

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 43-year-old building engineer who has worked for a federal contractor since 1999. Applicant has a history of delinquent debts totaling more than \$50,000 that he is unwilling to pay, despite having considerable savings. Applicant falsely answered questions on his security clearance application. Applicant has failed to mitigate the security concerns regarding Guideline F, financial considerations, and Guideline E, personal conduct. Clearance is denied.

CASENO: 04-04025.h1

DATE: 12/08/2005

DATE: December 8, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-04025

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esq., Department Counsel

Fahryn Hoffman, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 43-year-old building engineer who has worked for a federal contractor since 1999. Applicant has a history of delinquent debts totaling more than \$50,000 that he is unwilling to pay, despite having considerable savings. Applicant falsely answered questions on his security clearance application. Applicant has failed to mitigate the security concerns regarding Guideline F, financial considerations, and Guideline E, personal conduct. Clearance is denied.

STATEMENT OF CASE

On April 26, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR, which are in essence the administrative complaint, alleged a security concern under Guideline F, financial considerations, and Guideline E, personal conduct. In a sworn statement, dated June 17, 2005, Applicant denied all the allegations in the SOR, and requested a hearing.

The case was assigned to me on September 7, 2005. A notice of hearing was issued on October 18, 2005, scheduling the hearing for November 3, 2005. The hearing was conducted as scheduled. The government submitted six exhibits that were marked as Government Exhibits (GE) 1-6. The exhibits were admitted without objection. Applicant testified on his own behalf, and submitted one exhibit that was marked as Applicant's Exhibits (AE) A. The exhibits were admitted without objection. The record was left open to allow Applicant an opportunity to submit additional exhibits. He submitted AE B-E that were included in the record without objection. The transcript was received on November 17, 2005.

At the conclusion of the hearing and before closing statements, Applicant claimed he was unaware that the nature of the proceeding was to decide whether he would be granted a security clearance. Applicant acknowledged he received documents explaining the proceedings and that he read the documents. He acknowledged receiving a discovery letter from Department Counsel that he provided to me. A copy was made and included in the record. The letters Applicant received from Department Counsel were very specific as to what to expect at the hearing and provided information suggesting Applicant may want to retain an attorney because the Government was going to be represented by one. All the information Department Counsel was going to use at the hearing was made available to Applicant prior to the hearing. The information provided specifically explained what to expect at the hearing, that he could call witnesses, present evidence, and that it was up to him to present his case. Department Counsel's letter also advised Applicant to contact her if he had any questions. In his answer of June 14, 2005, Applicant states "I wish to have a hearing in regard to any decision made by this office." I am confident based on Applicant's answer, my questioning of him, and the documents he received that he was fully aware of the purpose of the hearing, and his untimely claim was disingenuous. I did leave the record open for him to provide any pertinent evidence that he may have neglected to present.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 43 years old and has been a building engineer for a federal contractor since 1999. Applicant attended three years of technical school and has various certifications and specialties. Applicant is married and has four children from other relationships. Applicant pays approximately \$900.00 in child support.

Applicant has approximately \$51,000.00 in delinquent debt. Applicant failed to pay his 1992 and 1993 federal income taxes, and a tax lien was filed against him in 1996 for nonpayment. Applicant owed \$5,840.00 in taxes. Applicant's wages were garnished in approximately 1994, and he paid \$84.00 a month until the debt was satisfied. The debt was satisfied in approximately 2000.

In 1996 or 1997, Applicant bought a luxury car costing approximately \$42,000, with monthly payments of \$720.00. Applicant defaulted on the car loan, the car was repossessed, and Applicant owes \$20,345. Applicant had no explanation for why he purchased an expensive car instead of paying off his tax debt sooner. Around the same time Applicant and his girlfriend, whom he had been living with and is the mother of two of his children, broke up and he started paying \$900.00 a month in child support.

Applicant has been steadily employed since at least 1991, and sometimes worked two jobs. Applicant admitted not paying attention to his debts and being unaware of some debts until he received the SOR. Applicant acknowledged in his answer the debts in the SOR were his and he owed them, but numerous times would contradict himself and claim perhaps the debts were that of his father or son who had the same name. Applicant also acknowledged regarding one

debt that his son would have been very young to have opened the account, but then claimed maybe his son took his social security number and fraudulently opened it. Applicant also claimed that his girlfriend opened accounts in his name. However, Applicant was unable to detail which debts he thought were not his. Applicant did not contact the creditors to determine any facts about the debts or take any action when he was first notified of the financial issues regarding his security clearance. Applicant's testimony was not credible.

In 2003, when confronted with the delinquent accounts listed on his credit report, Applicant claimed he did not recognize certain accounts and acknowledged others. Many of the accounts had been sold to collection agencies. Applicant took no affirmative action to contact the creditors and resolve their legitimacy. Applicant did acknowledge the debt in SOR 1.n. for \$14,842. The debt was for a car in which he co-signed a loan for his sister and the car was later repossessed. He also acknowledged a judgment in SOR 1.f. for \$2,792, and that it had not been paid. Applicant provided documentation dated November 8, 2005, after his hearing, from the creditor agreeing to settle this debt for \$1,000.⁽²⁾ No proof was provided to verify if Applicant paid the settlement.

Applicant made a sworn statement on April 29, 2003 to the Defense Security Service agent, stating, "I have all full intent to fulfill all of my financial obligations and responsibilities because as stated above I am going to find a lawyer and file bankruptcy. I'll be doing this by June 2003." Applicant did not file for bankruptcy in June 2003. Rather after receiving the SOR in April 2005, Applicant consulted an attorney sometime in June 2005, and again in August or September 2005, and claims he began paperwork to file for bankruptcy.⁽³⁾ Applicant had not taken any other action on his debts during the intervening two years. Applicant did not contact his creditors to resolve any questions either as to the legitimacy of the debts or to make payment arrangements. Applicant did not request a credit report and did not research any of his delinquent debts in an attempt to resolve or address them.

Applicant provided a document dated November 10, 2005, after his hearing, that pertains to debt 1.i. of the SOR.⁽⁴⁾ This document references that the creditor received a settlement payment for \$180.00 toward Applicant's debt of \$300.00. The settlement debt was satisfied by payment through a credit card. Applicant provided documentation for debt 1.c. dated November 8, 2005, after the hearing, that references an agreement to settle the account for \$150.00 once the payment is received.⁽⁵⁾ No proof was provided to show if Applicant made the payment. Applicant has not paid the delinquent debts in SOR 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.j., 1.k., 1.l., 1.m., 1.n., and 1.o. Although Applicant paid the debt in 1.i., he did so by credit card and it cannot be determined if he is current on his credit card payment.

Applicant's wife works and they have a net remainder of money at the end of each month, after paying their bills, of approximately \$400-600. Applicant and his wife own retirement accounts in the amount of approximately \$75,000-80,000. Applicant has a union pension account, that he is vested in, in the approximate amount of \$14,000-15,000. They maintain approximately \$2,000 in their saving account and between \$600-700 in checking. Applicant has not taken any loan against his retirement savings to pay off any of his delinquent debts and continues to contribute to the account. Applicant has sufficient financial assets to resolve his debts, but has not done so, instead Applicant is attempting to file for bankruptcy.

Applicant answered "No" to Questions 35, ⁽⁶⁾ 36, ⁽⁷⁾ 37, ⁽⁸⁾ 38, ⁽⁹⁾ and 39 ⁽¹⁰⁾ of his security clearance application (SCA) dated July 27, 2000, deliberately falsifying material facts on it. Applicant was aware he had returned his luxury car and had over a \$20,000 debt that he owed and failed to pay, yet did not list this on his SCA. Applicant had his wages garnished to pay a tax lien, yet failed to list it on his SCA. Applicant was aware he had many debts that were not current. Applicant had no explanation for why he was not truthful in answering these questions. He claims he answered the SCA too quickly and did provide some of the information during his DSS interview.

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, person conduct, with their respective DC and MC, applies 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 determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. ⁽¹¹⁾ The government has the burden of proving controverted facts. ⁽¹²⁾ The burden of proof is something less than a preponderance of evidence. ⁽¹³⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him. ⁽¹⁴⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. ⁽¹⁵⁾

No one has a right to a security clearance ⁽¹⁶⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." ⁽¹⁷⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. ⁽¹⁸⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. ⁽¹⁹⁾ 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 find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline F- Financial Considerations-a security concern exists when a person has significant delinquent debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Guideline E-Personal Conduct is a security concern when an individual's conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that 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 would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a prima facie case for disqualification under Guideline F and Guideline E.

Based on all the evidence, Financial Considerations 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*), apply in this case. Applicant has debts that he did not pay. The debts date as far back as 1996. Applicant has significant financial assets to resolve the debts, but has been unwilling to do so. The minimal action Applicant did take on some of his debts did not occur until after his hearing and there was no documented proof that he had actually made any payments other than for one through a credit card.

I considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC 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)*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). I conclude no mitigating conditions apply. Applicant did have an unexpected expense when in 1996, after Applicant and his girlfriend broke up, he was required to pay \$900.00 in child support, an amount he had not anticipated. However, Applicant did nothing to help his financial situation. Rather he bought a luxury car that cost \$42,000 and had monthly payments of \$720. Applicant failed to pay attention to his finances and he cosigned on a car for his sister that was later repossessed. During these years Applicant has made contributions to his pension plan, money he could have used to pay his debts. Applicant did not take a loan from his pension plan to pay his debts, but rather decided to file for bankruptcy. Applicant has expendable income at the end of the month, but does not use it to pay down any of his debts Applicant is unwilling to pay his delinquent debts. The minimal effort Applicant made to settle debts was not made until after he had his hearing. Applicant did nothing to research the legitimacy of his debts, even after he was put on notice that they were a security issue. Applicant's assertion that he is filing for bankruptcy is not a substitute for good financial management nor is it a resolution to the security concerns raised by his questionable judgment with regards to his finances. Applicant failed to mitigate the security concerns regarding his finances.

Based on all the evidence, Personal Conduct Disqualifying Condition (PC DC) 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*) applies in this case. Applicant was aware that he had tax lien, delinquent debts and repossessions in his financial history and deliberately failed to divulge them on his SCA. Applicant provided no reasonable explanation for his deliberate omissions.

I considered all the mitigating conditions and specifically considered Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.2 (*The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*), PC MC E2.A5.1.3.3 (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*), and PC MC E2.A5.1.3.5 (*The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*). I conclude none of the mitigating conditions apply. Applicant falsified his SCA. He did not provide the correct information until confronted by an investigator. Applicant was well aware his wages were garnished due to failure to pay his taxes and hence a subsequent tax lien. Applicant was aware his luxury car had been repossessed and he was delinquent on the \$20,000 debt he owed to the car company. Applicant's testimony regarding his debts was not credible. Although he admitted he owed the debts, he then claimed he was unaware of some of the debts, or they were someone else's debts, suggesting they were his father, son or girlfriend's debts. However, he had done nothing to research and/or resolve any questions he had about them. Instead, Applicant attempted to minimize his knowledge of the debts, despite acknowledging them, but took no affirmative action to resolve them. Applicant was not forthright when answering questions.

Applicant does not provide an explanation for why he failed to divulge all of the information requested. The falsifications are recent because they are a part of his SCA, and were not isolated because he lied on numerous questions. Applicant has not provided any evidence to show he has taken positive steps to reduce his vulnerability to coercion or exploitation. One objective of the security clearance process is to determine all relevant and material information concerning an applicant. The process requires full and open disclosure by the applicant of all requested information. Any intentional misrepresentation or omission by an applicant materially obstructs the investigation of

Applicant's security worthiness and raises serious concerns about the character and overall integrity of the individual. Applicant's actions raise serious security concerns. I find Applicant has failed to mitigate Guideline E.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I find Applicant has failed to mitigate the security concerns raised by the financial considerations and personal conduct concerns. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline F and Guideline E are decided against Applicant.

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:

Paragraph 1 Financial Considerations (Guideline F) AGAINST THE APPLICANT

Subparagraph 1.a. For 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

Subparagraph 1.j. Against the Applicant

Subparagraph 1.k. Against the Applicant

Subparagraph 1.l. Against the Applicant

Subparagraph 1.m. Against the Applicant

Subparagraph 1.n. Against the Applicant

Subparagraph 1.o. Against the Applicant

Paragraph 2 Personal Conduct (Guideline E) 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

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 Applicant. Clearance is denied.

Carol. G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. AE D.
3. No documentation was provided to support Applicant's claim that he is filing for bankruptcy.
4. AE B.
5. AE C.
6. Question 35: *Your Financial Record-Repossession, In the last 7 years, have you had any property repossessed for any reason?*
7. Question 36: *Your Financial Record-Tax Lien, In the last 7 years , have you had a lien placed against your property for failing to pay taxes or other debts?*
8. Question 37: *Your Financial Record-Unpaid Judgments, In the last 7 years have you had any judgments against you that have not been paid?*
9. Question 38: *Your Financial Delinquencies-180 Days, In the last 7 years, have you ever been over 180 days delinquent on any debt(s)?*
10. Question 39: *Your Financial Delinquencies-90 days, Are you currently over 90 days delinquent on any deb(s)?*
11. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
12. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
13. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
14. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, ¶ E3.1.15.
15. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15
16. *Egan*, 484 U.S. at 531.
17. *Id.*
18. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
19. Executive Order 10865 § 7.