

KEYWORD: Financial; Personal Conduct; Criminal Conduct

DIGEST: Applicant's personal conduct and financial problems continue to raise security concerns over his failure to resolve his debts to a number of creditors and because he gave false answers on a Questionnaire for Public Trust Positions, Standard Form (SF) 85 P. Applicant has failed to mitigate the security concerns caused by his financial irresponsibility and personal conduct that arises from the falsification of the SF 85P. Trustworthiness determination is denied.

CASENO: 04-00266.h1

DATE: 09/23/2005

DATE: September 23, 2005

In Re:

SSN: -----

Applicant for Trustworthiness Determination

ADP Case No. 04-00266

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant's personal conduct and financial problems continue to raise security concerns over his failure to resolve his debts to a number of creditors and because he gave false answers on a Questionnaire for Public Trust Positions, Standard Form (SF) 85 P. Applicant has failed to mitigate the security concerns caused by his financial irresponsibility and personal conduct that arises from the falsification of the SF 85P. Trustworthiness determination is denied.

STATEMENT OF THE CASE

On July 27, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating that DOHA could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue Applicant's eligibility to occupy a sensitive position requiring ADP clearance. ⁽¹⁾ Security concerns were raised under Guideline F (Financial Considerations), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct).

On September 9, 2004, Applicant answered the SOR and requested a hearing. On December 1, 2004, I was assigned the case. On January 6, 2005, a Notice of Hearing was issued scheduling the hearing to be held on January 28, 2005. For good cause, that hearing was rescheduled. On May 2, 2005, a Notice of Hearing was issued scheduling the hearing to be held on May 20, 2005. On June 9, 2005, DOHA received a copy of the transcript (Tr.).

The SOR was amended, over objections of Applicant's counsel, to add: "2.d. You were arrested on or about July 2003, in [town, state] and charged with driving while intoxicated." Applicant's counsel objected as to relevance.

FINDINGS OF FACT

In his response to the SOR, Applicant admits owing four debts and admits being arrested three times. He denies two debts and denies he falsified his SF 85 P. These admissions are incorporated herein as findings of fact. After a thorough review of the entire record, I make the following additional findings of fact:

Applicant is a 29 year old network systems administrator who has worked for a defense contractor since November 1998, and is seeking a security clearance.

Applicant indicated a department store debt (SOR 1.a, \$1,611) had been settled, but he did not provide supporting documentation because it had been settled between seven and nine years before the hearing. (Tr. 24) Applicant's July 2003 credit report (Gov Ex 3) indicates as of June 2003, the account had been charged off and transferred to another creditor. Applicant said his wife (Tr. 24) had paid a gasoline credit card debt (SOR 1.c, \$156). Upon questioning at the hearing, he stated his mother (Tr. 32) had paid the debt. The debt appears on his July 2003 credit report.

Applicant states he paid his telephone bill (SOR 1.e, \$198). He says he canceled his service and submitted his last payment. Thereafter he received another bill from the company. He returned that bill to the company and disputed he owed the debt. (Tr. 25) His July 2003 credit report lists a May 1999 charge off.

He admits owing a department store debt (SOR 1.b, \$440), a telephone bill (SOR 1.d, \$242) and a collection agency debt (SOR 1.f, \$2,931). Two debts are listed on his July 2003 credit report, and the other debt listed on his June 2004 credit report (Gov Ex 4). The finance company debt lists a balance date of July 2002, and the telephone bill has a March 2003 balance date.

The state has a four year statute of limitation on debt collection. Applicant asserts all the debts listed in the SOR are unenforceable. (Tr. 26) Applicant recently bought a new car and the week prior to the hearing refinanced his home. He had no difficulty with either transaction.

The SOR lists six debts totaling approximately \$5,500. A summary of those debts follows:

Creditor	Amount Owed	Current Status
----------	-------------	----------------

a.	department store debt	\$1,611	Denies. Applicant states this matter was settled in March 1999 or 2000. Appears on July 2003 credit report. (Gov Ex 3)
b.	department store debt	\$440	Admitted. Appears on June 2004 credit report. (Gov Ex 4)
c.	gasoline credit card	\$156	Denies. Applicant says his mother paid this bill in 1996. Appears on July 2003 credit report. (Gov Ex 3)
d.	telephone bill	\$242	Admitted. Appears on July 2003 credit report. (Gov Ex 3)
e.	telephone bill	\$198	Admitted in response to SOR. Denied at hearing. Appears on July 2003 credit report. (Gov Ex 3)
f.	collection agency	\$2,931	Admitted. Appears on July 2003 credit report. (Gov Ex 3)
	Total Debt listed in SOR	\$5,578	

In February 1997, Applicant was arrested and charged with Driving While Intoxicated (DWI). He had attended a party at his girlfriend's house and fell asleep when he was driving to his parent's home after the party. His car jumped the curb and hit a fence. Applicant failed a breathalyzer test. He pleaded nolo contendere and was sentenced to 90 days in jail, community service, four mandatory DWI educational classes, and to pay a fine and court costs of \$932.

In January 2000, Applicant was arrested and charged with reckless driving. When Applicant swerved to miss an accident, the police at the scene thought Applicant was driving recklessly. (Tr. 37)

The charge was later dismissed.

In March 2000, Applicant was arrested and charged with assault. Applicant and his wife were involved in an argument. They had only been married a couple of months, having been married in November 1999, and were having marital difficulties. His wife threw a small radio at him and when he threw it back, it hit her in the face. He was arrested and held in jail for 17 hours. When the couple reconciled, the charges were dropped.

In July 2003, when Applicant completed his SF 85P, he failed to list his DWI or assault charge because he did not want his boss or coworkers to see them. Question 20 asked if, during the prior seven years, Applicant had been arrested, charged with, or convicted of any offenses. He answered "No" to the question failing to list any of his three arrests. He stated he thought the question only related to convictions. Additionally, he thought his February 1997 DWI arrest had occurred more than seven years before he completed the form when, in fact, it had occurred six and a half years prior to completing the form.

Question 22 asked him if he was now over 180 days delinquent on any loan or financial obligation. He answered "No" failing to list any of his debts because the debts were old and he was not being contacted by creditors.

At the hearing, Applicant answered "No" when asked if he had "any involvement" with the police since his 2000 arrest. (Tr. 39) Upon further questioning, Applicant admitted to being pulled over for traffic violations which were clarified to mean speeding tickets. Upon further questioning, Applicant admitted being arrested in July 2003 for DWI.

POLICIES

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guidelines to be applied here are Guideline F (Financial Considerations), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct).

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. ⁽¹⁾

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information to be resolved in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

CONCLUSIONS

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

Applicant has six unpaid debts totaling approximately \$5,500. Disqualifying Conditions (DC) 1 (E2.A6.1.2.1. *A history of not meeting financial obligations*) and 3 (E2.A6.1.2.3. *Inability or unwillingness to satisfy debts*) apply.

Applicant asserts three of the bills have been paid, but has provided no documentation supporting his assertion. He indicates he does not have any paperwork because they were paid so long ago. However, the debts appear on his July 2003 and June 2004 credit reports.

Applicant asserts all six debts are unenforceable due to the statute of limitation. Applicant has failed to establish the last action on all of the debts occurred prior to four years ago in order to make the statute of limitation applicable. Under Guideline F (Financial Considerations), an Administrative Judge is not precluded from considering the security significance of an Applicant's delinquent as merely because those debts are barred by a statute of limitations. See, e.g., ISCR case number 01-09691 (March 27, 2003) at page three ("[E]ven if a delinquent debt is legally unenforceable under state law, the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring in failing to satisfy the debt in a timely manner."). Unenforceable debts can be considered as to the facts and circumstances under which the debts were incurred and decide whether the applicant took reasonable steps to address or otherwise resolve those debts before the statute of limitations expired. Accordingly, even if applicant cannot be forced by the state to pay the debts because of the statute of limitations, that does not preclude the Judge from considering the security implications of Applicant's failure to pay or otherwise resolve the debts before the statute of limitations expired. ISCR case number 01 -06776 (July 24, 2003).

None of the Mitigating Conditions (MC) apply in the Applicant's favor. MC 1 (E2.A6.1.2.1. *The behavior was not*

recent.) does not apply because the conduct is recent since the debts remain unpaid. MC 2 (E2.A6.1.2.2. *It was an isolated incident.*) does not apply because there are six debts. There was no showing the debts were caused by factors beyond Applicant's control. Therefore, MC 3 (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)*) does not apply. There has been no showing Applicant has received financial counseling nor is there any indication his financial difficulties are under control. Therefore, MC4 (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*) does not apply.

For MC 6 (E2.A6.1.2.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*) to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good faith effort to repay. A systematic, concrete method of handling his debts is needed, which is not present here. Because he has failed to document payment of his debts, I find against Applicant as to Guideline F (Financial Considerations).

The Government has satisfied its initial burden of proof under Criminal Conduct, Guideline J. Under Guideline J, the security eligibility of an applicant is placed into question when that applicant is shown to have a history or pattern of criminal activity creating doubt about his judgment, reliability, and trustworthiness. Between February 1997 and July 2003, Applicant was arrested four times. He was found guilty of the 1997 DWI. Because of these incidents, DC 1 (E2.A10.1.2.1. *Allegations or admission of criminal conduct, regardless of whether the person was formally charged*) and 2. (E2.A10.1.2.2. *A single serious crime or multiple lesser offenses.*) apply.

Although arrested four times, Applicant was convicted only of the 1997 DWI. Even though the charges were dropped, Applicant did assault his wife in March 2000. Applicant admitted he hit his wife in the face with a radio. He was again arrested for DWI in July 2003, but the outcome of that charge is unknown. Since the sole conviction occurred in 1997--more than eight years ago, I find the criminal conduct was not recent and MC 1 (E2.A10.1.3.1. *The criminal behavior was not recent*) applies. Even the assault occurred more than five years ago. I find for Applicant as to Guideline J (Criminal Conduct).

The Government has satisfied its initial burden of proof under Guideline E, (Personal Conduct). Under Guideline E, the security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal conduct which creates doubt about the person's judgment, reliability, and trustworthiness. Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate and meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. The nature of Applicant's actions, in providing false information to multiple questions on his SF 85P, poses a serious potential risk to the nation's security precautions.

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance or in other official matters is a security concern. Applicant admits he did not put down

his arrests because he did not want his boss or coworkers to see his answers. He asserts he thought questions 20, which asked if he had been arrested in the seven years before completing the form, was only related to convictions. Even if that were so, he should have listed his 1997 DWI conviction. He did not list his delinquent debts because they were old and his creditors were not contacting him.

Applicant's candor is problematic. He was specifically asked if he had "any involvement with the police" since his March 2000 arrest. He said "No." That was a lie. He had been arrested in July 2003 for DWI. Applicant's explanation for failing to list his arrests and delinquent accounts on his SF 85 P lacks veracity.

None of the mitigating conditions apply to his false answers. His arrests and delinquent debts were pertinent to a determination of judgment, trustworthiness, or reliability. The falsifications were not an isolated incident because he gave false answers to two different questions. There is no showing the Applicant made a prompt, good-faith effort to correct the falsification before being confronted with the facts. There is no indication his omissions were caused by improper or inadequate advice from authorized personnel or based on advice from legal counsel. Because of the serious nature of his falsifications, I find against the Applicant as to Personal Conduct, SOR subparagraph 3.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline F (Financial Considerations): AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Paragraph 2 Guideline J (Criminal Conduct): FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: For the Applicant

Subparagraph 2.d.: For the Applicant

Paragraph 3 Guideline E (Personal Conduct): AGAINST THE APPLICANT

Subparagraph 3.a.: For the Applicant

Subparagraph 3.b.: Against the Applicant

Subparagraph 3.c.: Against the 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 Applicant's eligibility to occupy a sensitive position requiring an ADP clearance.

Claude R. Heiny

Administrative Judge

1. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15