

KEYWORD: Financial; Criminal Conduct; Alcohol; Personal Conduct

DIGEST: While he was making payments on a Chapter 13 bankruptcy wage-earner's plan, Applicant was falling behind in paying other debts. He scheduled credit counseling for two days after his hearing. Applicant was also involved in criminal conduct related to his consumption of alcohol, a bad check, and deliberately misleading a Defense Security Service investigator. Applicant failed to mitigate financial, criminal, alcohol, and personal conduct security concerns. Clearance is denied.

CASENO: 04-05083.h1

DATE: 01/30/2006

DATE: January 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-05083

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

While he was making payments on a Chapter 13 bankruptcy wage-earner's plan, Applicant was falling behind in paying other debts. He scheduled credit counseling for two days after his hearing. Applicant was also involved in criminal conduct related to his consumption of alcohol, a bad check, and deliberately misleading a Defense Security Service investigator. Applicant failed to mitigate financial, criminal, alcohol, and personal conduct security concerns. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. In accordance with Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on 26 May 2005 detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations), Guideline J (Criminal Conduct), Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on 17 June 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on 1 November 2005. On 14 December 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 28 December 2005.

FINDINGS OF FACT

Applicant is a 50-year-old quality assurance auditor for a defense contractor. He has worked for this contractor and its predecessors for 31 ½ years. He has had a clearance since about 1977. He is a superior performer and model employee.

Applicant and his wife became financially overextended in 1995. Applicant admits that he and his wife have never been good at budgeting. Ex. 2 at 4. In 1997, they filed a petition for a Chapter 13 bankruptcy wage-earner's plan. The plan was approved and Applicant completed payments over 60 months and had his debts discharged in 2002. While he was paying off his Chapter 13, Applicant incurred more than \$21,000 in additional delinquent debts that were placed for collection or charged off, as alleged in the SOR. He has made no effort to resolve these delinquent debts nor to investigate some of the debts he does not recognize. His employer has referred him to a financial counselor with whom Applicant was scheduled to meet on 16 December.

Applicant started drinking alcoholic beverages when he was 19 years old. Over the years, he would, "on average," consume a 12-pack of beer over a weekend. Ex. 2 at 2. In May, 2001, he became embroiled in a verbal spat with his wife as they were doing home repairs. He threatened to commit suicide, picked up a small knife and a screwdriver, and hit himself in the chest with them. Applicant's wife called police, who reported that, when they arrived at Applicant's house, "he appeared to be very intoxicated." Ex. 7. Applicant did not inflict injuries other than a few scratches and whelps on his stomach and shoulder.

In August 2002, Applicant became involved in a physical altercation with his neighbor. When police arrived, they found Applicant "non responsive due the amount of alcohol consumed." Ex. 6.

In April 2003, Applicant was involved in a motor vehicle accident. The police officer who responded to the scene had Applicant perform a field sobriety test which he failed. Applicant refused the officer's request he take a Breathalyzer. He was arrested and charged with driving while intoxicated (DWI) and fleeing the scene of an accident. He eventually pled guilty in May 2005 to the DWI offense. He was placed on probation for two years. As a result of his conviction, Applicant was referred for an evaluation of his use of alcohol. The counselor tested Applicant and opined that he had a low probability of having a substance dependence disorder. Ex. P. She recommended Applicant be referred to the DWI education class, which he completed in November 2005. Ex. O. Applicant is still on probation until 2007. He continues to consume alcohol, but not with great frequency.

In July 2003, while appearing in court for the DWI offense, Applicant was arrested for theft by check of between \$20 and \$500. He had been sent a notice of the bad check, but had failed to redeem it. He was taken to jail and required to post bond. The charge was dismissed after Applicant paid the check and the court fees before 22 March 2004.

In any matter within the executive branch of the Government of the United States, it is a criminal offense to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation. 18 U.S.C. § 1001. Security clearances are within the jurisdiction of the executive branch of the Government of the United States. *See Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

On 30 October 2003, Applicant provided a signed, sworn statement to an agent of the Defense Security Service (DSS).

In the statement, Applicant claimed that, other than his DWI arrest, he "had not had any other problems with the police or law enforcement to include alcohol or drug related offenses." Ex. 2 at 2. Applicant denied deliberately omitting his arrest for theft from his signed, sworn statement. He claimed he was under the understanding that all the information he would give was voluntary and he had some right under the Privacy Act. Answer at 3; Tr. 33. After carefully observing Applicant's demeanor and listening to his testimony, I find he deliberately falsified his statement to the DSS agent. An Applicant's involvement with law enforcement officials is relevant and material to his security worthiness. Therefore, I find Applicant violated 18 U.S.C. § 1001.

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. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

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 process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline F-Financial Considerations

In the SOR, DOHA alleged Applicant petitioned for Chapter 13 bankruptcy in 1997 (¶ 1.a); had six debts totaling more than \$17,200 that had been charged off as bad debts (¶¶ 1.b-1.d, 1.f, 1.h, 1.m); had six delinquent debts totaling more than \$4,000 that were in collection status (¶¶ 1.e, 1.g, 1.i-1.l); and was convicted of theft (¶ 1.n). Applicant admitted all the allegations, except ¶¶ 1.d and 1.l, with explanation. An applicant who is financially overextended is at risk of having

to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government established each of the allegations in the SOR. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1.) and is unable or unwilling to satisfy his debts (DC E2.A6.1.2.3.). Even while paying on his wage-earner's plan, Applicant was failing to pay his other debts. He knew the Government was concerned about his debts, but did nothing to resolve them. Deceptive or illegal financial practices such as check fraud are also potentially disqualifying. DC E2.A6.1.2.2. Although Applicant will receive counseling in the future, he failed to demonstrate that his financial problems will not continue. None of the mitigating conditions apply. I find against Applicant on ¶ 1.

Guideline J-Criminal Conduct

In the SOR, DOHA alleged Applicant was arrested and charged with DWI and leaving the scene of an accident in April 2003 (¶ 2.a); was arrested in July 2003 and convicted of theft (¶ 2.b); and violated 18 U.S.C. § 1001 by deliberately providing false information in a signed, sworn statement given to a DSS agent (¶ 2.c). Applicant admitted each of the allegations, with explanation. A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1.

The Government established each of the allegations. It is potentially disqualifying for an applicant to engage in criminal conduct (DC E2.A10.1.2.1) whether it is a single serious crime (violation of 18 U.S.C. § 1001) or multiple lesser offenses (DC E2.A10.1.2.2). After examining all of the mitigating conditions, I conclude none apply. I find against Applicant on ¶ 2.

Guideline G-Alcohol Consumption

In the SOR, DOHA alleged that, at times between 1975 and October 2003, Applicant used alcohol to the point of intoxication (¶ 3.a); threatened to commit suicide after consuming alcohol in May 2001 (¶ 3.b); was involved in a physical altercation with a neighbor after consuming alcohol (¶ 3.c); and was arrested for driving while intoxicated in April 2003 and leaving the scene of an accident (¶ 3.d). Applicant admitted each of the allegations, except that in ¶ 3.a. Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness. Directive ¶ E2.A7.1.1.

The Government established each of the alcohol-related incidents alleged in the SOR. It is a potentially disqualifying condition to be involved in alcohol-related incidents away from work. DC E2.A7.1.2.1. Applicant does not believe he

has a drinking problem, and he has some support from a counselor that he is not alcohol dependent. He asserts that he only had a beer or two during the incidents. Yet the record shows impairment at significantly greater levels of alcohol consumption than Applicant is willing to admit. He failed the field sobriety tests that preceded his DWI arrest, and the police officers who saw Applicant after his "suicide attempt" and the fight with his neighbor report he was very intoxicated. I find his consumption of alcohol does cause him problems. Applicant claims he rarely drinks, now, and only has a beer or two when he does. Normally, that might invoke MC E2.A10.1.3.3 (positive changes in behavior supportive of sobriety). Unfortunately, based on his lack of candor during his testimony and in his previous statements, I was unable to conclude he was being honest with me. I find against Applicant on ¶ 3.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant falsified material facts in a signed, sworn statement by denying any arrests other than that of April 2003, when he had also been arrested in July 2003 (¶ 4.a). Applicant admitted the allegation, with explanation. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

Deliberately providing false or misleading information concerning relevant and material matters to an investigator in connection with a security determination is a security concern and may be disqualifying. DC E2.A5.1.2.3. Information is material if it would affect a final agency decision or, if incorrect, would impede a thorough and complete investigation of an applicant's background. ISCR Case No. 01-06870, 2002 WL 32114535 at *6 (App. Bd. Sep. 13, 2002). An applicant's criminal history is a matter that could affect a final agency decision on whether to grant the applicant a clearance and his failure to disclose it would impede a thorough investigation of the applicant's background. I conclude Applicant deliberately tried to mislead the DSS agent by claiming he had never been arrested for other than the DWI. None of the mitigating conditions listed under the guideline apply. I find against Applicant on ¶ 4.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a-1.n: Against Applicant

Paragraph 2. Guideline J: AGAINST APPLICANT

Subparagraph 2.a-2.c: Against Applicant

Paragraph 3. Guideline G: AGAINST APPLICANT

Subparagraph 3.a-3.d: Against Applicant

Paragraph 4. Guideline E: AGAINST APPLICANT

Subparagraph 4.a: Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

James A. Young

Administrative Judge