

KEYWORD: Financial Considerations; Personal Conduct

DIGEST: Applicant is a 36-year-old employee of a federal contractor, employed as an aircraft structural mechanic. He had unpaid debts of over \$65,000.00. He filed bankruptcy one month prior to the hearing. He has not demonstrated a good-faith effort to resolve financial difficulties. He gave false answers to two questions on his security clearance application. He failed to mitigate the security concerns about financial considerations and personal conduct. Clearance is denied.

CASE NO: 04-03710.h1

DATE: 06/12/2006

DATE: June 12, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-03710

DECISION OF ADMINISTRATIVE JUDGE

CHRISTOPHER GRAHAM

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 36-year-old employee of a federal contractor, employed as an aircraft structural mechanic. He had unpaid debts of over \$65,000.00. He filed bankruptcy one month prior to the hearing. He has not demonstrated a good-faith effort to resolve financial difficulties. He gave false answers to two questions on his security clearance application. He failed to mitigate the security concerns about financial considerations and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On May 3, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR alleged reasons under Guidelines F (financial considerations) and 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 or continue Applicant's security clearance.

In a written statement dated May 24, 2005, Applicant responded to the allegations in the SOR and requested a hearing. The case was previously assigned to another administrative judge on August 4, 2005, but was reassigned to me on September 23, 2005, due to caseload considerations. A Notice of Hearing was issued September 30, 2005, scheduling the hearing for October 26, 2005. The hearing was held as scheduled. The transcript (Tr.) was received November 9, 2005. At the hearing, the government offered five exhibits, Applicant submitted two exhibits, and Applicant testified in his own behalf.

FINDINGS OF FACT

Applicant admitted all of the allegations in SOR paragraph 1 (financial considerations) except subparagraph 1.b. Those admissions are incorporated herein as findings of fact. He denied the allegations in SOR paragraph 2 (personal conduct). I make the following additional findings of fact.

Applicant is a 36-year-old employee of a federal contractor, employed as an aircraft structural mechanic.⁽¹⁾ He completed high school and has one semester of college credits.⁽²⁾ He served six years in the U. S. Army, receiving an honorable discharge in August 1999.⁽³⁾ He is married and has one child.⁽⁴⁾

After September 11, 2001, he was laid off work and drew unemployment benefits.⁽⁵⁾ His reduced income while unemployed contributed to his indebtedness. The total amount of delinquent debts listed in the SOR is \$65,097.00. Of that amount, \$48,877 represents a mortgage which was foreclosed but which was guaranteed, and paid, by the Veterans Administration (VA).⁽⁶⁾ In September 2005, he filed a Chapter 7 bankruptcy, in which he listed all of the other debts listed in the SOR.⁽⁷⁾ His first meeting of creditors was scheduled for November 1, 2005.⁽⁸⁾ I kept the record open until December 2, 2005, so Applicant could file a copy of his discharge order.⁽⁹⁾ He filed a letter stating that department counsel could contact his attorney for any further information.⁽¹⁰⁾

In response to Standard Form 86 (SF 86), **Question 38. Your Financial Delinquencies - 180 Days** *"In the last 7 years, have you ever been over 180 days delinquent on any debt(s),"* Applicant answered "No". In response to **Question 39. Your Financial Delinquencies - 90 Days** *"Are you currently over 90 days delinquent on any debt,"* he answered "No". At the time he answered the security clearance application, his former wife had been taking care of the family's finances. While filling out the application, he contacted her and asked if there were any unpaid debts. She assured him there were none.⁽¹¹⁾

He signed his SF 86 on May 8, 2002.⁽¹²⁾ He and his first wife separated in July 2002, and subsequently were divorced in 2003.⁽¹³⁾ His interview with a DSS agent was on January 21, 2004.⁽¹⁴⁾ He claimed that the first he learned of his debts was with the DSS agent.⁽¹⁵⁾

POLICIES

"[No] one has a 'right' to a security clearance."⁽¹⁶⁾ 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."⁽¹⁷⁾ The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential coercion, and willingness and ability to abide by regulations governing use, handling, and protection of classified information."⁽¹⁸⁾ Eligibility for a security clearance may be adjudicated using the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative factors listed in ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future.

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.⁽¹⁹⁾ 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.⁽²⁰⁾

Once the Government establishes a disqualifying condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.⁽²¹⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽²²⁾ 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 judgment, reliability and trustworthiness of one who will protect the national interests as his or his 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.⁽²³⁾ Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, not actual, risk of compromise of classified information.

Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of

an applicant other than allegiance, loyalty, and patriotism.

Having considered the evidence as a whole, I find the following guidelines most pertinent to an evaluation of the facts of this case:

Guideline F: 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; and

Guideline E: 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.

CONCLUSIONS

Financial Considerations. The government has established its case under Guideline F. Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. arises where there is *(A history of not meeting financial obligations.)* Similarly, FC DC E2.A6.1.2.3. applies where the information shows an *(Inability or unwillingness to satisfy debts.)* The available information demonstrates Applicant has a history of not meeting his financial obligations. He has been delinquent in payments on numerous accounts. I conclude that FC DC E2.A6.1.2.1. and FC DC E2.A6.1.2.3. apply.

His debts go back as far as 2000. His home was foreclosed and the VA paid the debt. He filed bankruptcy one month before the hearing and the debt to VA was listed in his bankruptcy. After learning of his debts in January 2004, he still waited over 20 months to take any action to resolve his finances. This is not a good-faith effort to resolve delinquent debts. FC MC E2.A6.1.3.6. *(The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve bad debts)* does not apply. I find no other mitigating factors apply. I resolve Guideline F against Applicant.

Personal Conduct. The government has established its case under Guideline E. Personal Conduct Disqualifying Conditions (PC DC) include PC DC E2.A5.1.2.2. *(The deliberate omission, concealment, or falsification of relevant 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)* and PC DC E2.A5.1.2.5. *(A pattern of dishonesty)* both apply.

The government questions Applicant's trustworthiness because of his false answers to questions 38 and 39 on his SF 86. Applicant claimed the first he knew of his delinquent debts was during his interview with a DSS agent. He blamed his lack of knowledge on his former wife. I do not believe this is a credible answer. He stated he and his first wife divorced during 2003. The interview was in January 2004. In most divorce cases, a division of assets and liabilities is mandated by the divorce laws. It appears unbelievable that he would not have discovered his financial situation during the divorce proceedings. His wife may have been irresponsible, but he had time to learn of these debts and correct his SF 86. He did nothing and then claimed surprise. I do not believe his answer for the reasons stated above.

It is difficult to find that Applicant has mitigated the security concerns since he failed to make any attempt to correct his omissions before the information came out at the DSS interview. Not only has the Appeal Board found the use of personal conduct mitigating condition (PC MC) E2.A5.1.3.2. of the Adjudicative Guidelines (*isolated, corrected falsification*) to be unavailable to applicants seeking mitigation by treating the omission as isolated, but it has denied applicants availability of PC MC E2.A5.1.3.3. (*prompt, good faith disclosure*) as well in circumstances (as here) where the applicant has failed to correct his omission much earlier in a good-faith way.⁽²⁴⁾ The Government must be able to repose a high degree of trust and confidence in persons granted access to classified information, and Applicant by his omission does not satisfy those high standards at this time.⁽²⁵⁾ I conclude Guideline E against Applicant.

This record raises reasonable and persistent doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Clearance is denied.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by E3.1.25 of Enclosure 3 of the Directive, are:

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

Subparagraph 1.n. Against Applicant

Subparagraph 1.o. Against Applicant

Subparagraph 1.p. Against Applicant

Subparagraph 1.q. Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a. Against Applicant

Subparagraph 2.b. 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 Applicant's security clearance. Clearance is denied.

Christopher Graham
Administrative Judge

1. Tr. at 11-12.
2. Tr. at 12.
3. Tr. at 12-13.
4. Tr. at 11-12.
5. Tr. at 13-14, 17.
6. Tr. at 14-15.
7. Tr. at 15-16.
8. Tr. at 16.
9. Tr. at 17, 88.
10. Applicant's Exhibit 2 (Applicant's Letter dated November 30, 2005, with a 1 page attachment).
11. Tr. at 18.
12. Tr. at 7.
13. Tr. at 25.
14. Government Exhibit 3 (Applicant's Statement, dated January 21, 2004) at 4.
15. Tr. at 18.
16. *See Department of the Navy v. Egan*, 484 U.S. 518, 528 (1998).
17. *Id.* at 527.
18. Exec. Or. 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995).
19. *Egan, supra*, at 531.
20. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).
21. See ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

22. *Id.*, at 3.

23. *See Egan*; Directive ¶ E2.2.2.

24. *Compare* ISCR Case No. 97-0289 (January 1998) with DISCR Case No. 93-1390 (January 1995).

25. *See Snapp v. United States*, 444 U.S. 507, 511 fn.6 (1980).