

KEYWORD: Financial, Personal Conduct

DIGEST: Applicant is a 29-year-old employee of a defense contractor. He has delinquent debts and judgments totaling \$21,000.00. He deliberately omitted relevant information on his 2004 security clearance application. Applicant has not mitigated the security concerns arising from his financial difficulties and personal conduct. Clearance is denied.

CASE NO: 05-05333

DATE: 04/28/2006

DATE: April 28, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-05333

DECISION OF ADMINISTRATIVE JUDGE

NOREEN A. LYNCH

APPEARANCES

FOR GOVERNMENT

Richard A. Stephens, Esq., Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant is a 29-year-old employee of a defense contractor. He has delinquent debts and judgments totaling \$21,000.00. He deliberately omitted relevant information on his 2004 security clearance application. Applicant has not mitigated the security concerns arising from his financial difficulties and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On November 3, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program (Directive)*, dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant because of security concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

In a sworn written statement, dated December 15, 2005, Applicant responded to the allegations in the SOR. He elected to have his case decided on the written record in lieu of a hearing.

Department Counsel submitted the government's written case on February 15, 2006. Applicant was provided a complete copy of the file of relevant material (FORM-[\(U\)](#)), along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the government's case. Applicant received the FORM on March 2, 2006. He submitted additional evidence. The case was assigned to me on March 17, 2006.

FINDINGS OF FACT

Applicant admitted the factual allegations pertaining to financial matters under Guideline F (subparagraphs 1.a. through 1.m.) of the SOR. ⁽²⁾ Those admissions are incorporated as findings of fact. He denied the factual allegations under Guideline E (subparagraphs 2.a. and 2.b.) of the SOR. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant is a 29-year-old employee of a defense contractor. ⁽³⁾ He married in 1999 and divorced in 2002. He is remarried and has one child. On July 26, 2004, he submitted his security clearance application. ⁽⁴⁾

Applicant enlisted in the Army Reserves in 1998. He spent 2003 in Iraq on Operation Iraqi Freedom as an ammunition specialist. ⁽⁵⁾ He did not return to the United States until February 2004.

On July 26, 2004, he completed his security application. In response to question 37 (unpaid judgments in the last 7 years) he answered "no". In response to question 38, (delinquent debts past due for more than 180 days in the past 7 years) he responded "no". However, he answered question 35 concerning repossessions in the affirmative.

Applicant's credit bureau report, dated August 26, 2004, lists debts from 1998 until the present. In 2001, a vehicle was repossessed while Applicant was on active duty in Germany. His then wife did not use the checks Applicant sent home to pay the bills. He incurred significant medical bills because he did not have medical insurance. This report confirms the outstanding debts and judgments listed in the SOR. The majority of the debts are medical.

His outstanding unpaid debts are as follows: ¶1. a. hospital judgment in the amount of \$2,926.00; ¶1.b, hospital judgment in the amount of \$191.00; ¶1.c, credit card in the amount of \$87.00; ¶1.d, collection account in the amount of \$391.00; ¶1.e, collection account in the amount of \$3,549.00; ¶1.f, involuntary automobile repossession in the amount of \$6,667.00; ¶1.g, hospital judgment in the amount of \$3,191.00.00; ¶1.h, hospital judgment in the amount of \$452.00; ¶1.i, hospital judgment in the amount of \$240.00; ¶1.j, hospital judgment in the amount of \$217.00; ¶1.k, hospital judgment in the amount of \$120.00; ¶ 1.1 hospital judgment in the amount of \$736.00; and ¶ 1.m. hospital bill in the amount of \$3,000.00. ⁽⁶⁾

After receiving the SOR in 2005, Applicant claimed he is willing to pay his debts and is attempting to consolidate those debts with Consumer Debt Relief Group, LLC. His personal financial statement lists a \$195.00 monthly payment to the debt relief program. He also has a Debt Settlement Agreement but no record of any payment. However, Applicant

provided no supporting documentation of payments or a structured repayment plan. Despite his acknowledgment of the majority of the debts, Applicant has not provided documentary evidence to show he is in compliance with a debt payment schedule. (7)

On February 10, 2005, Applicant participated in a special interview at the Army ammunition plant. The interview focused on the eight judgments on Applicant's credit report that he had not acknowledged in his security clearance application. Applicant claimed he did not know about the hospital judgments. He explained the only one he knew about and reported, was the car repossession. He reported the delinquent account was due to his youth and negligence, but he did not recall the account.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (disqualifying conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (mitigating conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E.2.2, Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision.

The Adjudicative Process factors to consider are: (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 individual'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. Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interest of national security.

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

Guideline F - Financial Consideration: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Guideline E Personal Conduct 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.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information.⁽⁸⁾ If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation, or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate that it is clearly consistent with the national interest to grant or continue the applicant's clearance.⁽⁹⁾

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that 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. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of national security.⁽¹⁰⁾

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of the Executive Order 10865 specifically provides that industrial security clearance decisions shall be, "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude

the following with respect to each allegation set forth in the SOR.

Financial Considerations

A security concern exists where an applicant may be overextended financially to the point where they may resort to illegal activities to resolve their financial situation.

The government has established its case under Guideline F. Applicant accumulated debt over a period of several years totaling more than \$21,000.00. Applicant is not required to be debt free, but is required to manage his finances in such a way as to indicate he is responsible and of sound judgment. Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*a history of not meeting financial obligations*), and FC DC E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*) apply.

Under the Directive, it is possible to mitigate security concerns arising from financial difficulties. Appellant's bad debts arose at various times and continued for many years until the present time. Thus, Financial Considerations Mitigating Condition (FC MC) E2.A6.1.3.1 (*the behavior was not recent*), and FC MC E2.A6.1.3.2 (*it was an isolated incident*) do not apply in this case.

Applicant provided no information to support unemployment or medical emergencies as a cause of his delinquent and unpaid debts. In fact, Applicant denied any knowledge of a medical judgment. FC MC E2.A6.1.3.3 (*the conditions that resulted in the behavior were largely beyond the person's control*) does not apply.

Applicant asserts in his 2005 written statement that he is willing to now pay his debts. He promised in 2004 to consolidate his bills with consumer debt relief. Applicant has not met his burden of proof in this case. There is no documentation of a systematic, concrete method of handling his debts. He failed to document any payment on any debts. Financial Considerations Mitigating Condition (FC MC) E2.A6.1.3.4 (*there are clear indications that the problem is being resolved or is under control*) and FC MC E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) do not apply. I conclude his financial situation is not under control. Considering all the evidence in this case, I find Applicant has failed to meet his burden that he has overcome the financial concerns in the SOR. Accordingly, allegation subparagraphs 1.a. through 1. m. of the SOR are concluded against Applicant.

Personal Conduct

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.

The government established its case under Guideline E as to allegations 2. a. and 2b. Applicant's answer to Questions 37 and 38 omitted material facts from his security clearance application. When Applicant completed his security application in 2004, he answered "yes" to Question 35. Applicant acknowledges his judgment on the car that was repossessed. The government must establish that Applicant's omission, concealment or falsification in regards to his omission on the security clearance application was deliberate. When a falsification is denied, the government has the burden of proving it. Proof of omission standing alone does not establish or prove an applicant's intent or state of mind when the omission occurred. Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire*) applies.

Applicant intentionally omitted the eight judgments on his security clearance application due to the consequences they might present for him. It does not seem credible that he would not have any knowledge of the judgments from the hospitals for over a six year period. He noted the address was his parents' home, but it does not seem reasonable that his parents would not communicate with him. I find he did not carry his burden to persuade me he merely did not recall the judgments and delinquent account. I conclude against Applicant as to allegations 2.a. and 2.b.

I considered the personal conduct mitigating conditions and conclude that none of them apply in this case. Applicant did not disclose any information until he was confronted by the interview in 2005.

Finally, I considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I balanced all the factual circumstances and applied them to the adjudicative criteria established in the Regulation in light of the whole person concept. Despite the fact that Applicant wishes to resolve his financial situation, his deliberate omission of material information on his security clearance application is not mitigated. I conclude it is not clearly consistent with the national interest to grant a security clearance to Applicant.

Applicant has failed to meet his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I considered the record evidence, the whole person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive.

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 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

Paragraph 2, Guideline E. AGAINST APPLICANT

Subparagraph 2.a: 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 or continue a security clearance for Applicant. Clearance is denied.

Noreen A. Lynch

Administrative Judge

1. The government submitted eleven items in support of its contentions.
2. Item 4 (Applicant's Answer, dated December 2005) at 1.
3. Item 5 (Applicant's Security Clearance Application (SF 86), dated July 26, 2004) at 1.
4. *Id.*
5. *Id.* at 2-4.
6. Item 9 (Credit report, dated August 26, 2004) at 1-3; Item 10 (Credit report, dated September 1, 2005) at 1-3; Item 8 (Credit report, dated October 11, 2005) at 1-5.
7. Item 4, *supra* note 2 at 1.
8. ISCR Case No. 96-0277 (July 11, 1997) at 2.
9. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, Para E3.1.15.
10. Directive, Enclosure 2, Para. E2.2.2