

KEYWORD: Financial; Personal conduct; Criminal conduct

DIGEST: Applicant failed to mitigate security concerns relating to 20 delinquent now totaling nearly \$10,000.00 accumulated because of low income from hourly wages as a painter. Applicant seeks a security clearance in an effort to obtain overseas employment with the government. He failed to list debts on SF 86 but the allegation is mitigated by lack of deliberate action and intent to deceive by Applicant. However, he failed to mitigate the financial consideration concern. Security clearance denied.

CASE NO: 05-06773.h1

DATE: 06/22/2006

DATE: June 22, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-06773

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Esq. , Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate security concerns relating to 20 delinquent now totaling nearly \$10,000.00 accumulated because of low income from hourly wages as a painter. Applicant seeks a security clearance in an effort to obtain overseas employment with the government. He failed to list debts on SF 86 but the allegation is mitigated by lack of deliberate action and intent to deceive by Applicant. However, he failed to mitigate the financial consideration concern. Security clearance denied.

STATEMENT OF CASE

On December 1, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, 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 which 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On December 12, 2005, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to another judge on January 30, 2006, and assigned to me on March 7, 2006. A notice of hearing was issued on March 15 2006, for a hearing on April 3, 2006, and held that day. The government offered three exhibits and Applicant offered two into evidence and all were accepted. The transcript was received on April 19, 2006.

FINDINGS OF FACT

Applicant admitted all SOR allegations relating to delinquent debts with explanation for some and admitted the withholding information regarding them on his applicant for security clearance with explanation. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 61-year-old painter by trade who is paid \$13.00 per hour. He does not have a security clearance but needs one to take a job with a joint venture which is constructing two embassies abroad for the U.S. government. This prospective job would pay him more than he has ever made in his life and permit him to pay all his debts. He incurred 20 debts over the past years cited in the SOR totaling a little over \$10,000.00 of which the largest amount is for past due child support. He has been making payments of over \$450.00 per month for current child support payments but had fallen behind several years ago. His former wife who receives the payments recently agreed to reduce his debt from \$9,500.00 as alleged in the SOR to \$4,500.00 (Exh. A) to help him obtain the new job. Only one other debt is over \$1,000.00. He also has an unpaid state tax lien for \$200.00 filed in 1993. The total delinquent debts now are almost \$10,000.00. None have been paid in full or in part.

Applicant did not list the delinquent debts and the tax lien in answer to Questions 37, 38, and 39 on his application for security clearance (SF 86).

Applicant has been married and divorced three times and has eight children. Over the years he has paid child support for all children but now is paying for only the last child who is 16.

Applicant was assisted in filling out his SF 86 by a security officer for his prospective employer and believed he had complied with all requirements.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, 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." *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. See Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information See *Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating it is clearly consistent with the national interest to grant or continue a security clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. See Executive Order No. 12968 § 3.1(b).

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

Applicant's 20 delinquent debts prompted the allegation of security concern under Guideline F since an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of inability or unwillingness to satisfy debts. (E2.A6.1.2.3.) Mitigating Conditions (MC) might include the fact that the conditions that resulted in the behavior were largely beyond the person's control (E2.A6.1.3.3.) and the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.). However, those mitigating conditions do not apply. There is no evidence the debts resulted from conditions beyond his control even though he has been divorced three times and had several children who required support. He has not repaid the delinquent debts nor has he provided documentation showing repayment plans addressing the debts.

Applicant's failure to report his financial delinquencies at Questions 37, 38, and 39 on his SF 86 raises issues under Guideline E that might indicate questionable judgment, unreliability, and unwillingness to comply with rules and regulations and could indicate that the person may not properly safeguard classified information (E2.A5.1.1.).

Specifically, the deliberate omission, concealment, or falsification of relevant and material facts from a personnel security application could raise a security concern and be disqualifying. (E2.A5.1.2.2.) Applicant's failure to report any of the delinquent debts was at best negligent but in view of his testimony concerning the completion of the SF 86 and confusion regarding the many delinquent debts, I cannot conclude that it was deliberate.

Guideline J (Criminal Conduct) is alleged but only as a violation of 18 U.S.C. ¶ 1001 by failing to answer questions 37, 38, and 39. The allegation could be mitigated by the fact the crime was an isolated incident. (E2.A10.1.3.2.) I conclude Applicant did not have the requisite intent to give rise to a criminal offense.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Applicant impressed me at the hearing as a hard-working person whose many but relatively small debts had accumulated to the point that he had lost control and account of them but intended to resolve them if he had the financial means to do so.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude it is premature to grant a security clearance at this time.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

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

Subparagraph 1.n.: Against Applicant

Subparagraph 1.o.: Against Applicant

Subparagraph 1.p.: Against Applicant

Subparagraph 1.q.: Against Applicant

Subparagraph 1.r.: Against Applicant

Subparagraph 1.s.: Against Applicant

Subparagraph 1.t.: Against Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Paragraph 3. Guideline J: FOR APPLICANT

Subparagraph 3.a.: For 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 or renew a security clearance for Applicant. Clearance is denied.

Charles D. Ablard

Administrative Judge