean financial slate, Applicant's financial history continues to be troublesome. Applicant appears to be unaware of some of the outstanding claims against him, and those he is aware of he has not done anything to correct his financial record. Applicant offered no evidence that since his bankruptcy he has sought or obtained financial counseling. Guideline F is decided against Applicant.

Under Guideline J, criminal conduct is a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. Willingness to abide by rules is an essential qualification for eligibility for access to the nation's secrets. A history of illegal behavior indicates an individual may be inclined to break, disregard, or fail to comply with regulations, practices, or procedures concerning safeguarding and handling classified information.

Based on all the evidence, under Guideline J, I find DC 2: *A single serious crime or multiple lesser offenses*, applies. I have considered all the mitigating condition under Guideline J, and conclude none apply. Applicant had his driver's license suspended sometime before 1994, and has consistently and routinely broke the law since then, by driving on a suspended license and driving without insurance, among other infractions. Applicant readily admits he regularly drove on a suspended license for many years. Applicant has driven without insurance in violation of the law for minimally a period of eight years. Applicant has over a ten year history of driving on a suspended license, he continues to drive on a suspended license and testified he will continue to do so in the future. Applicant has consistently failed to pay the fines associated with his criminal activity. His failure to pay the fines imposed on him have contributed to his financial problems. Applicant has a total disregard for the rule of law and any appreciation for his requirement to obey it. Guideline J is decided against Applicant.

Personal Conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Personal conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Under Guideline E, DC 5: *A pattern of dishonesty or rules violations, including violation of any written or recorded agreement made between the individual and the agency*, applies. Applicant's history of criminal violations and his assertion that he will continue to violate the law raises a serious question regarding his judgment, trustworthiness and his unwillingness to comply with the rules and regulations. I have considered all the mitigating conditions under Guideline E and conclude none apply. Guideline E is decided against Applicant.

In all adjudications the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes we should view a person by the totality of their acts, omissions, motivations and various other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence in this case, including Applicant's appearance, demeanor and credibility while testifying. I have also considered him under the "whole person" concept. I am satisfied that Applicant failed to present sufficient evidence of refutation, extenuation, and mitigation to overcome the case against him. Accordingly, Guidelines F, J and E are decided against Applicant.

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 AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. Against the Applicant

Subparagraph 1.h. Against the Applicant

Paragraph 2. Guideline J AGAINST THE APPLICANT

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against the Applicant

Subparagraph 2.c. Against the Applicant

Subparagraph 2.d. Against the Applicant

Subparagraph 2.e. Against the Applicant

Paragraph 3. Guideline E AGAINST THE APPLICANT

Subparagraph 3.a. Against the Applicant

DECISION

In light of all the circumstances presented by the record in his case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Section E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518,531 (1988).
5. ISCR Case No. 01-20700 (December 19,2002) at p.3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p.2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, Section E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8;Directive, Enclosure 3, Section E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id.* at 531.
11. *Egan*, Executive Order 10865, and the Directive.
12. Executive Order. 10865.§ 7.