

KEYWORD: Financial; Personal Conduct; Criminal Conduct

DIGEST: Applicant has a history of financial difficulties, resulting in numerous unpaid debts and judgments. He has not obtained financial counseling or made a good-faith effort to resolve his delinquent debts. Applicant was convicted of making a false statement to obtain unemployment compensation in 2002. On security clearance applications submitted in July 2002 and January 2003, Applicant deliberately provided false responses concealing his judgments and delinquent debts. Applicant failed to mitigate the security concerns arising under the guidelines for financial considerations, personal conduct, and criminal conduct. Clearance is denied.

CASENO: 04-09259.h1

DATE: 04/20/2006

DATE: April 20, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09259

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Richard Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of financial difficulties, resulting in numerous unpaid debts and judgments. He has not obtained financial counseling or made a good-faith effort to resolve his delinquent debts. Applicant was convicted of making a false statement to obtain unemployment compensation in 2002. On security clearance applications submitted in July 2002 and January 2003, Applicant deliberately provided false responses concealing his judgments and delinquent debts. Applicant failed to mitigate the security concerns arising under the guidelines for financial considerations, personal conduct, and criminal conduct. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive"). On July 27, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleged security concerns raised under the Directive, specifically, Guideline F, Financial Considerations, Guideline E, Personal Conduct, and Guideline J, Criminal Conduct.

Applicant answered the SOR in writing on August 12, 2005. He elected to have a hearing before an administrative judge.

I received the case assignment on January 30, 2006. With the concurrence of Applicant and Department Counsel, I convened the hearing on March 9, 2006. The government introduced Exhibits 1 through 11. Applicant testified on his own behalf. I left the record open until March 31, 2006, to allow Applicant the opportunity to provide additional documents. Applicant did not provide additional material for consideration. DOHA received the final transcript of the hearing (Tr.) on March 17, 2006.

FINDINGS OF FACT

Applicant admitted the factual allegations in ¶¶ 1.a through 1.ss, 3.b, and 3.c of the SOR, and denied the remaining allegations. (Applicant's Answer to SOR, August 12, 2005.) Those admission are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant was born in February 1971. (Ex. 1 at 1.) He has a son, now 13 years old. (Tr. at 16.) Applicant pays child support regularly through deductions from his pay. (Tr. at 16-17.)

Applicant held a variety of jobs. He was a bagger in a grocery store for about 18 months, worked in a fast food restaurant for about four years, was a stock clerk in a meat store for several years, and worked in the service center of a department store from about October 1995 until June 1997. (Tr. at 18-19; Ex. 2 at 3.) Applicant worked for a heating and air conditioning business between about July 1997 and February 2000. (Tr. at 20; Ex. 2 at 3.)

In August 1998, authorities charged Applicant with larceny of merchandise, including televisions and video cassette recorders, while working in the service center for the department store. (Tr. at 20.) Applicant denied committing the offense; the charge was later dropped. (*Id.*)

In about February 2000, he began working as a driver and laborer for a federal contractor. (Ex. 2 at 3; Tr. at 22.) Applicant was laid-off from his job as a laborer in about August 2000. (Ex. 10 at 4; Tr. at 23.) He filed for and began collecting unemployment benefits. (Tr. at 23.) In November 2000, Applicant began working for the heating and air conditioning company again. (Ex. 2 at 2.) However, he continued to draw unemployment compensation for some time. (Tr. at 23.)

In February 2001, Applicant began working as a laborer for a defense contractor, stringing communication cables in ships in dry dock. (Tr. at 21-22; Ex. 2 at 2.) In March 2002, he began working in his present position for a defense contractor. (Ex. 2 at 2.)

In April 2002, authorities arrested Applicant for Making a False Statement for Unemployment Benefits, relating to his receipt of about \$1,300.00 in unemployment benefits after November 2000. (*Id.*) A court found him guilty of the

offense, in accordance with his pleas, and sentenced him to 60 days of confinement (suspended). (Tr. at 23; Ex. 6 at 2.) Applicant was also required to reimburse the state at the rate of \$100.00 a month. (Tr. at 24; Ex. 10 at 4.) Applicant asserts he repaid the debt, but did not provide any documentation. (Tr. at 24.)

In July 2002, Applicant completed an SF 86, Security Clearance Application. (Ex. 1 at 1.) In response to Question 37, he denied having any unpaid judgments against him within the preceding seven years. (Ex. 1 at 10.) He also denied having any debts that were 180 days delinquent within the preceding seven years (Question 38) or any debts then over 90 days delinquent (Question 39). (Ex. 1 at 10-11.)

In January 2003, Applicant executed another SF 86. (Ex. 2 at 10.) He again denied unpaid judgments or debts over 180 days delinquent within the preceding seven years, or that he was more than 90 days delinquent on any debt. (*Id.* at 10.)

Over the years, Applicant experienced difficulty paying his debts. He incurred medical bills for emergency room visits and treatment; the bills were not covered by insurance and Applicant was unable to pay them when due. (Tr. at 34-36, 39, 40, 42, 43, 46.) He had two or three different residences since 1996; but usually used his grandfather's home address for financial matters. (Tr. at 29.) When he changed residences, he left unpaid some bills for utilities and services, including cable access (Tr. at 36-37, 47), telephone service (Tr. at 38-39, 52), and water (Tr. at 53). He also fell behind on payments for credit card accounts (Tr. at 34, 37, 44-45), gifts of jewelry (Tr. at 33, 39, 46), and a worthless check (Tr. at 45). He was aware of the unpaid bills: over the years, he received some telephone calls from creditors attempting to collect on delinquent debts. (Tr. at 29-30.) He also received notice of lawsuits for collection, and attended hearings in some cases. Applicant believed he paid the judgment listed in ¶ 1.a of the SOR, but has not paid the judgments listed in ¶¶ 1.d, 1.n, 1.q, and 1.ll.

At the hearing, Applicant admitted many of the debts listed in the SOR, but was unable to recognize others. He asserted that when he completed the SF 86 he knew he had bills that were past due, but did not believe they were 90 or 180 days overdue. On cross-examination, he admitted he saw his credit report before filling out an SF 86, but thought the delinquent debts would be off his credit report when he submitted the application. (Tr. at 26, 28.)

Applicant is still employed by the defense contractor. When this action was initiated and his interim security clearance rescinded, he moved to the commercial side of the company. (Tr. at 25.) He was laid-off for six or seven weeks because of a shortage of available work. (*Id.*) As a result, Applicant is not financially able to take action to resolve his delinquent debts. (Tr. at 15, 65.) He called credit counseling companies to inquire about what services are available, but has not begun a counseling program. (Tr. at 63-64.)

POLICIES

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." (*Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as potentially disqualifying and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline F, Financial Considerations: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (Directive ¶ E2.A6.1.1.)

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 the applicant may not properly safeguard classified information. (Directive, ¶ E2.A5.1.1.)

Guideline J, Criminal Conduct: A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. (Directive, ¶ E2.A10.1.1.)

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

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." (Directive, ¶ E2.2.1.) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. (*Id.*) An administrative judge should consider the following factors: (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 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 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. (*Id.*)

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, ¶ E3.1.14.) Thereafter, the

applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (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).) "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." (Directive, ¶ E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, § 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline F, Financial Considerations

Paragraph E2.A6.1.2.1 of the Directive provides that it may be a disqualifying condition if the evidence reveals "[a] history of not meeting financial obligations." Similarly, ¶ E2.A6.1.2.3 indicates that an "[i]nability or unwillingness to satisfy debts" may be disqualifying. Applicant has a history of not meeting his financial obligations, leading to numerous judgments and delinquent debts. I conclude the available evidence is sufficient to raise both these potentially disqualifying conditions.

The security concerns arising from Applicant's financial difficulties can be mitigated. Under the Directive, ¶ E2.A6.1.3.1, it may be mitigating where "the behavior was not recent." The delinquent debts remain unpaid; therefore, they are recent. This potentially mitigating factor does not apply.

Paragraph E2.A6.1.3.2 of the Directive provides that it may be mitigating where the financial difficulty "was an isolated incident." Applicant's delinquent debts arose from various sources over many years-his financial difficulty was not an isolated incident. This mitigating condition does not apply.

Under ¶ E2.A6.1.3.3, it may be mitigating where, "[t]he 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)." Some of Applicant's financial problems arose from unexpected medical expenses, and occasional unemployment. This potentially mitigating condition applies in part.

Proof that "[t]he 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," may be mitigating, under ¶ E2.A6.1.3.4 of the Directive. Applicant did not present any evidence that he obtained financial counseling. I conclude this mitigating condition does not apply.

Finally, it may be mitigating where "[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." (Directive, ¶ E2.A6.1.3.6.) Applicant has not resolved his many debts, or presented evidence of any good-faith effort to do so. Considering all the circumstances, I find this potentially mitigating condition does not apply.

I considered the potentially disqualifying and mitigating circumstances in light of the "whole person" concept. Applicant is 35 years old. He incurred financial problems partly because of circumstances beyond his control, such as uninsured medical expenses and sporadic unemployment. However, he has not made a reasonable effort to resolve them. I conclude Applicant has not mitigated the security concerns arising from his financial difficulties.

Guideline E, Personal Conduct

The Directive sets out various factors relevant to an applicant's personal conduct that may be potentially disqualifying. Under ¶ E2.A5.1.2.2 of the Directive, "[t]he deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire" may be disqualifying. Applicant failed to inform the government about his unpaid judgments, in response to Question 37 on the security clearance applications he submitted in July 2002 and January 2003. At the hearing, Applicant claimed he was simply mistaken. I considered all the circumstances, including his knowledge of the lawsuits, his attendance at the hearings, his knowledge of the judgments against him, and the recency of the cases. I conclude Applicant deliberately provide false responses to deceive the government.

Applicant denied knowledge of any debts more than 180 days delinquent within the preceding seven years, or more than 90 days delinquent at that time on his security clearance applications. When questioned, he admitted knowing of the debts, but that he believed they were no longer on his credit report when he submitted his applications. Considering all the evidence, I find Applicant intended to deceive the government when he denied delinquent debts. I conclude the potentially disqualifying condition in ¶ E2.A5.1.2.2 of the Directive applies.

It is possible to mitigate the security concerns arising from personal conduct. I considered carefully all the potentially mitigating conditions and find that none apply. Considering all the circumstances in light of the "whole person" concept, Applicant failed to mitigate the security concerns arising from his falsification of his security clearance applications.

Guideline J, Criminal Conduct

Paragraph E2.A10.1.2.1 of the Directive provides "allegations or admission of criminal conduct" may be disqualifying. Similarly, under ¶ E2.A10.1.2.2 of the Directive, it may be disqualifying where an applicant committed "a single serious crime or multiple lesser offenses." As discussed above, I find Applicant deliberately provided false statements in his security clearance application on two occasions. This constitutes a violation of 18 U.S.C. § 1001. Moreover, in 2002 a state court convicted him of making a false statement to obtain unemployment benefits. I find both potentially disqualifying conditions raised in this case.

Paragraph 3.b of the SOR alleges Applicant was charged with grand larceny in 1998, but the charges were later dismissed. Applicant denied any complicity in the offense. I find the evidence insufficient to raise a security concern.

I considered carefully the potentially mitigating conditions under this guideline and find none apply. I conclude Applicant failed to mitigate the security concerns arising from his history of criminal conduct.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraph 1.a-ss: Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

Subparagraph 2.e: Against Applicant

Subparagraph 2.f: Against Applicant

Paragraph 3, Guideline E: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Subparagraph 3.b: For Applicant

Subparagraph 3.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 or continue a security clearance for Applicant. Clearance is denied.

Michael J. Breslin
Administrative Judge