

KEYWORD: Personal Conduct; Financial

DIGEST: Applicant accrued about \$55,000 in delinquent debt consisting of six unpaid credit cards and an out-of-court settlement of a civil suit for damages from an auto accident. While he has paid some of these debts, Applicant refuses to finish paying off the judgment as he feels it is unjust. His omission from a security clearance application of relevant information about his finances was not a deliberate attempt to conceal the information or mislead the government. He mitigated security concerns about his personal conduct, but not about his finances. Clearance is denied.

CASENO: 04-08027.h1

DATE: 01/31/2006

DATE: January 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-08027

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant accrued about \$55,000 in delinquent debt consisting of six unpaid credit cards and an out-of-court settlement of a civil suit for damages from an auto accident. While he has paid some of these debts, Applicant refuses to finish paying off the judgment as he feels it is unjust. His omission from a security clearance application of relevant information about his finances was not a deliberate attempt to conceal the information or mislead the government. He mitigated security concerns about his personal conduct, but not about his finances. Clearance is denied.

STATEMENT OF THE CASE

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to give Applicant a security clearance. On June 17, 2005, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline F (financial considerations) and Guideline E (personal conduct). Applicant timely answered the SOR, and requested a hearing.

The case was assigned to me on September 9, 2005, and I convened a hearing on September 20, 2005. The parties appeared as scheduled and the government presented six exhibits (GE 1 through 6), which were admitted without objection. Applicant testified in his own behalf and introduced four exhibits (AE A, B, C, and D), which were admitted without objection. I left the record open after hearing to allow Applicant time to submit additional information I deemed relevant and material to the issues herein. Applicant timely submitted one additional document, introduced without objection as AE E on October 18, 2005, and the record closed after DOHA received the transcript (Tr) on October 26, 2005.

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is 59 years old and employed as a long distance truck driver for a nationally-known delivery company with government contracts to haul sensitive and classified shipments. While Applicant usually does not know the details of what he is delivering, the contracts require he have a security clearance. Applicant has held this job since March 2003, before which he ran his own trucking company. He is a high school graduate with two years of college and vocational training. He and his wife have been married almost 40 years and have a son and a daughter.

In late 2000, Applicant helped his son start a small landscaping and grounds keeping business. Applicant used his personal credit cards and co-signed other accounts to buy equipment and materials for the business. Sometime within the next year, Applicant's son's fiancée left without warning. The son was devastated and abandoned the small business. Without incoming revenue, the credit card bills went unpaid and Applicant was left with about \$20,000 in delinquent debt consisting of four credit card or other personal credit accounts either charged off as business losses or referred for collection.

Applicant resolved the credit card debt listed in SOR ¶1.a in April 2004.⁽²⁾ He paid the debt listed in SOR ¶1.b, but there is no information other than a letter from the creditor's attorneys dated October 17, 2005, to show when it was paid.⁽³⁾ The debts listed at SOR ¶¶ 1.c and 1.f are part of the debt listed at SOR ¶ 1.d, which Applicant settled for \$4,000 applied to his wife's credit card in September 2004.⁽⁴⁾ Applicant paid the debt listed at SOR ¶ 1.e in January 2004.⁽⁵⁾

In 1989, Applicant's son was involved in an accident while driving one of Applicant's trucks. The other driver sued and, in October 1996, Applicant settled the case before trial because his son did not want to fight it in court and was still in the throes of his fiancée's abandonment. Applicant agreed to pay \$35,000 in addition to his insurance coverage.⁽⁶⁾ Applicant paid between \$200 and \$300 a month for a year and a half, but stopped paying. Applicant felt the payment was an unjust burden, as he felt the other party was also at fault in the accident and was being unduly enriched by the settlement. Applicant does not intend to pay anything more on this debt.

Applicant submitted a security clearance application (SF 86) on March 11, 2003. The version he completed has not been used for several years and he had to complete the form while on the road or at home, and without any help or supervision from the delivery company's security personnel. In response to Question 27.d, which asked if Applicant had any unpaid judgments in the preceding seven years, he answered "no." In response to Questions 28.a and 28.b,⁽⁷⁾ which asked if he had any debts delinquent for more than 180 days or if he was, at that time, more than 90 days past due on any debt, respectively, Applicant again answered "no."⁽⁸⁾ In response to the government's allegation he falsified his answers, Applicant avers he thought the settlement was more than seven years before, and that the other questions dealt with delinquencies on currently held accounts.

In April 2004, Applicant was interviewed by a Defense Security Service (DSS) agent about his finances as well as other facets of his background. Thereafter, Applicant provided DSS a signed, sworn statement discussing his delinquent debts, some of the causes for the debts, and his intentions regarding resolution of those debts. Applicant acknowledged the contents of a credit report the DSS agent showed him, averred he would settle his debts "in the near future," and represented his financial situation as "great" because he and his wife have "substantially benefitted financially" from their current jobs. Included with the statement was a personal financial statement (PFS) that showed Applicant and his wife earn about \$14,000 each month after deductions and have about \$5,000 left over each month after expenses.⁽⁹⁾

POLICIES AND BURDEN OF PROOF

The Directive sets forth adjudicative guidelines⁽¹⁰⁾ to be considered in evaluating an Applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive.⁽¹¹⁾ The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable 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. Having considered the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are Guideline E (personal conduct) and Guideline F (financial considerations).

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽¹²⁾ for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for the Applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it establishes that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to 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.⁽¹³⁾ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her 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.⁽¹⁴⁾

CONCLUSIONS

The government alleged Applicant should be disqualified because he is delinquent on several credit card or other personal credit accounts totaling about \$27,500 (SOR ¶¶ 1.a - 1.f) and that he has failed to pay a judgment entered against him in October 1996 (SOR ¶ 1.g). These allegations reflect security concerns under Guideline F; specifically, that one who is financially overextended through delinquent debt and poor personal financial management may be at risk of engaging in illegal acts to generate funds to resolve their fiscal difficulties.⁽¹⁵⁾ Additionally, how one manages his personal finances is also indicative of one's overall judgment and reliability. The government has presented sufficient information to support the SOR allegations regarding Applicant's finances. The facts established, in turn, support the preliminary decision to deny Applicant's request for a clearance.

In response, Applicant has shown two of the allegations (SOR ¶¶ 1.c and 1.f) are actually part of a third (SOR ¶ 1.d), which he settled in September 2004. Further, he has paid or resolved all but one of the debts at issue. The remaining unpaid debt (SOR ¶ 1.g) continues to concern the government. Applicant does not dispute he owes the other driver money for an accident one of his employees (his son). Applicant claims he only went along with the settlement because his son did not want to fight it any longer. Yet, Applicant knew or should have known he had the option of either negotiating other terms or going to trial, and he accepted the settlement terms nonetheless. He cannot now decide unilaterally he does not want to abide by the settlement. Applicant clearly has the means to resolve this debt, yet refuses to do so. Such decision making only serves to undermine the government's confidence Applicant would live up to his responsibilities should he be granted access to classified information. Based on the foregoing, Guideline F disqualifying condition (DC) 1⁽¹⁶⁾ and DC 3⁽¹⁷⁾ apply here.

By contrast, of the Guideline F mitigating conditions (MC), only MC 3⁽¹⁸⁾ has any application here. Applicant's initial financial problems arose when his son abdicated his role in the small business Applicant helped finance. Further, the accident that resulted in the settlement debt alleged in SOR ¶ 1.g was an unexpected event. However, sufficient time has passed that MC 3's beneficial effect is attenuated. MC 3 is also weakened by Applicant's refusal to satisfy the debt alleged in SOR ¶ 1.g. As discussed above, Applicant clearly has the means to have paid this debt already. Absent some information, which Applicant has not presented, to show the settlement was flawed or that Applicant has a viable claim for adjustment of the settlement, he is obligated to pay this debt. In light of the available information, his response to this debt is unreasonable and precludes a finding he has mitigated the government's concerns about his finances. On balance, I conclude Guideline F against the Applicant.

The government also alleged Applicant deliberately concealed an unpaid judgment less than seven years old (SOR ¶ 2.a); that he deliberately omitted the fact he has had debts more than 180 days delinquent (SOR ¶ 2.b); and that he deliberately omitted the fact he was at that time more than 90 days past due on any debts (SOR ¶ 2.c). Under Guideline E, a security concern arises where it is shown an applicant has exhibited questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Such conduct may indicate the person may not properly safeguard classified information.⁽¹⁹⁾

Available information shows Applicant should have answered "yes" to the relevant SF 86 questions. To be disqualifying, his answers must have been made deliberately and with intent to mislead the government's investigation.⁽²⁰⁾ That is not what happened here. As to Question 27.d, because the settlement was entered six years and five months

before he submitted the SF 86, it is plausible Applicant thought the information asked for was outside the scope of the question. As to Questions 28.a and 28.b, Applicant had never before completed an SF 86, and he had no assistance from his employer's security office. Those circumstances lend credence to his claim he thought the questions wanted information about currently held accounts only. Based on the foregoing, I conclude Applicant lacked the requisite intent to falsify his answers to the SF 86 questions at issue, and I find for the Applicant as to Guideline E.

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guideline. A fair and commonsense assessment⁽²¹⁾ of Applicant's financial problems, taken in the context of all of the information before me shows that reasonable doubts persist about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Absent substantial information to mitigate these doubts, which Applicant failed to provide, I cannot conclude he has otherwise overcome the government's case.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline F (Financial): AGAINST THE APPLICANT

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d: For the Applicant

Subparagraph 1.e: For the Applicant

Subparagraph 1.f: For the Applicant

Subparagraph 1.g: Against the Applicant

Paragraph 2, Guideline E (Personal Conduct): FOR THE APPLICANT

Subparagraph 2.a: For the Applicant

Subparagraph 2.b: For the Applicant

Subparagraph 2.c: For the 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 the Applicant. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. AE A.
3. AE E.
4. AE D; AE E.
5. AE B.
6. SOR ¶ 1.g alleges this debt is a judgment against Applicant entered in October 1996. In Applicant's statement to DSS in April 2004, Applicant refers to this debt as a judgment; however, there is no entry of judgment listed in any of the three credit reports submitted by the government. Testimony at hearing (Tr., 38 - 39; 45 - 46) shows this debt arose when Applicant and his son settled with the other driver. Nonetheless, it is clear this is a debt Applicant is obliged to pay.
7. SOR 2.c alleged falsification of SF 86 Question 39; however, the version Applicant completed (GE 1) uses Question 28.b for debts greater than 90 days past due. I amended this allegation at hearing (Tr., 53) to conform to the evidence contained in GE 1.
8. GE 1.
9. GE 5.
10. Directive, Enclosure 2.

11. Commonly referred to as the "whole person" concept, these factor are as follows:

1. Nature and seriousness of the conduct and surrounding circumstances.
2. Frequency and recency of the conduct.
3. Age of the applicant.
4. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences involved.
5. Absence or presence of rehabilitation.
6. Probability that the circumstances or conduct will continue or recur in the future;

12. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).

13. *See Egan*, 484 U.S. at 528, 531.

14. *See Egan*; Directive E2.2.2.

15. Directive, E2.A6.1.1.

16. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;

17. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;

18. Directive, 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);

19. Directive, E2.A5.1.1.

20. Directive, 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; (emphasis added)

21. Directive, E2.2.3.