

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant's falsification of his clearance application and financial irresponsibility renders him an unsuitable candidate for a security clearance. Clearance denied.

CASENO: 04-08855.h1

DATE: 02/13/2006

DATE: February 13, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-08855

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's falsification of his clearance application and financial irresponsibility renders him an unsuitable candidate for a security clearance. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 7 June 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of financial consideration and personal conduct. [\(1\)](#) Applicant answered the SOR on 27 June 2005 and requested a decision on the record. He did not respond to DOHA's 30 August 2005 File of Relevant Material (FORM). DOHA assigned the case to me 28 October 2005.

FINDINGS OF FACT

Applicant admitted the financial allegations of the SOR except for 1.e. [\(2\)](#) and the falsification allegations except for 1.a. [\(3\)](#); accordingly, I incorporate his admissions as findings of fact. He is a 53-year-old mail services supervisor employed by a defense contractor since January 1988. He seeks to retain the clearance he has held since approximately April 1989.

Applicant has a history of financial difficulties dating back to at least 1997. He filed for chapter 13 bankruptcy relief in December 1997. [\(4\)](#) The plan was ultimately confirmed and Applicant appears to have made about six (of 60) payments before defaulting. The chapter 13 was later dismissed, then re-instated and converted to a chapter 7 filing. Applicant was

discharged from nearly \$15,000.00 debt in July 1999. The relief was short lived.

The SOR alleges--and Applicant's admissions and the government's evidence establishes--eight delinquent debts totaling over \$13,000.00, all of which became delinquent between May 1999 and January 2005. (5) His debts include deficiency amounts for a repossessed automobile, collection accounts, and charge-off/bad debt accounts. None of the delinquent accounts have been paid off despite a February 2004 personal financial statement showing positive cash flow of \$375 per month. While the bulk of his debt (\$11,300.00) is from three accounts that are each more than \$1,000.00, the remaining five are less than \$1,000.00. Three of those are less than \$400.00 each; one unpaid collection account is \$26.00.

There is no evidence that Applicant contacted any of his creditors about his delinquent accounts, or that he has sought any kind of financial counseling.

When Applicant completed his clearance application in September 2002, he answered "no" to every question requiring him to disclose certain aspects of his financial situation. He failed to disclose his 1999 chapter 7 discharge and his 1999 unpaid judgment. (6)

POLICIES

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative 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. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

BURDEN OF PROOF

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence,

controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then 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.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their 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.⁽⁷⁾

CONCLUSIONS

The government established a Guideline F case, and Applicant did not mitigate the security concerns. Government records reflect over \$13,000.00 of delinquent debt acquired after Applicant's bankruptcy discharge in 1999.⁽⁸⁾ He has offered no credible explanation of how his finances deteriorated so quickly after his discharge. He offers no explanation why he has undertaken no repayment efforts, despite the apparent ability to do so.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent⁽⁹⁾ and not isolated;⁽¹⁰⁾ indeed they appear to be ongoing. Applicant has not demonstrated that his continuing financial difficulties are due to circumstances beyond his control.⁽¹¹⁾ There is no evidence that he has sought credit counseling or otherwise brought the problem under control.⁽¹²⁾ Finally, he has made no effort to contact his creditors to arrange repayment schedules for his debts, despite having the apparent means to do so.⁽¹³⁾ I conclude Guideline F against Applicant.

The government established a Guideline E case and Applicant did not mitigate the security concerns. He deliberately concealed his 1999 bankruptcy and his 1999 unpaid judgment.⁽¹⁴⁾ To examine his clearance application, you would not know he had ongoing financial problems. Further, none of the Guideline E mitigating conditions apply. The concealed information was relevant to a clearance decision.⁽¹⁵⁾ Although the falsifications were isolated, they were recent, and there is no evidence demonstrating that Applicant provided the correct information voluntarily.⁽¹⁶⁾ There is no evidence demonstrating that he corrected the falsification before being asked about it.⁽¹⁷⁾ There is no evidence to suggest that Applicant received bad advice about what he was required to disclose on his clearance application.⁽¹⁸⁾ I conclude

Guideline E against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: Against Applicant

Subparagraph d: Against Applicant

Subparagraph e: Against Applicant

Subparagraph f: Against Applicant

Subparagraph g: Against Applicant

Subparagraph h: Against Applicant

Subparagraph i: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: 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 denied.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. Applicant denied this debt, asserting that the account should be his ex-wife's responsibility. However, the credit reports on file show this to be an individual account in Applicant's name only. Applicant has provided no divorce decree or property settlement allocating this account to his ex-wife. Applicant also acknowledged responsibility for this account in his February 2004 sworn statement.
3. Applicant denied deliberately omitting his 1997-1999 bankruptcy proceeding from his clearance application, asserting that he thought the filing was more than seven years before applying for a clearance. This claim is not credible. Applicant did not offer this explanation in his February 2004 sworn statement. He raised it for the first time in his answer to the SOR. Further, the chapter 13 petition filed by Applicant in December 1997 was an individual petition in Applicant's name only, that was later dismissed for failure to make required payments, and ultimately converted to a chapter 7 petition. Applicant's discharge in bankruptcy was in July 1999--only slightly more than three years before Applicant's clearance application.
4. Applicant's stated timelines and explanations are inconsistent. Although his sworn statement attributes the financial problems to his divorce, his clearance application states that he and his wife did not separate until June 2000, nearly a year after his chapter 7 discharge.
5. The May 1999 debt (1.b.) is for a judgment obtained by Applicant's dentist that was not included in Applicant's bankruptcy filing.
6. Although not alleged in the SOR, he also failed to disclose the delinquent debts reported at 1.c., 1.d., and 1.e., each of which had been charged off as a bad debt or referred for collection before Applicant completed his clearance application.
7. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
8. E2.A6.1.2.1 A history of not meeting financial obligations; E2.A6.1.2.3 Inability or unwillingness to satisfy debts;
9. E2.A6.1.3.1 The behavior was not recent;
10. E2.A6.1.3.2 It was an isolated incident;
11. E2.A6.1.3.3 The conditions that resulted in the behavior were largely beyond the person's control. . . ;
12. 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;
13. E2.A6.1.3.6 The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

14. 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, . . . [or] determine security clearance eligibility or trustworthiness. . . ;
15. E2.A5.1.3.1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability;
16. E2.A5.1.3.2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;
17. E2.A5.1.3.3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts;
18. E2.A5.1.3.4. Omission of material facts was caused or significantly contributed by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided;