

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant's financial irresponsibility and falsification of his clearance application renders him an unsuitable candidate for a security clearance. Clearance denied.

CASENO: 05-07107.h1

DATE: 02/15/2006

DATE: February 15, 2006

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 05-07107

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN GRATTAN METZ, JR**

**APPEARANCES**

**FOR GOVERNMENT**

Julie R. Edmunds, Esquire, Department Counsel

**FOR APPLICANT**

**SYNOPSIS**

Applicant's financial irresponsibility and falsification of his clearance application renders him an unsuitable candidate for a security clearance. Clearance denied.

**STATEMENT OF THE CASE**

Applicant challenges the 19 October 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of financial consideration and personal conduct. [\(1\)](#) Applicant answered the SOR on 14 November 2005 and requested a decision on the record. He responded to DOHA's 20 December 2005 File of Relevant Material (FORM). The record closed on 18 January 2006, the day Department Counsel indicated no objection to Applicant's response. DOHA assigned the case to me 9 February 2006.

**FINDINGS OF FACT**

Applicant admitted the financial allegations of the SOR but denied the falsification allegations; accordingly, I incorporate his admissions as findings of fact. He is a 33-year-old office assistant employed by a defense contractor since September 1993. He has not previously held a clearance.

Applicant admits 13 delinquent debts totaling over \$43,000.00. Ten of those debts are for educational loans totaling over \$36,000.00. Five of the educational loans, totaling over \$14,000, are held by the Student Loan Marketing Association (Sallie Mae). The other four educational debts, totaling over \$36,000.00, are owed to two private lenders and a university. It is impossible to tell from the credit report whether any of the 10 educational accounts overlap. Six of the educational loans are reported to be more than 120 days past due, with total payments due of \$2349.00.

Applicant's response to the FORM contains part of an October 2005 bank statement showing an electronic payment of \$120.00 on a student loan that is otherwise uncorrelated to the educational accounts alleged in the SOR. It also showed an electronic loan payment of \$164.09 on an account that is unidentified. Applicant provided no information indicating what accounts these loan payments were for or whether they represented payments on consolidated debts. Applicant claims to have contacted Sallie Mae and obtained a four-month forbearance and consolidation of his loans. He does not claim to have arranged any repayment schedule, nor has he demonstrated that he is otherwise entitled to deferment of loan payments because he is still in school. Otherwise, there is no evidence that Applicant contacted any of his creditors about his delinquent accounts, or that he has sought any kind of financial counseling.

When Applicant completed his clearance application in December 2003 (and re-executed it in October 2005), he answered "no" to every question requiring him to disclose certain aspects of his financial situation. In so doing, he falsified his answers to questions 38 and 38 by failing to disclose the past due accounts at 1.b., 1.h., and 1.k, three non-educational accounts totaling nearly \$7,000.00. In his answer to the SOR, he denied any intent to falsify his clearance application, suggesting that he did not have his financial information in front of him when he was completing the application. His response to the FORM was more specific: "Honestly, I didn't have any financial information in front of me at that time, while trying to complete the questionnaire form. So any questions that solicited for financial information, I mistakenly took guesses at, instead of having the concrete facts to put down at that time."

Applicant was apparently not interviewed during his background investigation, and aside from the brief responses discussed above, he has not provided any explanation of the circumstances of his financial delinquencies.

## **POLICIES**

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

## **BURDEN OF PROOF**

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>(2)</sup>

## **CONCLUSIONS**

The government established a Guideline F case, and Applicant did not mitigate the security concerns. Applicant has over \$43,000.00 in unresolved debt. He meets none of the mitigating factors for financial considerations. His financial difficulties are both recent<sup>(3)</sup> and not isolated;<sup>(4)</sup> indeed they appear to be ongoing. He has not demonstrated that his continuing financial difficulties are due to circumstances beyond his control.<sup>(5)</sup> There is no evidence that he has sought credit counseling or otherwise brought the problem under control.<sup>(6)</sup> Finally, he has made no effort to contact his creditors to arrange repayment schedules for his debts.<sup>(7)</sup> I conclude Guideline F against Applicant.

The government established a Guideline E case and Applicant did not mitigate the security concerns. His answer to the SOR and his response to the FORM suggest that when he filled out his clearance application, he was mindful of having past due accounts, but did not have the information in front of him and so just "guessed." This explanation would be more credible if Applicant had guessed by disclosing he had past due accounts, but did not know the details. Instead he answered "no" to two questions requiring him to disclose any past due accounts. To examine his clearance application, you would not know he had ongoing financial problems, much less nearly \$7,000.00 in past due accounts. I find that Applicant deliberately falsified his financial situation on his clearance application.<sup>(8)</sup>

None of the Guideline E mitigating conditions apply. The concealed information was relevant to a clearance decision.<sup>(9)</sup> Although the falsifications were isolated, they were recent, and there is no evidence demonstrating that Applicant

provided the correct information voluntarily. <sup>(10)</sup> There is no evidence demonstrating that he corrected the falsification before being asked about it. <sup>(11)</sup> There is no evidence to suggest that Applicant received bad advice about what he was required to disclose on his clearance application. <sup>(12)</sup> I conclude Guideline E against Applicant.

### **FORMAL FINDINGS**

#### Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: Against Applicant

Subparagraph d: Against Applicant

Subparagraph e: Against Applicant

Subparagraph f: Against Applicant

Subparagraph g: Against Applicant

Subparagraph h: Against Applicant

Subparagraph i: Against Applicant

Subparagraph j: Against Applicant

Subparagraph k: Against Applicant

Subparagraph l: Against Applicant

#### Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: 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 denied.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
3. E2.A6.1.3.1 The behavior was not recent;
4. E2.A6.1.3.2 It was an isolated incident;
5. E2.A6.1.3.3 The conditions that resulted in the behavior were largely beyond the person's control. . . ;
6. 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 is under control;
7. E2.A6.1.3.6 The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.
8. 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, . . . [or] determine security clearance eligibility or trustworthiness. . . ;
9. E2.A5.1.3.1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability;
10. E2.A5.1.3.2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;
11. E2.A5.1.3.3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts;
12. E2.A5.1.3.4. Omission of material facts was caused or significantly contributed by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided;