

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant accumulated numerous debts that were discharged in a Chapter 7 bankruptcy. He still owes federal and state taxes and a child support arrearage. He was arrested for reckless endangerment for firing a shotgun into the air on the Fourth of July and placed on probation before judgment. The charges were dismissed after he successfully completed his probation, including court-ordered alcohol counseling. He did not disclose his arrest and alcohol counseling on his security clearance application (SF 86). He rebutted the allegation of falsifying his SF 86, but did not mitigate the security concern based on financial considerations. Clearance is denied.

CASENO: 04-06197.h1

DATE: 10/26/2005

DATE: October 26, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06197

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

James B. Norman, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant accumulated numerous debts that were discharged in a Chapter 7 bankruptcy. He still owes federal and state taxes and a child support arrearage. He was arrested for reckless endangerment for firing a shotgun into the air on the Fourth of July and placed on probation before judgment. The charges were dismissed after he successfully completed his probation, including court-ordered alcohol counseling. He did not disclose his arrest and alcohol counseling on his security clearance application (SF 86). He rebutted the allegation of falsifying his SF 86, but did not mitigate the security concern based on financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On January 18, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny Applicant a security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive). The SOR alleges security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). Under Guideline F, it alleges numerous delinquent debts. Under Guideline E, it alleges Applicant falsified his SF 86 by answering "no" to questions 26 (arrests or convictions not listed elsewhere) and 30 (alcohol-related treatment or counseling).⁽¹⁾

Applicant answered the SOR in writing on February 9, 2005. He admitted some allegations, denied others, and offered explanations. He requested a hearing, and the case was assigned to me on June 27, 2005. The hearing was held as scheduled on September 1, 2005, and I kept the record open until September 16, 2005, to allow both sides to submit additional documentary evidence. Department Counsel's additional evidence is incorporated in the record as Government Exhibit 10. Applicant's additional documents are incorporated as Applicant's Exhibits C and D. DOHA

received the transcript (Tr.) on September 16, 2005.

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I also make the following findings:

Applicant is a 47-year-old personnel clerk employed by a defense contractor. He was married in 1978 and divorced in 1982. He married his current spouse in April 1994. He testified he had "perfectly good credit" until he was married in 1994. He testified his wife "don't like to pay bills." She told him she had paid the bills she incurred, and he believed her. (2) Although he agreed his wife's overspending was a significant cause of their financial problems, he was reluctant to place the primary blame on her. He has not resolved the problem caused by his wife's spending habits. He testified, "[W]hen I tell her about it, she wants to start arguing." (3) He has not obtained any financial counseling. (4) There is no evidence he cancelled any joint charge accounts, disputed the accounts, or attempted to remove his name from them. His wife is employed intermittently, but suffers from several medical ailments.

Applicant retired from the U.S. Army in 1995 with a disability and was unemployed for more than a year. He lost a finger due to cancer and had difficulty finding employment. (5) He worked as manager of a pizza restaurant from April 1996 until November 1998, and as a state employee from November 1998 until arch 2003. He began working for his current employer in July 2003.

Although Applicant's medical problems were covered by TRICARE, he stated he could not afford the premiums to cover his spouse and stepson, both of whom had recurring medical problems. At the hearing, Applicant admitted his only uninsured medical expenses were for medications that could not be filled at a military pharmacy. (6) Applicant testified he suffered a mild stroke in November 2004 and was unemployed for "a little while." At that point, he decided he had no choice but to file a petition for bankruptcy. (7) By January 2005, Applicant had delinquent debts to 10 creditors totaling about \$6636.00, including a child support arrearage.

In May 2005, Applicant filed a petition for Chapter 7 bankruptcy, and on August 25, 2005, he received a discharge. (8) The schedule of debts in the bankruptcy petition includes all debts alleged in the SOR, except two debts totaling about \$280.00 and the child support arrearage. (9) He also owes about \$2,100.00 in federal taxes and \$900.00 in state taxes that were not discharged. (10)

Applicant has two children living with him. He pays child support for a third child and is paying an arrearage for two others. [\(11\)](#) Applicant testified he is paying the child support arrearage by automatic deduction from his pay. [\(12\)](#) After the hearing, he furnished copies of pay vouchers reflecting the automatic deduction. [\(13\)](#)

Applicant fired a shotgun into the air on July 4, 2002, to celebrate the holiday. His wife called the police, thinking Applicant had endangered her son, and Applicant was arrested for reckless endangerment. Applicant testified he had consumed two alcoholic drinks before the incident. In September 2002, he appeared in court and was given probation before judgment. He was sentenced to a year of supervised probation, a \$250.00 fine, 25 hours of community service, and 12 weeks of alcohol education classes. He was diagnosed as having no substance dependency. [\(14\)](#) He completed all the terms of his probation, and the charges were dismissed.

Applicant submitted a SF 86 on July 8, 2005. He responded "no" to question 26, asking if he had any arrests or convictions not listed elsewhere on the form, and to question 30, asking if his use of alcoholic beverages had resulted in any alcohol-related treatment or counseling during the past seven years. In his answer to the SOR, he wrote "I admit" under the allegation regarding question 26 and "I deny" under the allegation regarding question 30. Under both allegations he wrote "charges were dropped." He testified he did not disclose the arrest and alcohol education classes, based on advice from his security manager and others, because he did not think it was necessary in light of the verdict of probation before judgment and the eventual dismissal of the charges. [\(15\)](#)

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 has 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), as amended and modified. 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.

The Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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 ¶¶ E2.2.1.1 through E2.2.1.9.

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.

Initially, the Government must establish, by substantial evidence, conditions 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. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. 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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

Guideline F (Financial Considerations)

Under Guideline F, "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Directive ¶ E2.A6.1.1. A person who fails or refuses to pay long-standing debts or is financially irresponsible may also be irresponsible or careless in his or her duty to protect classified information.

Two disqualifying conditions (DC) under this guideline could raise a security concern and may be disqualifying in this case. DC 1 applies where an applicant has a history of not meeting his or her financial obligations. Directive ¶ E2.A6.1.2.1. DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3. Applicant's financial history establishes DC 1 and DC 3.

Several mitigating conditions (MC) are relevant. A security concern based on financial problems can be mitigated by showing the delinquent debts were not recent (MC 1) or an isolated incident (MC 2). Directive ¶ E2.A6.1.3.1., E2.A6.1.3.2. Applicant had multiple delinquent debts. Some were resolved by his bankruptcy discharge shortly before the hearing, but others have not yet been resolved. I conclude MC 1 and MC 2 are not established.

Security concerns arising from financial problems can be mitigated by showing they are the result of conditions beyond the person's control (MC 3). Directive ¶ E2.A6.1.3.4. Applicant's disability retirement from the Army, his inability to find employment for more than a year, and his wife's inability to work steadily because of health problems were conditions beyond Applicant's control. However, those conditions were only contributing factors. Applicant's fundamental problem was his and his spouse's spending habits. To the extent Applicant's problems are attributable to his wife's irresponsibility, the record reflects no actions by Applicant to restrict or remove her access to charge accounts for which he is jointly liable. I conclude MC 3 is not established.

A security concern arising from financial problems can be mitigated by showing a good-faith effort to resolve debts (MC 6). Directive ¶ E2.A6.1.3.6. The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. Furthermore, a discharge in bankruptcy does not constitute a good-faith effort to resolve a debt, even though it is relevant because it makes Applicant less vulnerable to coercion or temptation to engage in illegal conduct to generate funds. I conclude MC 6 is not established.

Even after obtaining a bankruptcy discharge, Applicant still faces significant federal and state tax debts and a child support arrearage. He has not sought financial counseling, and has not demonstrated any change in his financial management. After weighing the disqualifying and mitigating conditions and evaluating the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concern based on financial considerations.

Guideline E (Personal Conduct)

Under Guideline E, conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the person may not properly safeguard

classified information. Directive ¶ E2.A5.1.1. DC 2 applies where there has been a deliberate omission or falsification of relevant and material facts on any personal security questionnaire. Directive ¶E2.A5.1.2.2..

Department Counsel argued Applicant's failure to disclose his arrest and alcohol counseling shifted the burden to him to explain the omission sufficiently to negate a finding of knowing and deliberate falsification, citing ISCR Case No. 02-23133 (App. Bd. Jun. 9, 2004) at 5. The Appeal Board has rejected this interpretation of its decision. ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

When Applicant answered the SOR, he wrote "I admit" under the allegation of falsifying his answer to the question about arrests. However, I am not satisfied he understood he was admitting intentional falsification of the form. At the hearing he impressed me as somewhat unsophisticated. He testified he did not understand questions 26 and 30. I am satisfied he knew his answer to the SOR admitted the answer was wrong, but I am not satisfied he knew he was admitting intentional falsification.

When a falsification allegation is controverted, Department Counsel has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An Administrative Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred. *Id.*

I found Applicant's explanation of his negative answers on the SF 86 plausible. After hearing his testimony, observing his demeanor, and evaluating all the evidence of record, I found his testimony credible on the falsification issue. I am satisfied he did not intentionally falsify his SF 86. Accordingly, I conclude DC 2 is not established.

FORMAL FINDINGS

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

Paragraph 1. Guideline F (Financial Considerations):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.: Withdrawn from SOR

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

Paragraph 2. Guideline E (Personal Conduct) FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For 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 Applicant a security clearance. Clearance is denied.

LeRoy F. Foreman

Administrative Judge

1. At the hearing, Department Counsel moved to amend the SOR by deleting paragraph 1.f. because it duplicates paragraph 1.a. (Tr. 15-16). I granted the motion and have reflected the amendment in my Formal Findings.
2. Tr. 40-41.
3. Tr. 63-64.
4. Tr. 48.
5. Government Exhibit 3, p. 1.
6. Tr. 48.
7. Government Exhibit 1, pp. 1-3; Tr. 33-34.
8. Applicant's Exhibits A and B.
9. Government Exhibit 10.
10. Tr 44-45.
11. Tr. 52.
12. Tr. 41.
13. Applicant's Exhibits C and D.
14. Government Exhibit 5.
15. Tr. 55-58.