

KEYWORD: Criminal Conduct; Financial; Personal Conduct

DIGEST: Applicant is 42 years old and works as a communications specialist for a defense contractor. Between 1987 and 2002, Applicant was convicted of several crimes, failed to pay a number of outstanding debts, including taxes and child support, and deliberately falsified nine answers on his 2002 security clearance application. Applicant failed to mitigate the security concerns raised by his criminal conduct, financial considerations, and personal conduct. Clearance is denied.

CASENO: 04-02406.h1

DATE: 01/26/2006

DATE: January 26, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-02406

DECISION OF ADMINISTRATIVE JUDGE

SHARI DAM

APPEARANCES

FOR GOVERNMENT

Braden Murphy, Esq.

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 42 years old and works as a communications specialist for a defense contractor.

Between 1987 and 2002, Applicant was convicted of several crimes, failed to pay a number of outstanding debts, including taxes and child support, and deliberately falsified nine answers on his 2002 security clearance application. Applicant failed to mitigate the security concerns raised by his criminal conduct, financial considerations, and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On July 29, 2005, the Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) to Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR, which is essentially an administrative complaint, detailed reasons under Guideline J (Criminal Conduct), Guideline F (Financial Considerations), and Guideline E (Personal Conduct) why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to the Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

On September 6, 2005, Applicant filed his Answer and requested a hearing. The case was assigned to me on September 30, 2005. A Notice of Hearing was issued on November 1, 2005, setting the case for hearing on November 21, 2005. At the hearing, the Government introduced Exhibits 1-17 into evidence without objection. Applicant introduced Exhibits

A-E into evidence without objection. The Government did not call any witnesses. Applicant testified in his case-in-chief. The record remained open for 21 days to give Applicant an opportunity to submit additional documents; however, he did not do so. DOHA received the Transcript (Tr.) of the proceeding on December 2, 2005.

PROCEDURAL MATTERS

Prior to the commencement of the hearing, the Government moved to amend the SOR by withdrawing ¶ 1.a. from Guideline J and inserting it under Guideline E as ¶ 3.j. During the hearing the Government moved to correct the language in ¶ 1.d. by striking the words "Possession of Shoplifting Gear" and inserting the words "Offering a Forged Check." Applicant did not object to either motion. Said motions were granted.

FINDINGS OF FACT

In his Answer to the SOR, Applicant admitted all allegations pertaining to Criminal Conduct under Guideline J, except ¶ 1.i. (which he did not answer); all allegations pertaining to Financial Considerations under Guideline F, except ¶ 2.g. (which he did not answer); and all allegations pertaining to Personal Conduct under Guideline E. These admissions are incorporated herein as findings of fact. After a complete review of the evidence in the record, I make the following additional findings of fact:

Applicant is 42 years old and has been employed as a telecommunications specialist for a federal contractor since April 2001.⁽¹⁾

In June 1981, Applicant entered the armed forces.⁽²⁾ He admitted in his Answer that while in the service he was issued three Non-Judicial Punishments under the Uniform Code of Military Justice (UCMJ). In March 1987, he was disciplined under Article 92 for failing to obey a lawful order, and sentenced to 14 extra days of duty. This incident arose after his commanding officer placed him on restriction for neglecting his wife and son, and he failed to comply with the restriction (¶ 1.h.).⁽³⁾ In June 1987, he was charged with a violation of Article 92, Dereliction of Duty, because he failed to report a power outage. Two months later he was reduced in grade, forfeited \$250.00 a month for two months, and was sentenced to 45 days of extra duty (¶ 1.g.).⁽⁴⁾ In August 1987, Applicant was also found to have violated Article 107, Making a False Statement, when he lied to his superior about who was taking care of his son, and gave her an incorrect telephone number as to his whereabouts (¶ 1.f.).⁽⁵⁾ These proceedings and other events served as the basis for the revocation of his security clearance in 1988 that he had held since 1981.⁽⁶⁾ The clearance was subsequently reinstated in August 1989.⁽⁷⁾ He was honorably discharged in July 1990.⁽⁸⁾

After leaving the service, Applicant worked for a communications company until he started his own telephone installation business in October 1992.⁽⁹⁾ In 1999, he dissolved the business because of financial problems. He then secured a position for another contractor for about seventeen months before he started his present position.⁽¹⁰⁾ Over the course of his employment since 1990, he has received numerous commendations in his area of specialty.⁽¹¹⁾ He presently earns approximately \$69,000.00 a year.⁽¹²⁾ Applicant has been married four times and has been single since 1996.⁽¹³⁾ He has a son by his first marriage, and two children from other relationships. He no longer supports his 21 year-old son, but pays child support for the other two children.⁽¹⁴⁾ Approximately \$600.00 is deducted from his monthly check for child support pursuant to court orders.⁽¹⁵⁾ He is current with his federal and state income taxes.⁽¹⁶⁾

Applicant admitted in his Answer that in August 1998, he was found in civil contempt of a court order for failure to pay child support from August 1995 through April 1998, totaling approximately \$12,500.00. He was sentenced to 90 days in jail. The sentence was stayed, conditional on his making timely payments. In February 2000, the stay was revoked, and a warrant was issued for his arrest. He stated that the warrant was dismissed, but did not provide any evidence of its dismissal (§ 3.j).⁽¹⁷⁾ He presently owes approximately \$28,467.00 in child support arrearage (§ 2.e.).⁽¹⁸⁾ Applicant claimed that he had no knowledge of this child until 2000, but a court document indicates he declared himself the father in 1994.⁽¹⁹⁾

In his Answer, Applicant also admitted that in June 1999, he was charged with Aggravated Forgery. In May 2000, he pleaded guilty to a felony Theft in Excess of \$500.00, was sentenced to five years of probation, 30 days of work release, fined \$300.00, and ordered to pay \$13,600.00 in restitution to a credit card company and his former girlfriend (§ 1.d.).⁽²⁰⁾ He claimed his girlfriend gave him permission to borrow \$9,000.00 to pay off debts by using her credit card checks, and admitted he went over the limit.⁽²¹⁾ According to court records, she never authorized him to deposit her checks into his account. In fact, she had moved out of the residence they shared prior to the checks being mailed to the address where she had lived with Applicant.⁽²²⁾ As of July 2005, he stated he paid the full amount of restitution, and was released from probation, but did not produce any evidence to verify his assertions (§ 2.i.).⁽²³⁾

In October 2000, Applicant was charged with Driving While Intoxicated (DWI). Two months later he was found guilty, and convicted of felony DWI. He was fined \$300.00, sentenced to 16 days in jail, and placed on probation for two years (§ 1.b.). This conviction was in violation of the above probation, but did not cause it to be revoked (§ 1.c.).⁽²⁴⁾ Applicant admitted both allegations.

In addition to his legal problems, Applicant admitted in his Answer that he has outstanding debts, including taxes. In March 2005, a state lien was filed for \$1,367.00, representing unpaid taxes for years 1995, 1996 and 1997 (§ 2.a.). Another tax lien was filed in May 1996, for \$371.00 in unpaid taxes (§ 2.g.).⁽²⁵⁾ Although he has known about these debts for some time, he contacted the state for the first time two months ago, and is waiting for the state to get back to him about resolving the matters.⁽²⁶⁾

Applicant also admitted other delinquent debts. He owes a liquor store \$155.00 (¶ 2.b.), \$330.00 to another company (¶ 2.c.), and \$232.00 to a cable company (¶ 2.d). To-date he has not made an effort to pay any of these debts. [\(27\)](#) He also acknowledges an unpaid delinquent debt of \$6,143.00 to another company (¶ 2.f), but does not know what it relates to. [\(28\)](#) He recently paid in-full a \$3,220.00 judgment for materials he purchased for his dissolved business (¶ 2.h.). [\(29\)](#)

In his Answer to the SOR, Applicant admitted that he lied when he answered the following nine questions on his SCA: Question 21, Your Police Record-Felony Offenses (¶ 3.a.); Question 23-Your Police Record-Pending Charges (¶ 3.b.); Question 24, Your Police Record-Alcohol/Drug Offenses (¶ 3.c.); Question 26-Your Police Record-Other Offenses (¶ 3.d.); Question 32-Your Investigation Record-Clearance Actions (¶ 3.e.); Question 36-Your Financial Record-Tax Liens (¶ 3.f.); Question 37, Your Financial Record-Unpaid Judgments (¶ 3.g.); Question 38-Your Financial Delinquencies-180 Days (¶ 3.h.); and Question 39-Your Financial Delinquencies-90 Days (¶ 3.i.). He intentionally lied when he answered these questions because he knew the truth would have a negative impact on his career, and that he would be fired by his present employer. [\(30\)](#)

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, sets forth the criteria that must be evaluated when determining security clearance eligibility. Within those guidelines are factors to consider in denying or revoking an individual's request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual's request for access to classified information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence to reach a fair, impartial and common sense decision.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Section E.2. of Enclosure of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct of the applicant, an administrative judge should consider: (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

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in

the individual. Accordingly, decisions under the Directive must include consideration of not just the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information.⁽³¹⁾ The decision to deny an individual a security clearance request to an individual is not necessarily a judgment of the applicant's loyalty.⁽³²⁾ Instead, it is a determination that the applicant has not met the strict guidelines established by the Department of Defense 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.⁽³³⁾ The Directive presumes a rational connection between past proven conduct under any disqualifying condition and an applicant's present security suitability.⁽³⁴⁾

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the position of the government.⁽³⁵⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his clearance."⁽³⁶⁾

Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline J - Criminal Conduct: A security concern may exist when a history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Guideline F - Financial Considerations: A security concern may exist when 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: A security concern may exist when 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.

The applicable qualifying and mitigating conditions, raising either security concerns or mitigating security concerns

applicable to this case, are set forth and discussed in the Conclusions section below.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of credibility, and the application of the appropriate adjudicative factors and legal standards, including the "whole person" concept, I conclude the following with respect to the allegations set forth in the SOR:

Guideline J: Criminal Conduct

The Government established its case under Guideline J. Based on the evidence and Applicant's admissions that he was disciplined three times under the UCMJ and convicted of three crimes under the state's criminal statutes, Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1. (*Allegations or admission of criminal conduct, regardless of whether the person was formally charged*), and CC MC E2.A7.1.2.2. (*A single serious crime or multiple lesser offenses*) apply.

Additionally, the Government proved the allegation contained in ¶ 1.i. Applicant's knowingly and deliberate falsification of information in his response to nine questions on his signed, sworn SCA for the purpose of obtaining a security clearance, constitutes a criminal offense under 18 U.S.C. § 1001.

Guideline F: Financial Considerations

Based on the evidence and Applicant's admissions, the Government established its case under Guideline F, specifically, Financial Consideration Disqualifying Condition (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*). Applicant has failed to pay two tax liens, totaling \$1,738.00 that have been outstanding since the middle 1990's, and \$6,860.00 in other debts that have been delinquent for some time. In addition, he owes approximately \$28,000.00 in child support accrued since 1996. Although he claimed he paid the \$13,600.00 court-ordered restitution, he did not provide any evidence to confirm payment despite being given time to do so.

After reviewing all of the mitigating conditions under Guideline F, specifically, Financial Consideration Mitigating Condition (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*), I conclude they do not apply. Applicant's financial problems have been ongoing for many years and are not limited to an isolated incident, but relate to many creditors. I also considered E2.A6.1.3.6. (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) and determined it does not apply. In two instances he began making payments on his debts only after the court entered judgments against him. Within the past two months he started to investigate the tax bills dating back to 1995, and he has no knowledge as to the basis of the \$6,143.00 debt that has been delinquent for a period of time. Other than paying off a \$3,220.00 judgment, he has not made a good faith effort over the past couple years to settle his debts or mitigate the security concerns related to his finances. Accordingly, Guideline F is decided against Applicant.

Guideline E: Personal Conduct

Based on the evidence and Applicant's admissions, the Government established its case under Guideline E, specifically, Personal Conduct Disqualifying Condition (PC DC) E2.A.5.1.2.2. (*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, determine employment qualifications, aware benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies. Applicant intentionally concealed information and falsified nine answers in his 2002 SCA in order to maintain his present employment position.

I reviewed all of the mitigating conditions under this guideline and concluded none apply to this blatant disregard of the integrity of the security clearance application process. Applicant failed to mitigate the security concerns raised by his personal conduct. Accordingly, Guideline E is decided against him.

After considering the totality of the evidence in this case, including Applicant's credibility and the "whole person" concept that take into account various factors throughout his life, I find Applicant failed to mitigate any of the above security concerns. I am particularly troubled by his pattern of misrepresenting or not disclosing the truth over the course of the last twenty years. In 1987, he was disciplined for lying to his supervisor. In 1999, he claimed he had authorization to spend \$9,000.00 of his former girlfriend's money despite her representations to the court that she did not give him permission and had moved out of his home when he decided to steal her money. In this proceeding he asserted he had no knowledge of his out-of-wedlock child until 2000, in contradiction to a court document in which he acknowledged paternity in 1996. More importantly, in 2002 he deliberately lied when he filled out his SCA in order to save his job. While he may be a competent communications specialist, he clearly is not trustworthy or capable of exercising good judgment given his long history of deceitfulness.

For the reasons stated, I conclude Applicant is not eligible for access to classified information.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1: Guideline J (Criminal Conduct) 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

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

Paragraph 2: Guideline F (Financial Considerations) AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against the Applicant

Subparagraph 2.d.: Against the Applicant

Subparagraph 2.e.: Against the Applicant

Subparagraph 2.f.: Against the Applicant

Subparagraph 2.g.: Against the Applicant

Subparagraph 2.h.: For the Applicant

Subparagraph 2.i.: Against the Applicant

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

Subparagraph 3.a. Against the Applicant

Subparagraph 3.b.: Against the Applicant

Subparagraph 3.c.: Against the Applicant

Subparagraph 3.d.: Against the Applicant

Subparagraph 3.e.: Against the Applicant

Subparagraph 3.f.: Against the Applicant

Subparagraph 3.g.: Against the Applicant

Subparagraph 3.h.: Against the Applicant

Subparagraph 3.i.: Against the Applicant

Subparagraph 3.j.: 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. Clearance is denied.

Shari Dam

Administrative Judge

1. Government Exhibit 1 (Security Clearance Application, dated October 14, 2002) at 2.
2. *Id.* at 5.
3. Government Exhibit 17
4. Government Exhibit 17 (Documents relating to applicant's U.S. Army Security Clearance, and other U.S. Army documents, dated March 1987 to April 1990, 42 pages) at 18.
5. *Id.* at 26 and 32.
6. *Id.* at 31.
7. Applicant Group Exhibit B (Memorandum reinstating security clearance, dated August 10, 1989) at 1.
8. Tr. 53.
9. Tr. 61.
10. Tr. 62.
11. Applicant Group C (26 pages of various awards from 1991 to present).
12. Tr. 98.
13. Tr. 56.
14. Tr. 85, 92-93.
15. Tr. 94-96.

16. Tr. 104.
17. Government Exhibit 10 (Court Documents relating to Applicant's child support obligations) at 303.
18. Tr. 85.
19. Tr. 86-87; Government Exhibit 10, *supra* note 17, at 334.
20. Government Exhibit 5 (Court Documents relating to 1999 Forgery Arrest) at 7.
21. Government Exhibit 2 (Statement of Applicant, dated December 19, 2003) at 2.
22. Government Exhibit 5, *supra* note 20, at 15.
23. Tr. 39.
24. Government Exhibit 6 (Probation Documents related to 1999 forgery case) at 6.
25. Tr. 37; Government Exhibit 13 (Credit Bureau Report, dated October 21, 2002) at 6.
26. Tr. 121-124.
27. Tr. 36 and 79.
28. Tr. 80.
29. Tr. 80; Government Exhibit 16 (Credit Bureau Report, dated September 27, 2005) at 1.
30. Tr. 109.
31. Directive, Enclosure 2, ¶ E2.2.2.
32. Executive Order 10865, § 7.
33. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
34. ISCR Case No. 95-0611 at 3 (App. Bd., May2, 1996).
35. ISCR Case No. 01-20700 at 3 (App. Bd., Dec. 19, 2002); *See* Directive ¶ E3.1.15.
36. *Id.*