

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 41-year-old employee of a federal contractor. He has held a security clearance since 1982. Applicant's delinquent debts total \$19,107. Of that amount, \$16,182 represents unpaid child support payments for his daughter who is now 20 years old. Applicant has been seeking resolution of other delinquent debts for the past couple of years. Applicant has failed to successfully mitigate the security concern stemming from his history of not meeting financial obligations. In addition, he has failed to mitigate the security concern based on his falsification of his security clearance application when he deliberately omitted or concealed he had delinquent debts over 180 days old. Clearance is denied.

CASENO: 04-01047.h1

DATE: 08/17/2005

DATE: August 17, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-01047

DECISION OF ADMINISTRATIVE JUDGE

JACQUELINE T. WILLIAMS

APPEARANCES

FOR GOVERNMENT

Sabrina Redd, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 41-year-old employee of a federal contractor. He has held a security clearance since 1982. Applicant's delinquent debts total \$19,107. Of that amount, \$16,182 represents unpaid child support payments for his daughter who is now 20 years old. Applicant has been seeking resolution of other delinquent debts for the past couple of years. Applicant has failed to successfully mitigate the security concern stemming from his history of not meeting financial obligations. In addition, he has failed to mitigate the security concern based on his falsification of his security clearance application when he deliberately omitted or concealed he had delinquent debts over 180 days old. 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 under Executive Order 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 (the Directive). On August 3, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision: security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR on August 25, 2004. He elected to have a hearing before an administrative judge. This case was assigned to another administrative judge on November 22, 2004. However, because of caseload considerations, the case was reassigned to me on February 1, 2005. I conducted the hearing on February 22, 2005. The transcript (Tr.) was received on March 3, 2005. The record was left open until March 4, 2005 to allow Applicant to submit additional relevant evidence. On March 4, 2005, Applicant filed additional documents, which were not objected to by Department Counsel.

PROCEDURAL MATTERS

On November 5, 2004, Department Counsel filed a "Motion to Amend the Statement of Reasons (Motion)." The Government moved that the SOR be amended to add subparagraphs 1.e (another child support debt for \$8,523) and 1.f (unpaid judgment for \$840) to Guideline F (Financial Considerations). Additionally, the Government moved to amend subparagraph 2.a to Guideline E (Personal Conduct), showing that Applicant deliberately failed to disclose that he was over 180 days delinquent on debts set forth in subparagraphs 1.b through 1.e of the SOR. At no time while the record was open did Applicant respond to the Government's Motion. At the hearing, Applicant objected to the Motion being granted. He believed that subparagraph 1.e was a matter already before the court.⁽¹⁾ However, the Government argued subparagraph 1.e was a new allegation, which is separate and apart from the allegation contained in subparagraph 1.c, which also deals with child support. The Government's information was based on a credit report dated October 28, 2004.⁽²⁾ Applicant denied the allegations in the Government's Motion. Applicant's objections were overruled and the Government's Motion was granted.

FINDINGS OF FACT

Applicant denied all of the factual allegations contained in the SOR, as amended, under Guideline F and Guideline E. After a complete and thorough review of the evidence in the record, I make the following findings of fact:

Applicant is 41 years old and has been employed by his current federal defense contractor since 2001. He has been divorced twice and has three children. Applicant was in the U.S. Marines from 1982 to 1992. He received an honorable discharge and was awarded two good conduct medals. He has held a security clearance since 1982.

Applicant has been financially overextended since the early 1990s, and as a consequence, since then, has demonstrated a history of not meeting his financial obligations. The delinquent debts alleged in the SOR currently total \$19,107. He was aware of those debts, the credit card debt, and both telephone bills, at least as early as December 2003.⁽³⁾ Applicant continues to deny that he owes balances on any of the alleged delinquent debts.

The debt alleged in subparagraph 1.a is a delinquent telephone bill for \$415. In his Answer dated August 25, 2004, he stated he spoke to the company about this bill two years ago and the matter was supposed to have been cleared up. In a recent statement about this bill, he stated someone at the debt collection agency told him that "this account was closed and that this bill should have been removed from my credit report."⁽⁴⁾ To date, this debt remains unpaid.

Subparagraph 1.b alleged a credit card debt on an account that was placed for collection in about September 1999 in the approximate amount of \$1,292. This is a debt from 1977; the original debt was \$50. He tried to settle this account for \$100 but his offer was not accepted.⁽⁵⁾ On March 4, 2005, he inquired about this account in writing and was informed that he would receive a response within 45 to 90 days. To date, this debt remains unpaid.

The debt alleged in subparagraph 1.c is for child support arrearage that was placed for collection in about October 2000 in the approximate amount of \$7,659. He indicated that child support was taken out through a payroll deduction. In a document submitted in March 2005,⁽⁶⁾ he indicated he had an appointment on arch 7, 2005 to discuss this matter. To date, this debt has not been paid.

Subparagraph 1.d alleged that a telephone bill was placed for collection in about May 2003 in the approximate amount of \$378. He stated this cell telephone service was renewed without his authorization. He claimed that he tried to settle this matter but had "exhausted all methods with this company."⁽⁷⁾ On March 2, 2005, he further indicated that the collection agency informed him that the account was closed and the matter should not be on his credit report.⁽⁸⁾ To date, this debt has not been paid.

The debt alleged in subparagraph 1.e is a second debt for child support arrearage in the approximate amount of \$8,523, which has been turned over for collection. At the hearing, Applicant stated he was unaware of this additional child support debt. However, in a sworn statement, he mentioned being aware that there were two separate child support debts.⁽⁹⁾ In a document submitted in March 2005,⁽¹⁰⁾ he indicated that he had an appointment on March 7, 2005 to discuss this matter. To date, this debt has not been paid.

The debt alleged in subparagraph 1.f alleged a judgment was entered against Applicant in approximately November 2003 for \$840. Recently, in a letter regarding the judgment he explained this debt as one in which he was a cosigner on a loan and his friend defaulted on the payment. He explained further: "I admit this is my bill and I will try to get information on it to satisfy the Judgment."⁽¹¹⁾ To date, this debt has not been paid.

Applicant answered "NO" to Question 38 of the security clearance application: "Your Financial Delinquencies - 180 Days: In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Applicant failed to disclose that he was over 180 days delinquent, in those debts set forth in subparagraphs 1.a through 1.e of the SOR. In his Answer, he stated "I did not falsify any facts on my SF 86. To my knowledge these are bills I deny I owe."⁽¹²⁾

Applicant is current with all of his other bills. He indicated that someone other than himself should be responsible for seeing that his credit report is cleaned up. He further explained:

I have held a clearance since 1982. I have spent thirteen years in the U.S. Marines. . . . Now my suitability for my clearance is in question due to some errors on a credit report in which some of them [debts] have been discussed in my prior clearance approval.⁽¹³⁾

Applicant was interviewed during the background investigation several times regarding his financial history as reported on his credit report. Those interviews produced sworn statements.⁽¹⁴⁾ In each statement, Applicant talked about why his credit reports always listed debts considered as being delinquent but which he did not believe were in fact delinquent or outstanding. Some of the debts in Ex. 3 are the same ones mentioned in the SOR. The evidence shows that Applicant has a history of not meeting his financial obligations and that he is unable or unwilling to satisfy his debts.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline F, pertaining to financial considerations and Guideline E, pertaining to personal conduct, with their respective DC and MC, apply in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically, these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation, and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

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.⁽¹⁵⁾ The government has the burden of proving controverted facts.⁽¹⁶⁾ The burden of proof in a security clearance case is less than a preponderance of the evidence.⁽¹⁷⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him.⁽¹⁸⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁹⁾

No one has a right to a security clearance⁽²⁰⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽²¹⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽²²⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽²³⁾ 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.

Based upon consideration of all the evidence, I finding the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline F - Financial Considerations is a security concern because 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 E - Personal Conduct is a security concern because 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.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

CONCLUSIONS

The government established its case under Guideline F. With regard to outstanding delinquent bills revealed on credit reports, Applicant was interviewed as early as December 4, 1990 regarding his delinquent debts.⁽²⁴⁾ At that time, he encountered difficulties timely paying his bills. In 1991, he was going through divorce proceedings with his second wife and once again had delinquent debts that he felt were debts his wife incurred during the marriage but that he should not have been responsible for paying. He contended that during his second marriage, his credit was ruined by his second wife, now an ex-wife. In 1993, he had numerous delinquent debts and these are some of the same debts alleged in the SOR.⁽²⁵⁾ Applicant has a history of not meeting his financial obligations as well as inability or unwillingness to pay his just debts. Based on all the evidence, Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1 (*a history of not meeting financial obligations*) and FC DC E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*), apply in this case.

Although Applicant continues to have numerous outstanding debts which include a judgment against him, he has claimed numerous times that he would look into the matter of his financial difficulties. However, this record is devoid of any evidence showing that Applicant has a genuine inclination to remedy his delinquent debts. Applicant is unable to indicate a foreseeable time frame by which he will satisfy his debts. One example of this behavior is the child support debt for \$7,659. Since December 16, 2003, he knew child support arrearage was an issue.⁽²⁶⁾ Additionally, with regard to the second child support arrearage he stated "this is a [sic] unknown debt to me."⁽²⁷⁾ Moreover, he was no closer to having resolved either of these debts by the time of the hearing in this case.⁽²⁸⁾ Additionally, he claimed he never knew about the second child support debt, which is not supported by his signed, sworn statement of December 16, 2003.⁽²⁹⁾

I have considered all the Financial Considerations Mitigating Conditions (FC MC) and find that none apply. FC MC E2.A6.1.3.1 (*the behavior was not recent*) and FC MC E2.A6.1.3.2 (*it was an isolated incident*) do not apply in this case. His debts have been delinquent for a number of years. One of his credit card debts dates back to 1999. The child support debt he was aware of was outstanding and unpaid in 1997, and to date, continues to be unpaid. On November 13, 2003, a judgment for \$840 was entered against him, which he has failed to pay to date. The aforementioned delinquencies show his irresponsible behavior toward his debts. Since there are numerous debts, his delinquency in paying them is not an isolated incident. I conclude that Applicant has not mitigated the financial considerations security concerns.

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 omissions, 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. It is deliberate if it is done knowingly and willfully. Here, based on the record evidence as a whole, the government established its case under Guideline E, Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.1.1 (*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*). Applicant concealed material information on his SF 86 when he failed to identify his delinquent debts. Applicant was aware of these accounts at the time he filed his SF 86. Applicant has provided no credible information to explain why he did not list these debts. I conclude that Applicant's failure to identify these debts was deliberate.

I have reviewed the mitigating conditions under Guideline E and conclude none apply. Falsification of a security clearance applicant is a serious matter and it is not easily mitigated or explained away. Accordingly, Guideline E. is decided against Applicant.

To conclude, Applicant has failed to meet his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I have considered the record evidence as a whole, the whole-person concept, the clearly consistent standard, and the appropriate factors and guidelines in the Directive.

FORMAL FINDINGS

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

Paragraph 1. Financial Considerations (Guideline F) 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. Personal Conduct (Guideline E) AGAINST THE 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 continue a security clearance for Applicant.

Jacqueline T. Williams

Administrative Judge

1. Tr. at 11.
2. See Ex. 6, Credit Report, dated 10/28/2004.
3. Ex. 3, Applicant's Statement, dated December 16, 2003, at 1-2.
4. Ex. I, Applicant's Statement, dated March 2, 2004; 2004 date is an error. It was submitted in 2005.
5. Applicant's Answer, dated August 25, 2004, at 1.
6. Ex. H, Applicant's Statement dated March 3, 2004; 2004 date is an error. It was submitted in 2005.
7. Applicant's Answer, dated August 25, 2004, at 2.
8. Ex. K, Applicant's Statement, dated March 2, 2004; 2004 date is an error. It was submitted it in 2005.
9. Ex. 3, *supra* note 1, at 1-2.
10. Exs. G, H, Applicant's Statement, dated March 3, 2004; 2004 date is an error. It was submitted in 2005.
11. Ex. C, Applicant's Statement, dated March 4, 2004; 2004 date is an error. It was submitted in 2005.
12. *Id.*
13. *Id.*
14. See Ex. 3, *supra* note 1; Ex. 4, Applicant's Statement, dated February 20, 1991; Ex. 5, Applicant's Statement, dated December 4, 1990.
15. ISCR Case No. 96-0277 (July 11, 1997) at 2.
16. ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.

17. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).
18. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
19. ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
20. *Egan*, 484 U.S. at 531.
21. *Id.*
22. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
23. Executive Order 10865 § 7.
24. Ex. 5 *supra* note 12.
25. *Id.* at 1-2.
26. Ex. 3, *supra* note 1, at 1.
27. *Id.* at 2.
28. Tr. at 43-58.
29. *Id.*