

KEYWORD: Financial: Personal Conduct

DIGEST: Applicant is 45 years old and works for a federal contractor. Since the late 1990's, he accumulated approximately \$10,000 of delinquent debt that he has failed to resolve despite ongoing plans or intentions to do so. When he completed his security clearance application, he did not disclose his delinquent debts. He failed to mitigate the security concerns raised by financial considerations and his personal conduct. Clearance is denied.

CASE NO: 04-06978.h1

DATE: 04/21/2006

DATE: April 21, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06978

DECISION OF ADMINISTRATIVE JUDGE

SHARI DAM

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 45 years old and works for a federal contractor. Since the late 1990's, he accumulated approximately \$10,000 of delinquent debt that he has failed to resolve despite ongoing plans or intentions to do so. When he completed his security clearance application, he did not disclose his delinquent debts. He failed to mitigate the security concerns raised by financial considerations and his personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On May 26, 2005, the Defense Office of Hearings and Appeals (DOHA) under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under Guidelines F (Financial Considerations) and E (Personal Conduct) why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

On August 22, 2005, Applicant filed his Answer to the SOR, admitting all of the allegations, except one, and elected to have the case decided on the written record in lieu of a hearing. On October 27, 2005, Department Counsel prepared a File of Relevant Material (FORM), and mailed a copy of it to Applicant on October 31, 2005. Applicant received the FORM on November 18, 2005, and had 30 days from its receipt to file objections and submit material in refutation, extenuation or mitigation. He did not submit any additional information. On January 23, 2006, the case was assigned to me.

FINDINGS OF FACT

Based on the entire record, including Applicant's admissions in his Answer to the SOR, I make the following findings of fact:

Applicant is 45 years old and has worked for a federal contractor since January 2003. Prior to this position, he served in the armed forces from November 1982 until May 2002. He refiled a security clearance application (SCA) in July 2004.

(1)

When Applicant signed his SCA, he certified his answers were "true, complete, and correct" to the best of his knowledge and belief. In response to Question 37. Your Financial Record - Unpaid Judgement (*In the last 7 years, have you had any judgement against you that have not been paid*), he answered "No," and did not disclose the unpaid judgments alleged in SOR ¶¶ 1.f and 1.g (SOR ¶ 2.a). In response to Question 38. Your Financial Delinquencies - 180 Days (*In the last 7 years, have you been over 180 days delinquent on any debt(s)*), he answered "No," and failed to disclose the debts listed in SOR ¶¶ 1.a, 1.b, 1.c, 1.d, 1.e, 1.f, 1.g, 1.h, 1.i, 1.j, and 1.k (SOR ¶ 2.b). In response to Question 39. Your Financial Delinquencies - 90 Days (*Are you currently over 90 days delinquent on any debt(s)*), he answered "No," and failed to list said debts (SOR ¶ 2.c).

After completing the SCA, Applicant met with a government investigator to discuss the matters contained in it. During that interview he indicated his financial problems started in the late 1990's after he was deployed and his wife began handling their finances. (2) In 1999 or 2000, he sought assistance to consolidate his debts and entered into an agreement with a debt reduction service. He made timely payments for about a year and a half, at which time one of his payments was late, resulting in the termination of his contract with the service. In September 2003, he contracted with another debt consolidation service with whom he was making regular monthly payments as of March 2004. (3)

Applicant said he was unaware of the two outstanding judgments listed on his February 2004 credit report, but would include them in a debt consolidation plan. (4) He admitted he owed the majority of the debts (subsequently alleged in the SOR) and intended to consult with another credit service in order to pay off all of his debts. He was confused by Question 38, and acknowledged he incorrectly answered Question 39, but did not offer an explanation for doing so. He completed a monthly budget worksheet outlining his net income as \$2,945, minus \$2,268 for expenses and debt reduction payments per his contract, leaving him with net remainder of \$677.

Paragraph 1 of the SOR alleged that Applicant's delinquent debts, totaling \$9,998, consisted of \$3,762 in cell phone and utility bills (SOR ¶¶ 1. b, 1.c, 1.h, 1.j, 1.k, and 1.l); \$2,525 to credit card companies (SOR ¶¶ 1.d and 1.e); \$580 to a housing complex (SOR ¶ 1.i); \$2,099 in two judgments (SOR ¶¶ 1.f and 1.g); and \$1,032 in a tax lien (SOR ¶ 1.a). Applicant admitted he owed all of the debts, and claimed he paid the tax lien in October 2004 and one of the cell phone

bills. However, he did not provide proof of the payments, and both appear, along with all of the other debts, on a March 2005 credit report. [\(S\)](#)

In his August 2005 Answer to Paragraph 2, Applicant admitted he falsified Questions 38 and 39, and noted he was unaware of the judgments alleged in Question 37.

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, sets forth criteria which must be evaluated when determining security clearance eligibility. Within those adjudicative guidelines are factors to consider in denying or revoking an individual's request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual's request for access to classified information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence in order to reach a fair, impartial and common sense decision.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct an administrative judge should consider: (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.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not only the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. Directive, Enclosure 2, ¶ E2.2.2. The decision to deny an individual a security clearance is not necessarily a judgment about an applicant's loyalty. Executive Order 10865, § 7. Instead, it is a determination that an applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of

the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988). The Directive presumes a rational connection between past proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence in refutation, extenuation, or mitigation sufficient to overcome the position of the government. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); Directive, Enclosure 3, ¶ 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 clearance." *Id.*

Based upon the allegations contained in the SOR and a consideration of the evidence as a whole, the following adjudicative guidelines are pertinent to an evaluation of the facts of this case:

Guideline F - Financial Considerations: A security concern may exist when an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

Guideline E - Personal Conduct: A security concern may exist when conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

The disqualifying and mitigating conditions, either raising security concerns or mitigating security concerns applicable to this case, are discussed in the Conclusions section below.

CONCLUSIONS

I considered all of the facts in evidence, legal standards, including the "whole person" concept, and conclude as follows:

Guideline F: Financial Considerations

The Government established a *prima facie* case for disqualification under Guideline F. Based on the evidence, two disqualifying conditions under this guideline apply: (1) Financial Consideration Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and (2) FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*). Applicant has a history of failure to meet his financial obligations and inability or unwillingness to satisfy his debts that have accumulated since the late 1990's and are current today.

The Government having established its case, the burden shifted to Applicant to mitigate or rebut the allegations. After reviewing all of the mitigating conditions, I conclude none of the Financial Consideration Mitigating Conditions (FC MC) applies. There is no evidence that he encountered unexpected medical problems, a death, divorce or period of unemployment, such that 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)*) is applicable. I also considered FC MC 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 under control*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), and conclude neither applies. Although Applicant stated he has been on a debt consolidation agreement for a number of years, he did not present any evidence documenting his assertion or indicating that his current financial situation is under control or being resolved, as required by FC MC E2.A6.1.3.4. Applicant has been aware of the government's concerns since March 2004, at which time he indicated he would resolve the matters raised in the credit reports. He did not present any evidence demonstrating a "good-faith effort" to resolve the debts, as required by mitigating condition FC MC E2.A6.1.3.6. Hence, the allegations contained in SOR ¶¶ 1.a through 1.l are concluded against him. Accordingly, Guideline F is decided against Applicant.

Guideline E - Personal Conduct

The Government established a *prima facie* case for disqualification under Guideline E. Based on 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. Applicant admitted that he failed to disclose pertinent information when he answered Questions 38 and 39, and thus falsified his application. Although he claimed he did not have knowledge of the judgments alleged in SOR ¶¶ 1.f and 1.g at the time he completed the SCA, he did not produce any evidence supporting his contention that he never received notice of the judgment proceedings.

I find that none of the disqualifying conditions apply in view of his admissions, and the fact that at the time he completed the application he was making payments on delinquent debts through a debt consolidation company. Hence, the allegations contained in SOR ¶¶ 2.a, 2.b, and 2.c are found against him. Accordingly, Guideline E is concluded against Applicant.

I further considered the totality of the evidence in this case, including Applicant's 20 years of service in the armed

forces, and his previous work with a debt consolidation service. While Applicant expressed a willingness to achieve financial responsibility in March of 2004, he failed to adequately pursue that goal, and consequently did not establish a track record of financial management sufficient to mitigate the security concerns raised by a history of unresolved debts. Nor did he offer a plausible explanation for his failure to disclose the debts on his SCA sufficient to mitigate the security concerns raised by his personal conduct.

For the reasons stated, I conclude Applicant is not eligible for access to classified information.

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 as follows:

Paragraph 1: Guideline F (Financial Considerations) AGAINST APPLICANT

Subparagraphs 1.a through 1.l: Against Applicant

Paragraph 2: Guideline E (Personal Considerations) AGAINST APPLICANT

Subparagraph 2.a through 2.c: Against Applicant

DECISION

In light of all of 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.

Shari Dam

Administrative Judge

1. Item 4 at 2-3. (It is apparent from the record that Applicant completed and submitted another SCA prior to the electronically transmitted copy in July 2004.)

2. Item 5 at 2.

3. *Id.* at 3.

4. Item 5 at 8.

5. Answer; Item 9 at 2.