

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has a history of financial irresponsibility. In 1997, he filed for Chapter 7 bankruptcy. After the bankruptcy discharge, Applicant continued to incur delinquent debt. Although he has paid off one debt and has consolidated his student loan accounts, he is either unable or unwilling to pay his remaining delinquent debt. Applicant failed to report material facts relating to an automobile repossession and his current financial delinquencies on a security clearance application he completed and certified in August 2003. Applicant's financial problems and his lack of candor raise serious security concerns. Clearance is denied.

CASENO: 04-08218.h1

DATE: 02/17/2006

DATE: February 17, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-08218

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of financial irresponsibility. In 1997, he filed for Chapter 7 bankruptcy. After the bankruptcy discharge, Applicant continued to incur delinquent debt. Although he has paid off one debt and has consolidated his student loan accounts, he is either unable or unwilling to pay his remaining delinquent debt. Applicant failed to report material facts relating to an automobile repossession and his current financial delinquencies on a security clearance application he completed and certified in August 2003. Applicant's financial problems and his lack of candor raise serious security concerns. Clearance is denied.

STATEMENT OF THE CASE

On June 15, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct.

In a sworn, written statement, dated August 19, 2005, Applicant responded to the SOR allegations and elected to have his case decided on the written record, in lieu of a hearing. Department Counsel submitted the government's file of relevant material (FORM) on September 22, 2005. The FORM was mailed to Applicant on October 31, 2005, and received on November 10, 2005. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond. The case was assigned to me on December 19, 2005.

FINDINGS OF FACT

Applicant admits to the factual allegations pertaining financial considerations under Guideline F (subparagraphs 1.a, 1.b, 1.c, and 1.f). Those admissions are incorporated herein as findings of fact. He denies the remaining allegations under Guideline F and all the allegations under Guideline E. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 45-year-old employee of a defense contractor seeking to obtain a security clearance, the level of which has not been disclosed.⁽²⁾

Applicant has encountered financial difficulties since 1992.⁽³⁾ Part of his financial difficulties related to his unsuccessful pursuit of a career in show business.⁽⁴⁾ On September 7, 1997, Applicant filed for Chapter 7, bankruptcy.⁽⁵⁾ He listed \$9,040.00 in assets and \$17,107.00 in liabilities. On December 11, 1997, his debts were discharged.⁽⁶⁾ Applicant filed for bankruptcy due to overspending and bad financial decision making.⁽⁷⁾

On August 6, 2003, Applicant submitted a security clearance application.⁽⁸⁾ In response to question "35. Your Financial Record - Repossessions. In the last 7 years, have you had any property repossessed for any reason?" he answered, "No." He also answered, "No," to question "38. Your Financial Delinquencies - 180 Days. In the last 7 years, have you been over 180 day(s) delinquent on any debt(s)?" and question "39. Your Financial Delinquencies - 90 Days. Are you currently over 90 days delinquent on any debt(s)?"⁽⁹⁾

A credit report, dated August 11, 2003, revealed seven collection accounts with a hospital, total balance of \$2,566.00 (SOR subparagraph 1.b); two delinquent student loan accounts with approximate total balance of \$4,499.00 and \$6,688.00 (SOR subparagraph 1.e); a debt owed to the Family Support Division that was 180 days past due; a \$1,661.00 delinquent credit card account which was turned over for collection (SOR subparagraph 1.a); an \$82.00 collection account (SOR subparagraph 1.d); a paid collection account with an ambulance service; and a 1999 automobile repossession.⁽¹⁰⁾

The delinquent debts listed in the August 11, 2003, credit report were also listed in a credit report dated April 28, 2004.⁽¹¹⁾ An additional collection account on behalf of the family doctor in the amount of \$169.00 (SOR subparagraph 1.c) was listed in the April 28, 2004, credit report.

Applicant consolidated his student loan accounts and paid off the student loan collection account alleged in subparagraph 1.e of the SOR.⁽¹²⁾ He claims the debt alleged in SOR subparagraph 1.d was paid by his insurance company. However, the statement provided by the insurance company states no money was paid on the claim.⁽¹³⁾ He has no intent to pay the delinquent credit card account alleged in subparagraph 1.a of the SOR. He disputes the credit card company's late fees and annual fees.⁽¹⁴⁾ He intends to pay the delinquent medical accounts alleged in SOR subparagraph 1.b in 2008. He will not be able to afford to make payments on these accounts until that time.⁽¹⁵⁾ While he acknowledges the debt, he disputes the total amount owed to his wife's doctor related to the debt alleged in subparagraph 1.c of the SOR.⁽¹⁶⁾

Applicant claims to have misunderstood questions 38 and 39 on his security clearance application. He thought the questions referred to items that would not show up on his credit report since he knew his credit history would be investigated.⁽¹⁷⁾ He admits that his wife's automobile was repossessed since they could no longer afford to make the payments after his wife was laid off from her job.⁽¹⁸⁾ He did not explain why he failed to list the automobile repossession on his security clearance application in response to question 35.

A personal financial statement dated May 11, 2004, indicates Applicant and his wife have a total net income of \$2,112,00. Their total monthly expenses are \$421.00. They have a net remainder of \$111.00 left over each month.⁽¹⁹⁾

Applicant has been married to his current wife since June 1998.⁽²⁰⁾ He has one child from a prior marriage. He has been employed in plant protection for the same government contractor since July 2003.⁽²¹⁾ The quality of his work performance has not been characterized.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline F, pertaining to financial considerations, and Guideline E, personal conduct, with their respective DCs and MCs, apply in this case. Additionally, each security clearance decision must be a fair and impartial common sense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²²⁾ The government has the burden of proving controverted facts.⁽²³⁾ The burden of proof is something less than a preponderance of evidence.⁽²⁴⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.⁽²⁵⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽²⁶⁾

The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.⁽²⁷⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting such classified information.⁽²⁸⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽²⁹⁾ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of all the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline F - Financial Considerations: An individual who is financially over-extended 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: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that a person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a prima facie case for disqualification under Guideline F and Guideline E.

Guideline F- Financial Considerations

With respect to Guideline F, the government has established its case. Applicant has had financial difficulties since 1992. In 1997, he filed for Chapter 7 bankruptcy. Subsequent to the bankruptcy discharge, he continues to incur delinquent debts. His actions indicate that he is either unable or unwilling to pay his accounts. His overall attitude and actions towards his finances give rise to Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*); and FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*). The majority of Applicant's financial delinquencies remain unresolved. Some of the debts remain unresolved because he refuses to pay the debts. Others remain unresolved because he is unable to pay the debts. Although he has paid off his student loan collection accounts by taking out a consolidation loan, there is no information indicating he is making timely payments on his consolidation loan account. Considering his personal financial statement indicated he had only \$111.00 left over each month after expenses, his ability to make timely payments towards his student loan account is questionable.

Several conditions could mitigate the security concerns raised by Applicant's financial delinquencies. Neither Financial Considerations Mitigating Conditions (FC MC) E2.A6.1.3.1 (*The behavior was not recent*); or FC MC E2.A6.1.3.2 (*It was an isolated incident*) applies. Applicant has had a history of financial difficulties since 1992. He continues to struggle with his finances and has several outstanding debts.

It does not appear that Applicant's financial situation was the result of circumstances that were beyond his control. He admits that overspending and poor financial decisions were the cause of his first bankruptcy. As such 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)*), does not apply.

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 is under control*) does not apply since there is no indication Applicant sought financial counseling. Despite a bankruptcy discharge in 1997, he continues to struggle financially. While Applicant has resolved some of his delinquent debt, several of his delinquent debts remain. He has failed to provide sufficient evidence to demonstrate that his financial problems will soon be resolved.

Although Applicant has resolved some of his delinquent debt, I cannot apply FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) since he refuses to pay several of his

delinquent debts. Other debts remain unpaid because he cannot afford to make payments towards the debts.

Guideline E, Personal Conduct

The government alleged Applicant deliberately falsified his answers on his security clearance application with respect to questions 35 (SOR subparagraph 2.a), 38 (SOR subparagraph 2.b) and 39 (SOR subparagraph 2.c). The government has established a prima facie case with respect to the allegations under Guideline E. The Applicant answered, "No" to each of these questions even though he had delinquent debts and an automobile repossession.

I do not find credible Applicant's statement that he did not intend to falsify his security clearance application. He claims that he misread the questions and believed he was required to list only those delinquent debts which were not listed on his credit report. I give his statement little weight considering the plain language of questions 38 and 39. Applicant provided no explanation as to why he failed to list the automobile repossession in response to question 35. He was able to recall the specific details related to the automobile repossession but was unable to explain why he failed to report it. He has not provided sufficient information to meet his burden of persuasion.

Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.1 (*Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*), applies to Applicant's case. Applicant's most recent financial problems were discovered by the Department of Defense during his background investigation. The information discovered by the Department of Defense was reliable and unfavorable. As such, PC DC E2.A5.1.2.1 applies.

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's concealment of his current financial problems on his security clearance application were relevant and material to his security clearance background investigation. I do not find credible his explanation as to why he did not list his recent delinquent debts given the plain language of questions 35, 38, and 39 of the security clearance application.

None of the Personal Conduct Mitigating Conditions (PC MC) apply to Applicant's case. PC MC E2.A5.1.3.1 (*The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability*) does not apply since Applicant's deliberate withholding of relevant and material information during his security clearance investigation is pertinent to a determination of his judgment, trustworthiness and reliability.

PC MC E2.A5.1.3.3 (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*) cannot be applied. Applicant did not make a prompt, good faith effort to disclose his current delinquent debt. He did not discuss the debts until being interviewed by a Special Agent of the Defense Security Service. His failure to fully disclose his financial problems raise questions about his truthfulness and reliability. Accordingly, the allegations in SOR subparagraphs 2.a, 2.b, and 2.c are concluded against Applicant.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, common sense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I find Applicant has failed to mitigate the security concerns raised by the financial considerations and personal conduct concerns. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline F and Guideline E are decided against Applicant.

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:

Paragraph 1., Guideline F 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. Against Applicant

Paragraph 2., Guideline E AGAINST APPLICANT

Subparagraph 2.a. Against Applicant

Subparagraph 2.b Against Applicant

Subparagraph 2.c Against 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 Applicant. Clearance is denied.

Erin C. Hogan

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Item 5, Security Clearance Application, SF 86, signed August 6, 2003.
3. Item 10, Signed, Sworn Statement, dated May 11, 2004.

4. *Id.*
5. Item 11, Chapter 7 Bankruptcy Case, US Bankruptcy Court, Eastern District of California.
6. *Id.*
7. Item 10, Statement, *supra* note 3.
8. Item 5, SF 86, *supra* note 2.
9. *Id.*
10. Item 6, Credit Report, dated August 11, 2003.
11. Item 7, Credit Report, dated April 28, 2004.
12. Item 3, Answer to SOR, Letter from California Student Aid Commission, dated January 19, 2005.
13. Item 3, Answer to SOR, Claim Summary Report, Heitz Insurance Agency, dated July 21, 2005.
14. Item 10, Statement, *supra* note 3.
15. Item 3, Answer to SOR.
16. *Id.*
17. *Id.*
18. *Id.*
19. Item 10, p. 6.
20. Item 5, SF 86, *supra* note 2.
21. *Id.*
22. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
23. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
24. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
25. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, ¶ E3.1.15.
26. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15
27. *Egan*, 484 U.S. at 531.
28. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
29. Executive Order 10865 § 7.