

KEYWORD: Financial; Personal Conduct; Criminal Conduct

DIGEST: Applicant's financial problems raise security concerns because of his failure to resolve even one of his debts to ten creditors; several of those debts are substantial. While in 2004 he promised to begin a good-faith effort to resolve his debts, he failed to make progress even though he has a stable job with sufficient resources. Although Applicant is a reliable employee according to his supervisor, he failed to seek financial counseling or bankruptcy to address either his dated or recent debts. Similarly, the government established security concerns over his personal conduct and his criminal conduct because of his failure to disclose these financial issues on his security form as required. Clearance is denied.

CASENO: 04-02531.h1

DATE: 01/31/2006

DATE: January 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-02531

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN M. BRAEMAN

APPEARANCES

FOR GOVERNMENT

Julie R. Edmonds, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial problems raise security concerns because of his failure to resolve even one of his debts to ten creditors; several of those debts are substantial. While in 2004 he promised to begin a good-faith effort to resolve his debts, he failed to make progress even though he has a stable job with sufficient resources. Although Applicant is a reliable employee according to his supervisor, he failed to seek financial counseling or bankruptcy to address either his dated or recent debts. Similarly, the government established security concerns over his personal conduct and his criminal conduct because of his failure to disclose these financial issues on his security form as required. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on April 27, 2005. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. ⁽¹⁾ The SOR alleges specific concerns over finances (Guideline F), personal conduct (Guideline E), and criminal conduct (Guideline J). Applicant responded to these SOR allegations in an Answer notarized on May 10, 2005, and attached three letters of reference. (Exhibit A) He requested a decision be made with a hearing.

Department Counsel prepared the File of Relevant Material (FORM) on June 17, 2005, which was forwarded to Applicant on June 22, 2005. He failed to respond within 30 days of his receipt of the FORM on June 28, 2005, so the case was assigned to me for decision on August 24, 2005.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following findings of fact:

Applicant, 39 years old, has been employed by a defense contractor in State #1 since October 2002 as a security officer. He completed and signed his Security Clearance Application (SF 86) on November 13, 2002, and certified that the statements on the form were true and correct. He served in the military from August 1986 to August 1990. (Item 4)

Applicant married in 1995 and divorced in September 1998. He has three children: twins born in March 1996 and a daughter born in October 2000. (Item 4)

Finances, Personal Conduct, Criminal Conduct

On his SF 86 Applicant failed to disclose any adverse information regarding his finances in response to questions 35, 38, and 39, but he certified that the statements on the form were true and correct on the form. (Item 4) Applicant denied personal conduct and the criminal conduct allegations as he claimed the omissions were not done "deliberately" and that he wanted an opportunity to explain the circumstances of his debts. (Items 3, 5)

Investigation by the Defense Security Service (DSS) disclosed adverse credit references. During his January 2004 interview he provided a Statement where he explained that he began having financial troubles in 1995 after he married; after his divorce in 1998 he had child support payments of \$400 per month plus the debt from the marriage. "That was the beginning of a downward spiral." He lived with another woman and fathered a child with her, so now he pays almost \$600 per month in total child support. He paid his child support, but left other debts unpaid. He also had co-signed on a vehicle loan for his brother; when the brother died in July 2000, Applicant was not able to keep current with that car payment and his car payment, so both were repossessed. He minimized these deficiencies to DSS and stated he owed \$9,000 on his car and \$5,000 on his brother's car. He planned to contact a law firm and have all of these issues cleared up by May 2004. At that point he was living within his means as he made \$58,000 in 2003 with a lot of overtime. He had a total net monthly income of \$3,230, monthly expenses of \$1,984, and only made payments on his vehicle loan of \$516. Thus he had a net remainder of \$740. (Item 5)

In response to Interrogatories sent to him in June 2004 Applicant stated he was working with a "referral company" and all of his debts were "still in progress." He had not filed for bankruptcy. (Item 6) In May 2005 his debts remained unresolved; he explained that his pride kept him from filing for bankruptcy. His prior credit counseling company was under investigation, so he "started over" and believed he would be successful. However, he did not document that he had resolved any of his debts. (Item 3)

- SOR 1.a.. Applicant admitted his debt to Creditor #1 for \$5,480 which was a deficit on a delinquent credit card account that was charged off to bad debt in 1998 and remains unresolved. (Answer, Items 5, 6, 7)
- SOR 1.b. Applicant admitted his debt to Creditor #2, a bank, for \$2473 for an account charged off in 1999 which remains unresolved. (Answer, Items 5, 6, 7)
- SOR 1.c. Applicant admits his debt to Creditor #3 for \$5,534 which was placed for collection in 2000 where he has not made any payments. (Answer, Items 5, 6, 7)
- SOR 1.d. Applicant admitted his debt to Creditor #4, for \$865. For an account placed for collection in 2001 which is not resolved. (Answer, Items 5, 6, 7)
- SOR 1.e. Applicant admitted his debt to Creditor #5, for \$480 for an account placed for collection in 2001; he has not paid this bill. (Answer, Items 5, 6, 7)
- SOR 1.f. Applicant admitted his debt to Creditor #6, for \$1,450 for an account placed for collection in 2002 which has not been satisfied. (Answer, Items 5, 6, 7)
- SOR 1.g. Applicant admitted his debt to Creditor #7, for \$520 for an account placed for collection in June 2002 which is unresolved. (Answer, Items 5, 6, 7)
- SOR 1.h. Applicant admitted his debt to Creditor #8, for \$355 for an account placed for collection in November 2002 which is unresolved. (Answer, Items 5, 6, 7)
- SOR 1.i. Applicant admitted his debt to Creditor #9, for \$19,740 for the balance owed after resale of his automobile which was repossessed for non-payment prior to November 2002 which remains unsatisfied. (Answer, Items 5, 6, 7)

SOR 1.j. Applicant admitted his debt to Creditor #10, for \$18,372 for the balance owed after resale of an automobile where he had co-signed which was repossessed for non-payment prior to November 2002 which remains unsatisfied. (Answer, Items 5, 6, 7)

SOR 1.k. Applicant admitted he has not resolved these debts even though he has a monthly net remainder of \$740 after expenses. (Answer, Items 5, 6, 7)

References

His supervisor who has known him for more than two years attested Applicant has high ethical standards and has been a reliable employee. His military commander from 1990 attested that he accomplished his military duties "with great zeal and initiative." A military officer who knew him from 1987 to 1990 attested that he was trustworthy and was a "hard charger." (Exhibit A)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below:

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. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

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.**

Guideline J - Criminal Conduct

***The Concern:* A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.**

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Financial Considerations

The Government under E2.A6.1.2. conditions that could raise a security concern and may be disqualifying include: including Applicant's (1) history of financial problems and his (3) inability or unwillingness to satisfy all of his debts. At the time of the investigation he had ten unresolved debts that remain unresolved. While he promised to make arrangements to pay some of these debts, he provided no evidence he has done so. Further, he has sufficient income to handle his current financial obligations, and resolve these debts.

Thus, Applicant has failed to mitigate⁽²⁾ these financial concerns as he has provided no evidence that he resolved even one of these debts. While Applicant argues that first his marriage and later his divorce contributed to his financial problems, those circumstances do not meet the threshold of 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).] In the eight years since his divorce in 1998, he has had resources, yet he has failed to develop a plan to resolve these debts. Instead, he has incurred more debts in 2000, 2001, and in 2002 that

also remain unresolved. While it is commendable that he is paying his child support, the mitigation guidelines require an individual to have initiated a "good-faith effort to repay overdue creditors or otherwise resolve debts."

Thus, Applicant has failed to demonstrate that he is now financially responsible as he failed to follow through on any of his plans to resolve these debts. Neither has Applicant shown that he has received or is receiving counseling for the problem. There are no clear indications that the problem is being resolved or is under control despite having sufficient income and favorable references as to his good character and reliability.

After considering him as a whole person under the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant under SOR Paragraph 1 as he failed to mitigate the allegations in SOR subparagraphs 1.a. through 1.k.

Personal Conduct

The government established its concerns over Guideline E Personal Conduct under Disqualifying Condition 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, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities. Applicant chose to omit adverse information in response to three financial questions on his security form. While he stated that he had no intent to falsify, that simply denial is insufficient to meet the mitigating standards. None of the mitigating conditions⁽³⁾ relating to personal conduct apply. Significantly, even when he met with DSS he minimized the amount he owed on the two cars that were repossessed in 2002. For example, he reported he only owed \$9,000 on one car and \$5,000 on another when, in fact, he owed over \$19,000 on one and over \$18,000 on another.

Also, I considered the record evidence as a whole to determine whether Applicant's overall conduct can be mitigated because of his favorable references. I have evaluated his conduct and considered the following factors:

E.2.21.1. The nature, extent, and seriousness of the conduct; E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation; E2.2.1.3. The frequency and recency of the conduct; E2.2.1.4. The individual's age and maturity at the time of the conduct; E2.2.1.5. The voluntariness of the participation; E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes; E2.2.1.7. The motivation for the conduct; E2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and E2.2.1.9. The likelihood of continuation or recurrence. (E.2.2. Adjudication Process)

Even after looking at the whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraph 2.a., 2.b. and 2.c. under SOR Paragraph 2.

Criminal Conduct

The Government established security concerns⁽⁴⁾ over Applicant's criminal conduct in failing to provide truthful answers on his security form as required by Section 1001 of Title 18 of the United States Code. Applicant has failed to mitigate⁽⁵⁾ this criminal conduct by his simple denial of an intent to falsify as he certified under this code that his answers on the security form were truthful. Hence, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraph 3.a. incorporated under SOR Paragraph 3.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

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

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph 3.a.: 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 the Applicant. Clearance is denied.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.

2. **E2.A6.1.3. Conditions that could mitigate security concerns include:** E2.A6.1.3.1. The behavior was not recent; E2.A6.1.3.2. It was an isolated incident; 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); 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; E2.A6.1.3.5. The affluence resulted from a legal source; and E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

3. **E2.A5.1.3. Conditions that could mitigate security concerns include:** E2.A5.1.3.1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability; E2.A5.1.3.2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily; E2.A5.1.3.3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts; E2.A5.1.3.4. Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided; E2.A5.1.3.5. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress; E2.A5.1.3.6. A refusal to cooperate was based on advice from legal counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information; E2.A5.1.3.7. Association with persons involved in criminal activities has ceased.

4. **E2.A10.1.2. Conditions that could raise a security concern and may be disqualifying include:**

E2.A10.1.2.1 Allegations or admissions of criminal conduct, regardless of whether the person was formally charged.

5. **E2.A10.1.3. Conditions that could mitigate security concerns include:** E2.A10.1.3.1. The criminal behavior was not recent; E2.A10.1.3. 2. The crime was an isolated incident; E2.A10.1.3.3. The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life; E2.A10.1.3. 4. The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur; E2.A10.1.3. 5. Acquittal; E2.A10.1.3.6 There is clear evidence of successful rehabilitation.