

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is 38 years old and has worked as a packing and shipping employee for a federal contractor since 1999. He has a history of not meeting his financial obligations and intentionally failed to divulge his delinquent debts on his security clearance application. Applicant failed to mitigate the security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. Clearance is denied.

CASENO: 04-11930.h1

DATE: 04/18/2006

DATE: April 18, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-11930

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is 38 years old and has worked as a packing and shipping employee for a federal contractor since 1999. He has a history of not meeting his financial obligations and intentionally failed to divulge his delinquent debts on his security clearance application. Applicant failed to mitigate the security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On July 18, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating it was 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, alleged security concerns under Guideline F (financial considerations) and Guideline E (personal conduct).

In a sworn statement, dated January 10, 2006, Applicant responded to the SOR allegations and requested a hearing. In his SOR response, Applicant admitted the allegations in SOR ¶¶ 1.d, 1.e, 2.a and 2.b. He denied the allegations in SOR ¶¶ 1.a, 1.b, and 1.c. The case was assigned to me on February 14, 2006. A notice of hearing was issued on March 7, 2006, scheduling the hearing for March 30, 2006. The hearing was conducted as scheduled. The government submitted seven exhibits that were marked as Government Exhibits (GE) 1-7. The exhibits were admitted into the record without objection. Applicant testified on his own behalf, and submitted two exhibits that were marked as Applicant's Exhibits A-B. The exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on April 10, 2006.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 38 years old and has worked as a packing and shipping employee for a federal contractor since 1999. He was married for ten years before divorcing in August 2001 and has two children from the marriage. He has another child from another relationship. He pays child support for all three of his children and is responsible for one-half of the medical expenses for his two children from his marriage. Often times his ex-wife does not pay her half of the deductible amount of the medical bills.⁽²⁾ He remarried in 2004. His wife had delinquent credit card debts that he helped her pay off.⁽³⁾ He has expended money to help set his wife up in a cosmetic business that has not reaped financial benefits to date.⁽⁴⁾

Applicant served ten years on active duty in the Air Force, and has served an additional eight years as a reservist. He was activated for one year from December 2004 to December 2005, and is in the paygrade of E5.⁽⁵⁾

While going through his divorce, Applicant became delinquent on some of his debts. Applicant has paid the debts listed in SOR ¶¶ 1.a, 1.b, and 1.c.⁽⁶⁾ At one time he had contacted the creditor in SOR ¶ 1.d to set up a payment plan, but has not followed through on making any payments in the last six months. This debt is for a large medical bill for his third child.⁽⁷⁾ He is unaware of what the debt is for in SOR ¶ 1.e, and has made no effort to determine its validity or repay the debt. In his sworn statement of February 17, 2004, he admitted that when he left active duty in 1997 it was an adjustment paying for health insurance.⁽⁸⁾ He also admitted to "some inattentiveness and carelessness" in managing his finances.⁽⁹⁾

Applicant and his wife have approximately \$100 left at the end of the month after paying their expenses. He owes approximately \$2,370 to a department store, \$300 to another department store, and \$4,300 to another store that he is currently making timely payments on and the debts are not delinquent.⁽¹⁰⁾ Although he is attempting to work extra active duty days to make extra money it is not on a consistent or regular basis.⁽¹¹⁾ He has not sought any financial counseling.

Applicant completed his security clearance application (SCA) on August 15, 2002, and answered "No" to Questions 38⁽¹²⁾ and 39.⁽¹³⁾ In his sworn statement of February 17, 2004, he stated, "My failure to provide the correct information concerning the above delinquent accounts was not intentional, but was the result of a lack of attention to detail on my part. I did not intend to conceal this information or to provide false information..."⁽¹⁴⁾ At the hearing, Applicant acknowledged that he deliberately falsified his SCA and admitted he should have told the truth and should not have lied. He regrets his actions and accepts that he has no excuses for his actions.⁽¹⁵⁾

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. Additionally, each security clearance decision must be a fair and impartial commonsense 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.⁽¹⁶⁾ The government has the burden of proving controverted facts.⁽¹⁷⁾ The burden of proof is something less than a preponderance of evidence.⁽¹⁸⁾ 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.⁽¹⁹⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽²⁰⁾

No one has a right to a security clearance⁽²¹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽²²⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽²³⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽²⁴⁾ 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 the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline F-Financial Considerations-a security concern exists when a person has significant delinquent debts. 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, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in

one aspect of life provides an indication of how a person may behave in other aspects of life.

Guideline E-Personal Conduct is a security concern when an individual's conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that could indicate that the 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 Guidelines F and E.

Based on all the evidence, 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*), apply in this case. Applicant has delinquent debts that he has not paid. Although he claims he set up a payment plan for the largest debt, he has not made any payments. He has failed to research another debt to determine what it is for, nor has he taken any action toward resolving it.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC E2.A6.1.3.1 (*The behavior was not recent*), FC MC E2.A6.1.3.2 (*It was an isolated incident*), 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)*), 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*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant has delinquent debts that he still owes, so the behavior is recent. He has more than one delinquent debt and has had delinquencies in the past, so it is not an isolated incident. FC MC E2.A6.1.3.1 and FC MC E2.A6.1.3.2 do not apply. Applicant went through a divorce in 2001, and had a child with medical needs that affected his financial situation. Security concerns arising from financial problems can be mitigated by showing they are the result of conditions beyond a person's control. However, even if Applicant's financial difficulties initially arose due to circumstances outside of his control, it is appropriate to consider whether he acted in a reasonable manner when dealing with his financial difficulties. (25) Applicant has only marginally taken control of his finances since 2001. He paid off his new wife's debts before resolving his own and has not taken any action on one of his debts. Applicant has not sought financial counseling. Although he has paid some debts, he does not have a clear financial plan for how he will resolve his other delinquencies. FC MC E2.A6.1.3.3, FC MC E2.A6.1.3.4 and FC MC E2.A6.1.3.6 do not apply. I

find Applicant has failed to mitigate the security concerns under Guideline F.

The deliberate omission of relevant and material facts from a security clearance application is a concern and may be disqualifying. PC DC E2.A5.1.2.2. Information is material if it would affect a final agency decision or, if incorrect, would impede a thorough and complete investigation of an applicant's background. (26) An applicant's financial situation is a matter that could affect a final agency decision on whether to grant the applicant a clearance, and his failure to disclose it would impede a thorough investigation of his background.

Based on all the evidence, Personal Conduct Disqualifying Condition (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 in this case. Applicant admitted he deliberately failed to divulge his delinquent debts on his SCA.

I considered all the mitigating conditions and specifically considered Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.2 (*The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*), PC MC E2.A5.1.3.3 (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*), and PC MC E2.A5.1.3.5 (*The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*). Applicant deliberately lied on two questions of his SCA and again lied in his sworn statement of February 17, 2004. His actions were not isolated and he did not admit and acknowledge his debts until confronted by an investigator over a year and a half later. PC MC E2.A5.1.3.2 and PC MC E2.A5.1.3.3 do not apply. Applicant has not provided any evidence to show positive steps he has take to reduce his vulnerability to exploitation. Applicant showed a lack of judgement and reliability when falsely filling out his SCA and again when he made a subsequent false statement under oath. PC MC E2.A5.1.3.5 does not apply. Applicant has failed to mitigate the security concern under Guideline E.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense 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 the whole person and I find Applicant failed to mitigate the security concerns regarding Guideline F, financial considerations, and Guideline E, personal conduct. 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, Guidelines F and 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: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Carol G. Ricciardello

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. Tr. 20-22.
3. Tr. 41-42
4. Tr. 50-51.
5. Tr. 27-29.
6. Answer
7. Tr. 25.
8. GE 2 at 2.
9. *Id.*
10. Tr. 52-54.
11. Tr. 49.
12. Question 38 asks: *Your Financial Delinquencies-180 In the last 7 years, have you been over 180 days delinquent on any debt(s).*
13. Question 39 asks: *You Financial Delinquencies-90 Days Are you currently over 90 days delinquent on any debt(s)?*
14. GE 2 at 4.
15. Tr. 44.
16. ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).

17. ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
18. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
19. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
20. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
21. *Egan*, 484 U.S. at 531.
22. *Id.*
23. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
24. Executive Order 10865 § 7.
25. ISCR Case No. 02-02116 at 4 (App. Bd. Sep. 25, 2003).
26. ISCR Case No. 01-06870, 2002 WL 32114535 (App. Bd. Sep. 13, 2002).