

KEYWORD: Criminal Conduct; Financial; Personal Conduct

DIGEST: Applicant, a 35-year-old employee of a defense contractor and former sergeant, was discharged under other than honorable conditions in 2001 for misuse of a government credit card, and making false official statements, and forgery to cover up the original offense. While he omitted several details of the offenses on his SF 86, the omissions were minor and he made a full effort to report them on the form, in his interview, and at the hearing. He has since taken private employment with two companies holding a security clearance. His first work concerned rebuilding the Pentagon after 9/11. He has successfully rehabilitated himself, is financially secure, and cares for two daughters as a single father. The security concerns have been mitigated. Clearance is granted.

CASENO: 04-04805.h1

DATE: 08/17/2005

DATE: August 17, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-04805

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 35-year-old employee of a defense contractor and former sergeant, was discharged under other than honorable conditions in 2001 for misuse of a government credit card, and making false official statements, and forgery to cover up the original offense. While he omitted several details of the offenses on his SF 86, the omissions were minor and he made a full effort to report them on the form, in his interview, and at the hearing. He has since taken private employment with two companies holding a security clearance. His first work concerned rebuilding the Pentagon after 9/11. He has successfully rehabilitated himself, is financially secure, and cares for two daughters as a single father. The security concerns have been mitigated. Clearance is granted.

STATEMENT OF CASE

On January 31, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, 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, issued a Statement of Reasons (SOR) to Applicant which detailed reasons 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 a security clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On February 15, 2005, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to me on March 24, 2005. A notice of hearing was issued on May 27, 2005, for a hearing on June 16, 2005, and held that day. Five government exhibits and six exhibits for Applicant were admitted into evidence. The record was left open for 30 days to allow the Applicant to supply a signed notarized statement from one of his witnesses. This was submitted as the seventh exhibit. The transcript was received on June 28, 2005.

FINDINGS OF FACT

Applicant denied some of the allegations with explanation and admitted of some of the allegations with explanation. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 35-year-old employee of a defense contractor. Applicant had several criminal charges brought against him in 2001 while on active duty in the Army stemming from the misuse of a government credit card when he was having financial troubles. He had incurred a private debt of \$800.00 for a Christmas trip for his family on his government credit card and then submitted two false travel claims for a combined amount of \$1,079.00 to pay the card debt. To accomplish this he forged his superior officer's signatures on the claims and made false statements on the claim forms. Applicant was charged under the Uniform Code of Military Justice (UCMJ) with larceny, false official statements, and forgery. He resigned from the Army receiving an other than honorable discharge to avoid courts martial after nine years of credible service holding the rank of Sergeant E-5. He was reduced in grade to E-1 and the charges were dismissed. His commanding officer recommended a general discharge for Applicant.

He also had been arrested and charged under the UCMJ in 1998 with assault and failure to obey an order in a domestic dispute. He received five days of extra duty as punishment for that offense. He was also arrested in 2001 for driving with a suspended license and failing to display registration.

Applicant had a delinquent debt from a credit card issued by the military exchange system for \$2,737.00. The debt was repaid four months before the issuance of the SOR. He also had a delinquent debt to a chain merchandiser for \$810.00 that was paid in 2004. His current credit rating is good and he is not delinquent on any debts.

Applicant is alleged to have failed to fully respond to Questions 25, 38, and 39 on his security clearance application (SF 86) relating to failure to report the 1998 UCMJ charge, and the military exchange financial delinquency. He did fully report the major criminal charges and their disposition in 2001 in response to Questions 21 and reported the facts of the 1998 charge at Question 25 but mistakenly used a 2001 date. He also reported a \$820.00 delinquent debt not alleged in the SOR at Question 38 regarding 180 day delinquencies, but did not report the military exchange debt on Questions 38 and 39 relating to delinquencies of 90 and 180 days.

Applicant is a single father with two daughters ages nine and ten. He receives no financial assistance from his estranged wife. He is heavily involved in the education of his daughters and their girl scout activities where he serves as a scout leader (Exhs. B, C, and D). Applicant's salary is \$72,000.00 per annum and has increased 45% since he started work with his present employer in 2002. He is highly regarded by both his present and former employers (Exhs. C, D, and G).

Applicant worked for his former employer in the re-construction of the Pentagon in 2001 and 2002 after the 9/11 attack on the facility where he made a substantial contribution to the contract work of his employer. At that time he was required to obtain a security clearance to have access to the building. This was his first job since his discharge from active duty and he was able to do so. He has held a security clearance since that time without incident. Applicant had intended to make the military a career until the events of 2001 transpired resulting in his discharge.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information

See Egan, 484 U.S. at 531. The applicant then has the burden of demonstrating it is clearly consistent

with the national interest to grant or continue a security clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

Guideline J (Criminal Conduct) is alleged. The Government has established a sufficient basis that Disqualifying Condition E2.A10.1.1. might be applicable to Applicant in that he was charged and convicted of a criminal offense. It could be mitigated by the facts that the criminal behavior was not recent (E2.A10.1.3.1), the crime was an isolated incident (E2.A10.1.3.2.), and that there is clear evidence of successful rehabilitation (E2.A10.1.3.6.). I conclude that, since the offenses occurred four years ago, the application of the mitigating condition is justified. While the offenses were grievous, they all arose out of one principal offense that was an isolated instance in an otherwise successful military career but compounded by Applicant in his actions to accomplish and then attempt to cover up the offense.

The 1998 UCMJ charge relating to a domestic dispute is now seven years old and mitigated by the passage of time. The 2001 charge was also four years ago and was basically a traffic offense that has not re-occurred and is mitigated by passage of time. (E2.A10. 1.3.1.)

Applicant's conduct since his discharge has been exemplary and he has been successful in developing a new career. He is remorseful for his misconduct and knows the mistakes he made can never be fully rectified. He gave credible testimony with considerable candor at the hearing presenting a highly articulate statement that was in no way defensive or excusing of his actions. His statement to the investigating officer (Exh. 2) was also comprehensive and candid.

Applicant's delinquent debt prompted the allegation of security concerns under Guideline F in that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of inability or unwillingness to satisfy debts. (E2.A6.1.2.3.) Mitigating Conditions (MC) include the fact that the person has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.) While the debt was delinquent and should have been paid earlier, it was satisfactorily resolved four

months before the SOR was issued so I deem that sufficiently prompt to apply the mitigating factor. The other debt that was reported on his SF 86 has been paid.

Applicant's failure to report fully his police record for arrests or convictions at Question 25 on his SF 86 raises issues under Guideline E that might indicate questionable judgment, unreliability, and unwillingness to comply with rules and regulations and could indicate that the person may not

properly safeguard classified information (E2.A5.1.1.). Specifically, the deliberate omission, concealment, or falsification of relevant and material facts from a personnel security application could raise a security concern and be disqualifying. (E2.A5.1.2.2.) The fact that he did report the

2001 offenses on his SF 86 at Question 20 and the details of the 1998 UCMJ charge at Question 25 indicates that he was making a conscientious effort to fully report those matters. The fact that he inadvertently used a 2001 date for the 1998 offense is not sufficient to find that the allegation of deliberate omission has been proven.

Applicant's failure to report the military exchange debt was as a result of the fact that payments were being made on it at the time he filled out the SF 86 and he did not consider it to be delinquent, or at least did not know that it was delinquent on his credit report as he did not have a report at that time. In view of these circumstances, I conclude Applicant did not deliberately fail to disclose the requested information on his SF 86.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Applicant has an excellent record with his present and past employers and has provided evidence of being fully rehabilitated. Applicant engaged in conduct that was criminal in nature, compounded his original offense in a cover-up effort, but has been punished for it by losing his opportunity for a successful military career, the stigma of his misconduct, and the fact that he does not have an honorable discharge. He has turned a bad situation around and, after four years of successful rehabilitation, has been punished enough. While Applicant turned to illegal activity as a result of his financial difficulties, the activity feared by concerns over financial issues, Applicant's experience as a result of his misconduct leads me to conclude that he would never be a candidate again for such conduct.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude Applicant's record of conduct justifies a finding that it is clearly consistent with the national interest to grant a

security clearance.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline J: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Paragraph 2. Guideline F: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Paragraph 3. Guideline E FOR APPLICANT

Subparagraph 3.a.: For Applicant

Subparagraph 3.b.: For Applicant

Subparagraph 3.c.: For Applicant

Subparagraph 3.d.: For Applicant

DECISION

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

Charles D. Ablard

Administrative Judge