

KEYWORD: Personal Conduct; Financial; Criminal Conduct

DIGEST: Applicant is 38 years old and has applied for a position with a federal contractor. Since the late 1990's, he accumulated a significant amount of delinquent debt that he has been unable to resolve. When he completed his security clearance application, he did not list his delinquent debts, a previous job termination, and two criminal convictions. He failed to mitigate the security concerns raised by personal conduct, financial considerations, and criminal conduct. Clearance is denied.

CASENO: 05-06753.h1

DATE: 05/23/2006

DATE: May 23, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-06753

DECISION OF ADMINISTRATIVE JUDGE

SHARI DAM

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 38 years old and has applied for a position with a federal contractor. Since the late 1990's, he accumulated a significant amount of delinquent debt that he has been unable to resolve. When he completed his security clearance application, he did not list his delinquent debts, a previous job termination, and two criminal convictions. He failed to mitigate the security concerns raised by personal conduct, financial considerations, and criminal conduct. Clearance is denied.

STATEMENT OF THE CASE

On October 31, 2005, the Defense Office of Hearings and Appeals (DOHA) under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under Guidelines E (Personal Conduct), F (Financial Considerations), and J (Criminal Conduct) why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

On November 18, 2005, Applicant filed his Answer to the SOR and requested a hearing. On January 23, 2006, the case was assigned to me. A Notice of Hearing was issued on April 11, 2006, setting the case for hearing on May 1, 2006. At the hearing the Government introduced exhibits (GX) 1-3 into evidence. Applicant testified in his case-in-chief. DOHA received the hearing transcript (Tr.) on May 10, 2006.

FINDINGS OF FACT

Based on the entire record, including Applicant's admissions in his Answer to the SOR and at the hearing, I make the following findings of fact:

Applicant is 38 years old. He has worked as a plumber for the last 18 years, and for his present employer for two months. He is married to his second wife and has three young children at home. In April 2005, he filed a security clearance application (SCA), in anticipation of obtaining a position with a federal contractor.

In November 1992, Applicant was arrested and charged with (1) Driving While Intoxicated (DWI), and (2) Unlawful Carrying a Weapon. He was found guilty of both charges and sentenced to one year probation, ordered to attend DWI school, and fined \$732 plus court costs of \$187.

In March 1999, Applicant was arrested and charged with (1) Alcohol to a Minor, and (2) Disorderly Conduct. He was found guilty, sentenced to a suspended jail sentence of 60 days, placed on probation for one year, and fined \$500 plus court costs of \$209.

From approximately July 2004 until January 2005, Applicant worked for a private contractor in the Middle East, supplying services to the armed forces stationed there. In January, he was terminated from that position for violating a company time sheet policy, and then returned to the United States. Applicant stated he did not consider it a formal termination because he was told to call the company in a couple months for rehiring.⁽¹⁾

Applicant's financial problems began in the late 1990's and continued to the present, as acknowledged by him and documented in a 2006 credit report.⁽²⁾ At that time he began paying child support, helping his sick mother, incurring medical bills for a knee surgery, and supporting his present family.⁽³⁾ Currently, he and his wife have a net monthly combined income of \$3,000. After paying their expenses, including two car loans, there is about \$50 left for other incidentals. He spoke to a credit counselor in 2004, but did not enter into a debt consolidation program because he did not earn enough income at the time.⁽⁴⁾ He has contacted a couple creditors in an attempt to resolve some of the debts. To-date, he has not investigated all of the alleged outstanding debts, nor resolved or established any form of a repayment plan for them.⁽⁵⁾

Paragraph 2 of the SOR alleged that Applicant's delinquent debts total \$28,000. Applicant admitted owing the debts contained in ¶¶ 2.c, 2.f, and 2.g. Although he was unaware of the unpaid judgement alleged in ¶ 2.a, and debts listed in ¶¶ 2.b, 2.d and 2.e, he admitted the allegations.

When Applicant signed his SCA in April 2005, he swore his answers were "true, complete, and correct" to the best of his knowledge and belief. In response to Question 20. Your Employment Record - *Has any of the following happened to you in the last 10 years? Fired from 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*), he answered "No," and did not list his January 2005 job termination. Applicant did not disclose the incident because he was told by a company official to reapply in a couple months, despite receipt of the termination notice. Hence, he did not think it was an official termination. ⁽⁶⁾ I find this explanation credible.

In response to Question 22. Your Police Record - Firearms/Explosives Offenses (*Have you ever been charged with or convicted of a firearm or explosives offense? For this item, report information regardless of whether the record in your case has been 'sealed' or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substance Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.c. 3607*), he answered "No." He did not disclose the 1992 arrest because the judge told him the matter would be "off his record" once he completed his probationary term. ⁽⁷⁾ Based on the sentence and fact that he was in college at the time, I find this explanation credible.

In response to Question 24. Your Police Record - Alcohol/Drug Offenses (*Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs? For this item, report information regardless of whether the record in your case has been 'sealed' or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substance Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.c. 3607*), he answered "No," and did not disclose the 1992 or 1999 convictions. He thought both of the charges were removed from his record because they were more than seven years old, but admitted he made a mistake about the 1999 charge.

In response to Question 37. Your Financial Record - Unpaid Judgments (*In the last 7 years, have you had any judgements against you that have not been paid?*), Applicant answered "No," and failed to disclose the unpaid judgement listed in SOR ¶ 2.a. In response to Question 38. Your Financial Delinquencies - 180 Days (*In the last 7 years, have you been over 180 days delinquent on any debt(s)?*) he answered "No," and failed to disclose the debts listed in SOR ¶¶ 2.a, through 2.e. In response to Question 39. Your Financial Delinquencies - 90 Days (*Are you currently over 90 days delinquent on any debt(s)*), he answered "No," and did not list the debts alleged in SOR ¶¶ 2.a through 2.e. Applicant believed he was not required to report his old financial delinquencies because he thought they had been removed from his credit history after seven years, and at the time he completed the SCA his other bills were current and not delinquent.

In answering the above four questions, Applicant reasoned that it would be better not to raise issues he believed were no longer on his record. He essentially opted for nondisclosure rather than disclosure of items in his past that could create potential problems. (8) Although he claimed he misunderstood the questions, I do not find that explanation credible based on his testimony and evidence.

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, sets forth criteria which must be evaluated when determining security clearance eligibility. Within those adjudicative guidelines are factors to consider in denying or revoking an individual's request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual's request for access to classified information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence in order to reach a fair, impartial and common sense decision.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not only the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. Directive, Enclosure 2, ¶ E2.2.2. The decision to deny an individual a security clearance is not necessarily a judgment about an applicant's loyalty. Executive Order 10865, § 7. Instead, it is a determination that an applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information.

Department of the Navy v. Egan, 484 U.S. 518, 531 (1988). The Directive presumes a rational connection between past proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence in refutation, extenuation, or mitigation sufficient to overcome the position of the government. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); Directive, Enclosure 3, ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his clearance." *Id.*

Based upon the allegations contained in the SOR and a consideration of the evidence as a whole, the following adjudicative guidelines are pertinent to an evaluation of the facts of this case:

Guideline E - Personal Conduct: A security concern may exist when 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.

Guideline F - Financial Considerations: A security concern may exist when 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.

Guideline J - Criminal Conduct: - A security concern may exist when a history of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

The disqualifying and mitigating conditions, either raising security concerns or mitigating security concerns applicable to this case, are discussed in the Conclusions section below.

CONCLUSIONS

I considered all of the facts in evidence, legal standards, including the "whole person" concept, and Applicant's credibility, and conclude as follows:

Guideline E - Personal Conduct

Based on the evidence, the Government established its case under 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 award fiduciary responsibilities*). While Applicant's explanation regarding his failure to disclose the job termination and 1992 conviction was credible, his reasons for not disclosing his delinquent debts and criminal record for alcohol related crimes, are not credible. I find that he wilfully chose not to disclose the criminal charges, in particular the 1999 conviction. He knew he had financial difficulties and debts in 2004 when he met with a credit counselor, and thus, his explanation that he believed his old debts had fallen off his credit history when he completed the SCA in April 2005, is not believable.

The Government having established its case, the burden shifted to Applicant to mitigate or rebut the allegations. After reviewing all of the mitigating conditions, I conclude none apply. Falsification of a security-clearance application is a serious matter, and is not easily mitigated or explained away. Hence, the allegations contained in SOR ¶¶ 1.a and 1.b are concluded in his favor and ¶¶ 1.c through 1.g are concluded against him. Accordingly, Guideline E is decided against him.

Guideline F: Financial Considerations

The Government established its case for disqualification under Guideline F. Based on the evidence, two disqualifying conditions apply: (1) Financial Consideration Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and (2) FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*). Applicant admitted that he has a long history of not meeting his financial obligations that began in the late 1990's and continues to the present. He remains unable to meet his expenses, as indicated by his testimony and a current credit report.

The Government having established its case, the burden shifted to Applicant to mitigate or rebut the allegations. After reviewing all of the mitigating conditions, I conclude Financial Consideration Mitigating Condition (FC MC) E2.A6.1.3.3 (*The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)*) applies in this case. Applicant's financial difficulties are the result of unexpected marital, family, and medical problems, which were factors beyond his control.

As that mitigating condition standing alone is insufficient to overcome the Government's present concern, I also considered FC MC E2.A6.1.3.4 (*The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or 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*), and conclude neither applies. In 2004, Applicant met with a credit counselor and was unable to enter into a consolidation agreement due to his financial situation. Unfortunately, that situation has not changed and he was unable to present any evidence indicating that those delinquent debts are being resolved or under control, as required under FC MC E2.A6.1.3.4. Nor, is there any evidence to support a conclusion that since 2004 he has taken additional steps to investigate all of the debts or manage his current situation, as contemplated under the "good faith" language of FC MC E2.A6.1.3.6. Hence, the allegations contained in SOR ¶¶ 2.a through 2.g are concluded against him. Accordingly, Guideline F is decided against Applicant.

Guideline J: Criminal Conduct

The Government established a case under Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1 (*Allegations or admissions of criminal conduct, regardless of whether the person was formally charged*). Applicant was convicted of a crime in 1992 and 1992. In addition, as Applicant did not admit to allegation 3.a, the Government bears the burden of establishing that Applicant's failure to truthfully answer Questions 24, 26, 37, 38 and 39, on the SCA constitutes criminal conduct. Section 1001 of Title 18, United States Code makes it a felony, punishable by a fine, imprisonment, or both to knowingly and willfully make a false statement on a writing, in this case the SCA. I have concluded that Applicant deliberately falsified his answers to the said questions. Thus, the government established its case under this guideline. None of the mitigating conditions apply. Accordingly, Guideline J is decided against Applicant.

For the reasons stated, I conclude Applicant is not 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 as follows:

Paragraph 1: Guideline E (Personal Considerations) AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For 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

Paragraph 2: Guideline F (Financial Considerations) AGAINST APPLICANT

Subparagraphs 2.a through 2. g: Against Applicant

Paragraph 3: Guideline J (Criminal Conduct AGAINST APPLICANT

Subparagraph 3.a: 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 interest to grant Applicant a security clearance. Clearance is denied.

Shari Dam

Administrative Judge

1. Tr. 56.

2. GX 3.

3. Tr. 50.

4. Tr. 53-54.

5. Tr. 55.

6. Tr. 56.

7. Tr. 19.

8. Tr. 37.