

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant's falsification of his clearance application and financial irresponsibility renders him an unsuitable candidate for a security clearance. Clearance denied.

CASENO: 04-04668.h1

DATE: 02/13/2006

DATE: February 13, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-04668

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's falsification of his clearance application and financial irresponsibility renders him an unsuitable candidate for a security clearance. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 29 June 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of financial consideration and personal conduct⁽¹⁾. Applicant answered the SOR on 15 July 2005 and requested a decision on the record. He did not respond to DOHA's 12 August 2005 File of Relevant Material (FORM). DOHA assigned the case to me 28 November 2005.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR; accordingly, I incorporate his admissions as findings of fact. He is a 46-year-old supervisory security officer employed by a defense contractor since September 2001. This is his first application for an industrial clearance. He previously held a clearance while on active duty with the army in the early 1980.

Applicant has a history of financial difficulties dating back to at least 1996. He was unemployed from November 1994 to July 1995, and he and his wife fell behind on their accounts. They filed for chapter 7 bankruptcy relief in March 1996 and had over \$19,000.00 in debt discharged in June 1996. The relief was short lived.

Applicant admits 23 delinquent accounts totaling nearly \$29,000 since his 1996 bankruptcy discharge. He attributes these delinquent accounts to periods of unemployment, when the family had to rely on his wife's income alone, but Applicant's clearance application shows that he has been continually employed since November 1991, except for the 7-8

month period that induced their 1996 bankruptcy filing, and three short periods of unemployment: May-August 1997, July-August 1999, and July-September 2001, when he obtained his current position.

Applicant's debts include deficiency amounts for a repossessed automobile, collection accounts, charge-off/bad debt accounts, and bad checks. His financial troubles also include two "slow pay" accounts that were not alleged in the SOR, but that nevertheless highlight his financial issues.

In his October 2003 sworn statement, Applicant indicated that he intended to resolve his delinquent accounts by March 2004. None of the delinquent accounts have been paid off--although it appears that Applicant has been making payments on the debt at 1.k. and 1.u.--despite an October 2003 personal financial statement showing positive cash flow of \$372 per month. While the bulk of his debt (\$23,000.00) is from five accounts that are each more than \$1,000.00, four of the past-due accounts are less than \$100.00. Another five are less than \$200.00 each, four less than \$500.00 each, and another five less than \$1,000.00.

There is no evidence that Applicant contacted any of his creditors about his delinquent accounts, or that he has sought any kind of financial counseling.

When Applicant completed his clearance application in February 2002, he reported two delinquent accounts even though he had several more past due accounts at that time. He failed to disclose that he had an automobile repossession and two federal tax liens in the last seven years. He did disclose his 1996 bankruptcy.

POLICIES

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. 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 for or against Applicant. However, specific adjudicative 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. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

BURDEN OF PROOF

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then 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.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their 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.⁽²⁾

CONCLUSIONS

The Government established a Guideline F case, and Applicant did not mitigate the security concerns. Government records reflect nearly \$29,000.00 of delinquent debt acquired after Applicant's bankruptcy discharge in 1996.⁽³⁾ He has offered no credible explanation of how his finances deteriorated so quickly after his discharge other than three periods of unemployment totaling nine months during the following four years. He offers no explanation why he has undertaken no repayment efforts since becoming re-employed in September 2001, despite the apparent ability to do so.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent⁽⁴⁾ and not isolated;⁽⁵⁾ indeed they appear to be ongoing. Applicant's three brief periods of unemployment since 1996 do not constitute circumstances beyond his control.⁽⁶⁾ There is no evidence that he has sought credit counseling or otherwise brought the problem under control.⁽⁷⁾ Finally, he has made no effort to contact his creditors to arrange repayment schedules for his debts, despite apparently having the means to do so.⁽⁸⁾ I conclude Guideline F against Applicant.

The government established a Guideline E case and Applicant did not mitigate the security concerns. He deliberately concealed this automobile repossession and his two federal tax liens.⁽⁹⁾ The other adverse financial information he did disclose does not contain any information to suggest the extent of his financial problems. Further, none of the Guideline E mitigating conditions apply. The concealed information was relevant to a clearance decision.⁽¹⁰⁾ Although the

falsifications were isolated, they were recent, and there is no evidence demonstrating that Applicant provided the correct information voluntarily. (11) There is no evidence demonstrating that he corrected the falsification before being asked about it. (12) There is no evidence to suggest that Applicant receive bad advice about what he was required to disclose on his clearance application. (13) I conclude Guideline E against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: Against Applicant

Subparagraph d: Against Applicant

Subparagraph e: Against Applicant

Subparagraph f: Against Applicant

Subparagraph g: Against Applicant

Subparagraph h: Against Applicant

Subparagraph i: Against Applicant

Subparagraph j: Against Applicant

Subparagraph k: Against Applicant

Subparagraph l: Against Applicant

Subparagraph m: Against Applicant

Subparagraph n: Against Applicant

Subparagraph o: Against Applicant

Subparagraph p: Against Applicant

Subparagraph q: Against Applicant

Subparagraph r: Against Applicant

Subparagraph s: Against Applicant

Subparagraph t: Against Applicant

Subparagraph u: Against Applicant

Subparagraph v: Against Applicant

Subparagraph w: Against Applicant

Subparagraph x: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph 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 a security clearance for Applicant. Clearance denied.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
3. E2.A6.1.2.1 A history of not meeting financial obligations; E2.A6.1.2.3 Inability or unwillingness to satisfy debts;
4. E2.A6.1.3.1 The behavior was not recent;

5. E2.A6.1.3.2 It was an isolated incident;
6. E2.A6.1.3.3 The conditions that resulted in the behavior were largely beyond the person's control. . .;
7. 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;
8. E2.A6.1.3.6 The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.
9. 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, . . . [or] determine security clearance eligibility or trustworthiness. . .;
10. E2.A5.1.3.1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability;
11. E2.A5.1.3.2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;
12. E2.A5.1.3.3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts;
13. E2.A5.1.3.4. Omission of material facts was caused or significantly contributed by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided;