

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant successfully mitigated the financial considerations security concern. But he deliberately falsified his responses to Questions 38 and 39 of a security-clearance application completed in January 2003 when he failed to disclose any of his financial delinquencies. His explanation for doing so is not credible. Clearance is denied.

CASENO: 04-11257.h1

DATE: 02/08/2006

DATE: February 8, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-11257

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Jason R. Perry, Esq., Department Counsel

Francisco J. Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant successfully mitigated the financial considerations security concern. But he deliberately falsified his responses to Questions 38 and 39 of a security-clearance application completed in January 2003 when he failed to disclose any of his financial delinquencies. His explanation for doing so is not credible. Clearance is denied.

STATEMENT OF THE CASE

On January 31, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating the reasons why DOHA proposed to deny or revoke access to classified information for Applicant.⁽¹⁾ The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F for financial considerations and Guideline E for personal conduct (falsification of a security-clearance application). Applicant replied to the SOR on March 14, 2005. He requested a hearing and admitted the SOR allegations with explanations.

Department Counsel indicated he was ready to proceed on June 22, 2005, and the case was assigned to me June 27, 2005. Thereafter, a notice of hearing was issued scheduling the hearing for September 16, 2005. Applicant appeared without counsel and the hearing took place as scheduled. DOHA received the transcript September 29, 2005. Shortly thereafter, a review of the transcript revealed what appeared to be an error concerning the transcription of a monetary figure on pages 48 and 49. I requested the court reporting firm to review the recording of the hearing and make any necessary corrections. On or about October 12, 2005, I received corrected pages 48 and 49, and copies were provided to Applicant. Those corrected pages are made part of the administrative record as Appellate Exhibit I.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein. In addition, I make the following findings of fact:

Applicant is a 38-year-old married man who is the father of three children. He and his wife separated in about 1998, and Applicant is now starting to take the initial steps to obtain a divorce. Per a voluntary separation agreement, Applicant pays child support to his spouse for his three children. He is employed by a defense contractor as a program manager for computer security/monitoring center. His annual salary is now \$102,000, although that is a fairly recent development. He is required to hold a security clearance for his job-related responsibilities.

Before working in the defense industry, Applicant served on active duty with the U.S. Navy for about 14 years from October 1984 until November 1998. His rating was cryptological technician administrator (CTA 1), and when discharged his rank was petty officer first class (paygrade E-6). As an additional duty, Applicant received formal training and served as a special security officer (SSO). As a SSO, Applicant became familiar with the security clearance process, including answering questions from sailors about the security-clearance application. Based on his naval experience, Applicant knew bad debt was a potential issue in holding a security clearance.

The record evidence shows Applicant has a history of financial problems. For example, a January 2003 credit report (Exhibit 2) disclosed that Applicant had eight accounts in a collection or charge off status. The table below summarizes the details about the accounts alleged in the SOR, including a general description, the current status, and cites to the relevant part of the record.

<i>Debt Description per SOR</i>	<i>Current Status</i>	<i>Record</i>
¶ 1.a-bad debt of \$1,996 from a credit card account.	Unpaid; collection being handled by a law firm.	Applicant's testimony
¶ 1.b-bad debt of \$2,030 from a credit card account.	Settled September 2005.	Exhibit A
¶ 1.c-bad debt of \$266 from a credit card account.	Paid.	Exhibit 5
¶ 1.d-credit card account 120-days past due, balance of \$1,354.	Paid.	Exhibit C
¶ 1.e-credit card account 90-days past due, balance of \$330.	Disputed and deleted from credit report.	Exhibit C
¶ 1.f-car loan 120-days past due, balance of \$40,796.	Car returned; deficiency balance settled September 2005.	Exhibit B
¶ 1.g-collection account of \$122 for a medical bill.	Paid.	Exhibit 4

To sum up, Applicant paid or otherwise resolved six of the seven accounts, and he intends to resolve the bad debt in ¶ 1.a via a payment plan within a few months.

Applicant attributes his history of financial problems to the financial strain caused by his marital separation and an illness experienced by his mother. Concerning the separation, Applicant pointed out he was left to pay off marital debt as the credit card accounts were held jointly. That debt, coupled with paying child support, caused a financial strain. Concerning his mother, she became quite ill and Applicant was the only family member who could help with the related costs. Applicant tapped into his limited financial resources to pay for his mother's medical care, and subsequently, he paid for his mother's funeral expenses.

Applicant completed and signed a security-clearance application on or about January 23, 2003 (Exhibit 1). In response to Questions 38⁽²⁾ and 39⁽³⁾ asking about financial delinquencies, Applicant answered "no," thereby denying having any delinquent debts within the relevant periods. Indeed, nowhere on the application did Applicant disclose that he had delinquent debt or was otherwise experiencing financial problems. In signing the application, Applicant certified his statements were true, complete, and correct to the best of his knowledge and belief and made in good faith, and that he understood that a knowing and willful false statement could be punished under federal law.

Applicant explained that he answered no after seeking advice from his company's facility security officer (FSO). According to Applicant, the FSO told him he could answer no since none of his current accounts fell within the scope of the questions. Applicant presented no information to corroborate his explanation.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security-clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each applicable guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. 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.

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security

clearance is not a determination of an applicant's loyalty.⁽⁴⁾ Instead, it is a determination that the applicant has not met

the strict guidelines the President has established for granting a clearance.

BURDEN OF PROOF

The only purpose of a security-clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁵⁾ There is no presumption in favor of granting or continuing access to classified information.⁽⁶⁾ The government has the burden of proving controverted facts.⁽⁷⁾ The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than the preponderance of the evidence.⁽⁸⁾ The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.⁽⁹⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽¹⁰⁾ Once the government meets its burden, an applicant has the burden of presenting evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him.⁽¹¹⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹²⁾

As noted by the Court in *Egan*, "it should be obvious that no one has a 'right' to a security clearance," and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹³⁾ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

CONCLUSIONS

Under Guideline F, a security concern typically exists for two different types of situations--significant unpaid debts and unexplained affluence; this case involves the former. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in his obligation to protect classified information. Many persons encounter financial problems through no fault of their own. For others, financial problems appear to be part of a general tendency toward irresponsibility that is a security concern.

Here, based on the record evidence as a whole, the government established its case under Guideline F. The evidence shows Applicant has a history of not meeting his financial obligations⁽¹⁴⁾ as well as inability or unwillingness to satisfy his just debts.⁽¹⁵⁾ The same facts support a conclusion of financial irresponsibility. Applicant took on more debt than he could handle and his situation was made worse upon his separation. It also appears he lived beyond his means. For example, in December 1998, which was the same year he separated from his wife, he bought a new and relatively expensive car with a very high interest rate (SOR ¶ 1.f). The loan became past due when he missed payments and the balance shot up to more than \$40,000 before he returned the car. In short, it appears this is yet another case where an

applicant irresponsibly used credit.

I reviewed the six mitigating conditions (MC) under Guideline F and conclude that Applicant mitigated the security concern. First, Applicant's financial problems are due, at least in part, to his separation and the out-of-pocket expenses associated with his mother's illness and death. These are circumstances beyond his control,⁽¹⁶⁾ and Applicant receives credit in mitigation. Second, Applicant has made a "good-faith effort"⁽¹⁷⁾ to resolve his financial problems. He has paid or otherwise resolved six of the seven delinquent accounts in the SOR. The remaining account is for about \$2,000, an amount Applicant can easily resolve given his level of income. Although he could have been more focused or aggressive in attacking his delinquent debt (cutting back on lifestyle, selling personal property, taking a second job, etc.), his efforts are sufficient to qualify for mitigation under the guideline. Taken together, it appears Applicant has made good progress in resolving his delinquent indebtedness. Accordingly, Guideline F is decided for Applicant.

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. 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.

Here, based on the record evidence as a whole, the government established its case under Guideline E. Applicant's answers in response to Questions 38 and 39 were deliberately false within the meaning of DC 2.⁽¹⁸⁾ His falsification of his security-clearance application creates doubt about his judgment, reliability, and trustworthiness.

I reviewed the mitigating conditions under Guideline E and conclude none apply. In particular, I considered whether Applicant's explanation fit within the meaning of MC 4,⁽¹⁹⁾ which recognizes that on occasion an applicant will provide a false answer due to bad advice. I conclude it does not because his explanation is simply not credible. His explanation is most improbable because Applicant--an experienced military man and former SSO--knew or should have known that someone with a financial history like his was required to disclose it in response to Questions 38 and 39 (or at least in a cursory manner in response to the general remarks question of the application). And his explanation is not credible because there is not a bit of supporting or corroborating evidence on this key issue. His self-serving explanation is too convenient, and standing alone, it is insufficient evidence to rely upon. Accordingly, Guideline E is decided against Applicant.

To conclude, Applicant has not met his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I considered the evidence as a whole, both favorable and unfavorable, the whole-person concept, the clearly-consistent standard, and other appropriate factors and guidelines in the Directive.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

SOR ¶ 1-Guideline F: For Applicant

Subparagraphs a - g: For Applicant

SOR ¶ 2-Guideline E: Against Applicant

Subparagraphs a - 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 is denied.

Michael H. Leonard

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. "In the last 7 years have you been over 180 days delinquent on any debt(s)?"
3. "Are you currently over 90 days delinquent on any debt(s)?"
4. Executive Order 10865, § 7.
5. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
6. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.

7. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

8. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

9. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

10. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

11. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

12. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

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

14. E2.A6.1.21. A history of not meeting financial obligations.

15. E2.A6.1.2.3. Inability or unwillingness to satisfy debts.

16. 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).

17. E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

18. 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.

19. E2.A5.1.3.6. Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided.