

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 28-year-old site laborer seeking employment with a defense contractor. Over the years, he has accrued 14 delinquent debts. He admits to seven of the debts. Of the eight he denies, he has provided no proof and little argument that any obligations are satisfied. Additionally, he has failed to adequately explain four of his security clearance application answers involving his financial and employment record. By failing to address these matters, Applicant has failed to mitigate security concerns arising from financial considerations and personal conduct. Clearance is denied.

CASENO: 05-06479.h1

DATE: 06/08/2006

DATE: June 8, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-06479

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is a 28-year-old site laborer seeking employment with a defense contractor. Over the years, he has accrued 14 delinquent debts. He admits to seven of the debts. Of the eight he denies, he has provided no proof and little argument that any obligations are satisfied. Additionally, he has failed to adequately explain four of his security clearance application answers involving his financial and employment record. By failing to address these matters, Applicant has failed to mitigate security concerns arising from financial considerations and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On October 31, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) concluding it was unable to find that it is clearly consistent with the national interest to grant him a security clearance. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). In a notarized statement, dated December 8, 2005, Applicant responded to the SOR allegations. He admitted seven of the 14 allegations raised under Guideline F and admitted two of the four allegations raised under Guideline E. Additionally, he waived his right to an administrative hearing in favor of a decision based on the written record.

Department Counsel prepared a File of Relevant Material (FORM), ⁽²⁾ dated January 18, 2006. Applicant received a complete copy of the FORM on January 27, 2006. He was given the opportunity to submit documentary information in rebuttal, or to explain adverse information in the FORM. In response, Applicant substantially repeated his answers to the SOR. On February 2, 2006, Department Counsel personally informed Applicant he could submit additional documentation through February 27, 2006. ⁽³⁾ Applicant declined to submit any additional material. The case was assigned to an administrative judge on March 17, 2006, and it was transferred to me on May 24, 2006.

FINDINGS OF FACT

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

Applicant is a 28-year-old site laborer seeking employment with a defense contractor. His employment with this defense contractor is contingent upon his eligibility for access to a sensitive assignment abroad. Applicant is unmarried and has earned a high school diploma.

Inasmuch as Applicant failed to provide any documentary evidence or explanation regarding the allegations contained in the SOR, there are no facts setting the background as to how the alleged debts arose. Similarly, there is no substantive evidence supporting Applicant's denials regarding some of the alleged debts.

The debts alleged in the SOR are based on the results of a June 28, 2005, Equifax credit report.⁽⁴⁾ Those debts are set forth below.⁽⁵⁾ They are followed by Applicant's complete responses:⁽⁶⁾

SOR	CREDITOR	APPLICANT'S RESPONSE
1.a.	COMMUNICATIONS BILL: \$50 debt, in collection since about December 2002.	"I deny. Decision without hearing."
1.b.	COMMUNICATIONS BILL: \$31 debt, in collection since about February 2003.	"I deny. Decision without hearing."
1.c.	MEDICAL ACCOUNT: \$215 debt, in collection since about July 2003.	"I deny. Decision without hearing. Dad's med. bill." (" <i>Me and my Dad have same name.</i> ") ⁽⁷⁾
1.d.	COMMUNICATIONS BILL: \$194 debt, in collection since about September 2003.	"I deny. Decision without hearing."
1.e.	MEDICAL COLLECTIONS: \$10 debt, in collection since about February 2004.	"I deny. Decision without hearing. Dad's med. bill." (" <i>Dad's bill.</i> ") ⁽⁸⁾
1.f.	SECURITY: \$164 charged off as bad debt in about October 2004.	"I admit. Decision without hearing."
1.g.	DEBT AFTER REPOSSESSION SALE: \$2,003 owed since about November 2004.	"I deny." (" <i>Voluntary repossession.</i> ") ⁽⁹⁾
1.h.	DEBT: \$3,228 charged off as bad debt in about February 2005.	"I admit. Decision without hearing."
1.i.	CABLE TELEVISION: \$347, in collection since about February 2005.	"I deny. Decision without hearing."
1.j.	DEBT: \$1,267, in collection since about March 2005.	"I admit."

1.k.	CHILD SUPPORT: \$1,668, at least 180 days past due in April 2005.	"I admit. Decision without hearing." ("Child support being taken out of check every two weeks.")-(10)
1.l.	FINANCE COMPANY: \$188 charged off as bad debt in about May 2005.	"I admit. Decision without hearing."
1.m.	FINANCE ENTITY: \$362 charged off as bad debt since about May 2005.	"I admit. Decision without hearing."
1.n.	PHONE COMPANY: \$1,081 charged off as bad debt in about June 2005.	"I admit. Decision without hearing." ("Cancelled phone. Still was billed.")-(11)

Applicant completed a security clearance application (SF-86) on June 2, 2005. Based on his answers, four allegations of falsifications have arisen. Applicant answered "No" to Question 20 (**Your Employment Record: Has any of the following happened to you in the last 10 years? Fired from a job - Quit a job after being told you'd be fired - Left a job by mutual agreement following allegations of misconduct - Left a job by mutual agreement following allegations of unsatisfactory performance - Left a job for other reason under unfavorable circumstances**). The Government alleges this is untrue, to which Applicant has commented: "Voluntarily left job; either was unfairly treated or not enough hours."-(12) To the sub-allegation he was terminated from one position for job abandonment, he stated he quit voluntarily. To another sub-allegation, alleging he was terminated from another position for excessive tardiness, he responded that he was never late and was always early.

Moreover, Applicant answered "No" to Question 35 (**Your Financial Record - Repossessions In the last 7 years, have you had any property repossessed for any reason?**). The Government alleges this is untrue and that he deliberately failed to disclose the automotive repossession noted at SOR sub-paragraph 1.g. In his response, Applicant does not deny the allegation. He does, however, elaborate by noting: "Voluntarily repossessed it. I called them."

Furthermore, concerning Question 38 (**Your Financial Delinquencies - 180 Days In the last 7 years, have you been over 180 days delinquent on any debt(s)?**), to which Applicant answered "No," the Government asserts that he deliberately failed to list his delinquencies. He responded by stating "I accept that." Similarly, with regard to the fourth issue, regarding Question 39 (**Your Financial Delinquencies - 90 Days Are you currently over 90 days delinquent on any debt(s)?**), and to which Applicant had answered "No," the Government asserts that he also deliberately failed to list these delinquencies. Applicant again responded by stating "I accept."

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.⁽¹³⁾ The government has the burden of proving controverted facts.⁽¹⁴⁾ The burden of proof is something less than a preponderance of evidence.⁽¹⁵⁾ 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.⁽¹⁶⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁷⁾

No one has a right to a security clearance⁽¹⁸⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁹⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽²⁰⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽²¹⁾ 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 security clearance.

Based upon 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. *The Concern:* An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.⁽²²⁾

Guideline E - Personal Conduct. *The Concern:* 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.⁽²³⁾

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

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). For clarity, I will discuss each separately.

Financial Considerations

The Government demonstrated that for reasons which remain unexplained, Appellant accrued a number of debts over the past few years. ⁽²⁴⁾ Consequently, 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. With the Government's burden met, the burden should then shift to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. Applicant, however, has only provided admissions or denials without any corroborative or substantive evidence. Having failed to carry his burden, Applicant has also failed to argue that any of the Financial Considerations Mitigating Conditions apply.

Personal Conduct

The SOR alleges that Applicant deliberately falsified material facts on his SF-86 regarding his employment record,

repossessions in his financial record, and financial delinquencies. Applicant admits to deliberately failing to list his financial delinquencies and he does not deny deliberately failing to disclose that his automobile was repossessed. [\(25\)](#)

Consequently, 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, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness or aware fiduciary responsibilities*) applies. Inasmuch as Applicant has admitted three of the four sub-allegations without presenting any evidence of refutation, extenuation, or mitigation to overcome the case against him, and has presented no supporting evidence with regard to the sole sub-allegation he denies, no Personal Conduct itigating Conditions can be applied.

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 (Financial Considerations) AGAINST APPLICANT

Subparagraph 1.a. - 1.n.: Against Applicant

Paragraph 2. Guideline E (Personal Conduct) AGAINST APPLICANT

Subparagraph 2.a. - 2.d: Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is denied.

Arthur E. Marshall, Jr.

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 (Directive).
2. The FORM included a five-page brief and seven documents.
3. Handwritten note, dated February 2, 2006, on Memorandum for Department Counsel, dated February 1, 2006.
4. Item 5 (Equifax credit report, dated June 28, 2005).
5. The names of all creditors have been made generic. All sums cited are approximate amounts and remained unsatisfied as of June 28, 2005.
6. The responses noted are Applicant's responses to the SOR. Where there is a deviation from that answer, or if additional information was given in his answer to the FORM, it is noted and italicized in parenthesis. None of the denied allegations are substantiated with any tangible proof or additional explanation.
7. Inasmuch as Applicant is a "junior," there is the potential of confusion between father and son. Applicant, however, has not gone beyond this brief comment to establish that the debt noted on his credit report is not his, personally.
8. *Id.*
9. Item 5, *supra*, footnote 4. The credit report, at entry 18, page 4, duly notes that the repossession was voluntary.
10. Applicant has provided no evidence of a garnishment, allotment, or other method currently employed to address this debt.
11. Applicant has provided no documentation supporting his response.
12. The Government offers an investigator's notes from interviews with Applicant's former employers to support its allegations. *See* Item 6 (Interview Notes from first employer, undated) and Item 7 (Interview Notes from second employer, dated July 11, 2005). Applicant's responses to the allegations are taken from his answers to the FORM, which are more complete than his answers to the SOR. Although he contradicts the facts underlying the Government's allegation/sub-allegations, Applicant has offered nothing to refute the charges.
13. ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).
14. ISCR Case No. 97-0016 at 3 (App. Bd. Dec 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
15. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
16. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

17. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
18. *Egan*, 484 U.S. 518, at 531.
19. *Id.*
20. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
21. Executive Order 10865 § 7.
22. Directive, Enclosure 2, ¶ E2.A6.1.1
23. Directive, Enclosure 2, ¶ E2.A5.1.1.
24. See Item 1, *supra*, footnote 4.
25. The fact that the repossession was voluntary in nature does not mitigate or extenuate the fact that the financial obligation remains and his answer was misleading.