

KEYWORD: Financial; Personal Conduct; Criminal Conduct

DIGEST: Applicant is 44 years old, married with one child, and works as a security guard at an ammunition plant. He has 13 delinquent debts incurred after his 1996 Chapter 7 bankruptcy. He falsified his answers on his auto repossessions, 180 and 90 day debt delinquencies on his 2003 security clearance application, and made a false statement in November 2003 to the Government investigator. He had a 1999 arrest and deferred prosecution disposition on a misdemeanor theft charge. Applicant did not mitigate the financial considerations, personal conduct, and criminal conduct security concerns. Clearance is denied.

CASENO: 04-00516.h1

DATE: 04/28/2006

DATE: April 28, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-00516

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Michael Schilling, Esq.

SYNOPSIS

Applicant is 44 years old, married with one child, and works as a security guard at an ammunition plant. He has 13 delinquent debts incurred after his 1996 Chapter 7 bankruptcy. He falsified his answers on his auto repossessions, 180 and 90 day debt delinquencies on his 2003 security clearance application, and made a false statement in November 2003 to the Government investigator. He had a 1999 arrest and deferred prosecution disposition on a misdemeanor theft charge. Applicant did not mitigate the financial considerations, personal conduct, and criminal conduct security concerns. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On July 5, 2005, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on August 30, 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on October 12, 2005. On November 30, 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on December 12, 2005.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 44 years old, married with one child, retired from the U.S. Navy in 1999, and works as a security guard at an ammunition plant. His wife works in the retail industry. They live in a mobile home for which they pay nothing in rent or mortgage to the owner, Applicant's mother-in-law. He owns a car and a \$17,000 motorcycle, payments for each of about \$375 per month are deducted directly from his Navy retirement pay. Applicant filed Chapter 7 bankruptcy in 1996 on \$19,958.68 of delinquent debts. The bankruptcy court ordered a discharge of these debts on November 19, 1996. Applicant and his wife each earn about \$24,000 annually. Presently, Applicant has \$26,132 in delinquent debt. His wife pays the bills monthly. (Tr. 22-34, 69, 73-76, 107, 110; Exhibits 1, 4-7)

Applicant has 13 delinquent debts listed in the SOR. Since receiving the SOR, Applicant telephoned several of these creditors, but has not paid any money on any of these debts. Applicant told the Government investigator in his November 2003 statement that he would have these debts paid in the next two years, but he has not done so. He wants to file Chapter 7 bankruptcy again, but does not have the money to hire the attorney with whom he has consulted on the bankruptcy. The delinquent debts are \$213 owed on a credit card obtained in 1993, \$118 owed on a state tax lien, \$6,000 on a car repossessed in 1997 that Applicant voluntarily surrendered because he could not make the payments, \$1,406 owed on a credit card obtained in 1999, \$58.22 for a check written on insufficient funds in his checking account dating from October 2000, \$50 for a medical bill from October 2000, \$328 owed on an electric bill at his former home from December 2000, \$1,293 owed on a credit card from 2001, an auto insurance premium of \$226 owed from 2001, the balance owed on a car repossession from 2003 of \$5,006 arising from an auto accident that totaled the car and for which Applicant had no insurance, a medical bill for \$498 from May 2002, a \$713 delinquent account from February 2005, and \$801 for another delinquent account dating from February 2005. (Tr. 48, 49, 71, 88-100; Exhibits 3, 5-7)

Applicant completed his security clearance application (SCA) on February 27, 2003. He had a week's time to prepare the paper copy of the SCA from which the final form was typed. In answer to Question 35 (repossessions in the past seven years) he did not disclose that he had a car repossessed in 1997. In answer to Question 38 (debts delinquent over 180 days in the past 7 years), Applicant did not disclose first 11 debts listed in the SOR even though he knew he had these delinquent debts more than 180 days past due at some time in the past 7 years. Applicant answered Question 39 (currently 90 days delinquent on any debt) on the SCA by admitting an auto loan delinquency but not listing the first nine and the eleventh debts listed on the SOR, all of which were at least 90 days delinquent. (Tr. 40-44, 50-53, 80; Exhibits 1-3)

Applicant lived in a house on July 13, 1999, when a stolen safe was brought into it by other persons. Applicant knew the safe was stolen by these people, who he knew at the time. From the money in the safe Applicant accepted \$300, and knew it was stolen money when he accepted it from the thieves. The police arrested and charged Applicant with theft and booked him on August 16, 1999. The charge was a misdemeanor. He was released on a notice to appear in court at a later date. The states attorney in that county later put Applicant on a deferred prosecution program that he successfully completed on August 3, 2000, after 11 months of voluntary supervision and restitution of the \$300. Applicant's November 20, 2003, statements to the Government investigator denying he knew the source of the \$300 or that the safe was stolen were false. (Tr. 55-61; Exhibits 9 at 11 and 12, 10, 11, B)

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. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry*

§ 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 pertinent 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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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 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. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. ay

2, 1996). All that is required is proof of facts and circumstances that 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. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. See Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "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 Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of 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.* E2.A6.1.1

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.* E2.A5.1.1

Guideline J: Criminal Conduct: *The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.* E2.A10.1.1

CONCLUSIONS

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR. To these facts the Disqualifying Conditions (DC) and Mitigating Conditions (MC) are considered and applied so that the following conclusions are drawn on each security concern.

Applicant has a history of not meeting his financial obligations, after having almost \$20,000 in debts discharged in bankruptcy in 1996 incurring another \$26,132 in delinquent debts (DC 1, E2.A61.2.1). Applicant pleads penury while

incurring these debts, but he has made no efforts other than a few telephone calls to try to pay these delinquent debts, thereby displaying an inability and unwillingness to satisfy his debts (DC 3, E2.A6.1.2.3).

Applicant has not initiated any efforts, good-faith or otherwise, to repay these debts. The behavior is recent because the debts remain unpaid and two became delinquent in 2005. Applicant's period of unemployment after his Navy retirement and his son's medical conditions were five years ago, and he has been employed since then. Therefore, no MC apply and I conclude this security concern against Applicant.

The Personal Conduct security concern involves Applicant's deliberate falsification of information on his SCA regarding his debts and repossessions, and his false information given to the Government investigator during his November 2003 interview as part of the security clearance process. DC 2 (The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, or similar form used to determine security clearance eligibility or trustworthiness E2.A5.1.2.2), DC 3 (Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, or other official representative in connection with a personnel security or trustworthiness determination E2.A5.1.2.3) apply. Applicant's explanations on these issues are not persuasive, particularly because he admitted he knew he had delinquent debts to the Government investigator, and he has a history of not paying his debts. Deliberately giving the Government investigator false information concerning his 1999 theft arrest further demolishes his credibility. I find no MC apply on this security concern, and conclude this guideline against Applicant.

The final security concern is Criminal Conduct. DC 1 (Allegations or admissions of criminal conduct, regardless of whether the person was formally charged E2.A10.1.2.1) and DC 2 (A single serious crime or multiple lesser offenses E2.A10.1.2.2) apply. Applicant knowingly obtained control over stolen property, the \$300 he was given in 1999. Applicant then knowingly and willfully made a false statement to the Government investigator in 2003 about his knowledge of the 1999 crime. While the 1999 offense was six years ago, Applicant violated 18 U.S.C. § 1001 by making a false statement about it to the Government investigator. That statement is recent and part of an official investigation. There are no MC applicable under this guideline, and I conclude this security concern against Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

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

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Subparagraph 3.b: Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. Clearance is denied.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).