

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant accrued nearly \$12,000 in delinquent or past due debts between 1998 and 2002. His delinquencies in large part were the result of unforeseen events or other conditions beyond his control. He has paid or otherwise resolved all of his debts, and his finances are currently sound. Applicant's omissions from a security clearance questionnaire of his facts about his debts and about his arrest record were unintentional. Accordingly, Applicant has mitigated the related security concerns about his finances and personal conduct. Clearance is granted.

CASENO: 04-03661.h1

DATE: 12/19/2005

DATE: December 19, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-03661

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esquire, Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant accrued nearly \$12,000 in delinquent or past due debts between 1998 and 2002. His delinquencies in large part were the result of unforeseen events or other conditions beyond his control. He has paid or otherwise resolved all of his debts, and his finances are currently sound. Applicant's omissions from a security clearance questionnaire of his facts about his debts and about his arrest record were unintentional. Accordingly, Applicant has mitigated the related security concerns about his finances and personal conduct. Clearance is granted.

STATEMENT OF THE CASE

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding^(U) it is clearly consistent with the national interest to give Applicant a security clearance. On May 11, 2005, DOHA issued an SOR to Applicant regarding facts in his background that raise security concerns addressed in the Directive under Guideline F (financial considerations) and Guideline E (personal conduct). Specifically, the SOR presented allegations Applicant had accrued more than \$16,000 in delinquent debts in the form of eight personal credit accounts (SOR ¶¶ 1.a - 1.h). The SOR also contained allegations Applicant deliberately withheld from a March 2003 security clearance application (SF 86) facts about his arrest record (SOR ¶ 2.a) and about his delinquent debts (SOR ¶¶ 2.b and 2.c). Applicant timely answered the SOR (Answer), and denied two of the allegations about his debts (SOR ¶¶ 1.e and 1.g) and all of the allegations of deliberate falsification (SOR ¶¶ 2.a, 2.b, and 2.c).

Applicant also requested a hearing. The case was assigned to me on August 10, 2005, and I convened a hearing on September 21, 2005. The parties appeared as scheduled and the government presented six exhibits (GE 1 through 6), which were admitted without objection. Applicant testified in his own behalf and submitted eight exhibits admitted into the record as AE A - H. DOHA received the transcript (Tr.) on October 6, 2005.

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is 48 years old and employed by a defense contractor as an air conditioning and refrigeration technician. He served for 22 years in the United States Marine Corps, retiring in 1997 as a company first sergeant in the Corps' Recon Division. After retiring, he was self-employed until illness and divorce forced him to find other work. After separating in 1998, Applicant and his wife finalized their divorce in June 2001. They have two sons, one of whom is still a minor and now lives with Applicant.

Also in 1998, Applicant developed diverticulitis, an intestinal disorder that required two surgeries and kept Applicant in the hospital over a month. After he went home, it took him about six months to recover to the point he could work steadily. In the meantime, personal credit accounts left over after his marriage, as well as legal fees incurred to get custody of his son went unpaid. Applicant was unaware of many of the debts insofar as he thought most were his ex-wife's responsibility and he assumed she would pay them. Others he was simply unable to pay given his inability to work full time.

Applicant's debts consisted of about \$9,000 in unpaid credit cards (SOR ¶¶ 1.a - 1.e). One of the credit cards was enforced through a civil judgment in favor of a national hardware chain (SOR ¶ 1.h). Applicant also incurred a delinquent utility bill when he and his wife moved from the last residence they had while he was in the military (SOR ¶ 1.f). Finally, Applicant failed to timely pay a \$30 bill for medical services in 2002 (SOR ¶ 1.g). With the exception of this last medical bill, all of Applicant's delinquencies arose between 1998 and 2000.

Applicant has been arrested and/or charged four times with alcohol-related offenses. In April 1979, he was charged with being drunk in public. There is no information available regarding the circumstances or disposition of that charge. In March 1994, Applicant was arrested and charged with driving while impaired (DWI). He later pleaded guilty to reckless driving and was assessed a fine and court costs. In July 2000, Applicant got into an argument with another customer at a local convenience store. The police were called and, because he had had a few beers that day, he was detained for four hours, then released after being cited for drunk in public, to which he later pleaded guilty. He was assessed a fine and court costs. In January 1999, Applicant was arrested and charged with driving under the influence of alcohol (DUI). He later pleaded guilty, was fined, and ordered to attend an alcohol awareness and safety class. Applicant has not consumed any alcohol since sometime in 2001.

On March 20, 2003, Applicant submitted a security clearance application (SF 86) to initiate a review of his suitability for access to classified information. In response to question 24, which asked whether Applicant had ever been arrested for or charged with alcohol- or drug-related offenses, Applicant answered "yes," and listed his 1999 DUI arrest. He omitted the 1979 drunk in public charge because he had forgotten about it; he omitted the 1994 DWI charge because he had pled guilty to reckless driving. As such, he thought he did not have to list the original charge. He also thought he did

not have to list it because it had been more than seven years earlier. Applicant also did not list his July 2000 drunk in public charge because he had forgotten about this incident as well. Applicant fully disclosed the omitted information to a Defense Security Service (DSS) agent in a subject interview in December 2003.

In response to questions 37, 38, and 39, which ask for information about unpaid judgments, debts greater than 180 days delinquent, and debts more than 90 days past due, respectively, Applicant answered "no." He testified he was unaware of the judgment or the delinquent debts at the time he filled out the SF 86.

At time he was interviewed by DSS, Applicant was making about \$2,500 monthly after deductions. This included his \$600⁽²⁾

in monthly retired military pay. His current position pays him \$16 hourly, which equates to around \$2,500 monthly before deductions and does not include his retired pay; however, Applicant averages at least 50 hours each week, so that his gross monthly pay from his contractor job alone is about \$3,200. In the past year, Applicant has paid the debts listed in SOR ¶¶ 1.a, 1.d, 1.f, 1.g, and 1.h. The debt listed in SOR ¶ 1.b is the same as the now-satisfied judgment in SOR ¶ 1.h. Applicant reached an agreement with the creditor listed in SOR ¶ 1.c, whereby he pays them \$200 each month taken automatically from his checking account. Applicant asserts that after researching the debt for about \$4,600 listed in SOR ¶ 1.e, he has been unable to determine this is a valid debt attributable to him.⁽³⁾

Applicant now has custody of his 16-year-old son and no longer has to pay child support to his ex-wife. He now cares for his elderly mother and had to defer paying the aforementioned debts long enough to make long-needed repairs to her house. He is also awaiting approval of his request to become the legal guardian of his disabled, adult sister.

POLICIES AND BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽⁴⁾ for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for the Applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it establishes that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.⁽⁵⁾ 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 as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁽⁶⁾

To that end, the Directive sets forth adjudicative guidelines⁽⁷⁾ for consideration when evaluating an Applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are Guideline E (personal conduct) and Guideline F (financial considerations).

CONCLUSIONS

The security concern stated under Guideline E is that 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.⁽⁸⁾ Here, the government has alleged Applicant deliberately falsified four answers in his SF 86. The available information establishes the underlying facts and that they were not disclosed in Applicant's SF 86. Accordingly, the government is reasonably concerned, in light of the results of Applicant's background investigation, about whether he can be relied on to tell the truth even in adverse circumstances. An applicant's completion of a security questionnaire is the initial step in requesting a security clearance. Because false or incomplete information given in the questionnaire is capable of affecting the way in which Department of Defense personnel perform their official functions in making an informed assessment of a person's suitability to hold a clearance, it is material. Moreover, a false answer is material even if there is no proof that it actually influenced an agency's investigatory functions.

However, to be disqualifying such omissions must have been made deliberately.⁽⁹⁾ Simple mistakes through forgetfulness or confusion about the question do not indicate a defect in a person's reliability or integrity. I conclude, based on the totality of available information in this regard, that Applicant did not intend to falsify his answers to the SF 86. At the outset, it is important to note that I found Applicant's testimony at hearing to be forthright and credible. Further, it appears he made a full disclosure of the omitted debts and criminal charges when he was interviewed by DSS during his investigation. As to his omission from his SF 86 of three of his alcohol-related arrests, his explanations are plausible. Many times arrests for public intoxication are disposed of in much the same fashion as traffic tickets. As to the 1979 charge, Applicant's claim he forgot about it is reasonable. As to his 1994 DWI charge, it is also reasonable he misinterpreted his obligation to disclose this because he pleaded to a lesser offense. Lastly, if Applicant wished to withhold this information from the government, it does not follow that he would list the 1999 arrest.

As to his negative answers to questions 37, 38, and 39, I accept as credible Applicant's claim he was unaware of the debts and the judgment. Such circumstances are not unusual when an individual has been divorced, relocated, and hospitalized as was Applicant. On balance, in the absence of intent to falsify his SF 86, I conclude none of the Guideline E disqualifying conditions (DC) apply, and this guideline is resolved in favor of the Applicant.

The facts presented through the government's information offered in support of the SOR allegations also raise security concerns addressed in the Directive under Guideline F. Specifically, an applicant who is financially overextended through delinquent debt and poor personal financial management may be at risk of engaging in illegal acts to generate funds to resolve their fiscal difficulties. Failure to reasonably attend to personal finances may also indicate poor judgment and reliability in other facets of one's conduct. ⁽¹⁰⁾ These facts also support application of Guideline F disqualifying condition (DC) 1 ⁽¹¹⁾ and DC 3. ⁽¹²⁾ DC 1 applies based on the fact there is a record of delinquencies attributable to the Applicant. As to DC 3, even after Applicant became aware of the extent of his indebtedness through his DSS interview, he was unable to pay until he made repairs on his mother's house. He was also faced with ongoing legal expenses while pursuing full custody of his younger son.

While the government is reasonably concerned about the risks attendant to Applicant's indebtedness, Applicant has taken sufficient action to ease those concerns. In short, he has paid or is paying the listed debts attributable to him. Except for one \$30 delinquency in 2002, he has incurred no other financial problems since 2000. The circumstances that led to his financial difficulties - divorce, medical problems, unreliable employment prospects - no longer exist. Based on all of the available information about Applicant's finances, Guideline F mitigating condition (MC) 1, ⁽¹³⁾ MC 3, ⁽¹⁴⁾ and MC 6 ⁽¹⁵⁾ apply here, and I resolve this guideline in favor of the Applicant.

I have carefully weighed all of the available evidence, and I have applied the appropriate disqualifying and mitigating conditions. Further, I have tried to make a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. Applicant's omissions from his SF 86 were unintentional and, therefore, not disqualifying. Additionally, he amassed a significant amount of personal debt due almost entirely to circumstances beyond his control, but has taken sufficient corrective action to alleviate the security concerns about his past financial difficulties. Any reasonable doubts arising from the results of Applicant's background investigation have been satisfactorily addressed and he has overcome the government's case.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline F (Financial): FOR THE APPLICANT

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d: For the Applicant

Subparagraph 1.e: For the Applicant

Subparagraph 1.f: For the Applicant

Subparagraph 1.g: For the Applicant

Subparagraph 1.h: For the Applicant

Paragraph 2, Guideline E (Personal 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

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. Clearance is granted.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. This is 60% of his total pay. The rest goes to his ex-wife.
3. AE A - H.

4. See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
5. See *Egan*, 484 U.S. at 528, 531.
6. See *Egan*; Directive E2.2.2.
7. Directive, Enclosure 2.
8. Directive, E2.A5.1.1.
9. Directive, 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; (emphasis added)
10. Directive, E2.A6.1.1.
11. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;
12. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;
13. Directive, E2.A6.1.3.1. The behavior was not recent;
14. Directive, 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);
15. Directive, E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.