

KEYWORD: Financial; Personal Conduct; Criminal Conduct

DIGEST: Applicant is 30 years old, married with four children, and has worked as a commercial truck driver for a federal employer since 2003. Applicant had over \$20,000 in delinquent debt, dating as far back as 1999, that he only recently started paying off. He has decreased his debt to approximately \$10,000. Applicant let most of his debt lay dormant for years until his security clearance application became an issue. Applicant deliberately failed to list any of his debts on his security clearance application. Applicant failed to mitigate the security concerns regarding Guideline F, financial considerations, Guideline E, personal conduct, and Guideline J, criminal conduct. Clearance is denied.

CASENO: 05-00721.h1

DATE: 03/28/2006

DATE: March 28, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-00721

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Melvin Howry, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is 30 years old, married with four children, and has worked as a commercial truck driver for a federal employer since 2003. Applicant had over \$20,000 in delinquent debt, dating as far back as 1999, that he only recently started paying off. He has decreased his debt to approximately \$10,000. Applicant let most of his debt lay dormant for years until his security clearance application became an issue. Applicant deliberately failed to list any of his debts on his security clearance application. Applicant failed to mitigate the security concerns regarding Guideline F, financial considerations, Guideline E, personal conduct, and Guideline J, criminal conduct. Clearance is denied.

STATEMENT OF THE CASE

On August 22, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant 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. [\(U\)](#) The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F (financial considerations), Guideline E (personal conduct), and Guideline J, (criminal conduct).

In a sworn statement, dated September 9, 2005, Applicant responded to the SOR allegations and requested a hearing. In his SOR response, Applicant admitted all of the allegations under Guidelines F and Guideline J. He denied the allegations under Guideline E. The case was assigned to me on November 25, 2005. A notice of hearing was issued on February 15, 2006, scheduling the hearing for March 7, 2006. The hearing was conducted as scheduled. The government submitted eight exhibits that were marked as Government Exhibits (GE) 1-8. The exhibits were admitted into the record without objection. Applicant testified on his own behalf, and submitted nine exhibits that were marked as Applicant's Exhibits A-I. The exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on March 15, 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 a 30-year-old truck driver who has worked for a federal contractor since 2003. He is married and has four children. He served in the Marine Corps and received an other than honorable discharge. Applicant incurred numerous debts when he was younger because he was not thinking about his financial future. He stated "I was just more worried about going out and living it up, getting everything that I could."⁽²⁾

When Applicant left the service in 1998, he had a difficult time finding a job. He did not work for approximately a month and got behind in his bills. He was employed at the local sheriff's department from sometime in 1998 until 2002 and was released from the job due to unsatisfactory performance. He was unemployed for approximately a year into 2003, when he was hired by his current employer.⁽³⁾ His wife works as a dispatcher for a large company. Applicant's wife purchased their house in 2003, in her name only and it was not until January 2006, that Applicant's name was added to the deed.⁽⁴⁾

Applicant started to pay off some of his delinquent debts that were in collection status in September 2005.⁽⁵⁾ He has paid the debts listed in SOR ¶¶ 1.b, 1.c, 1.d, 1.e, 1.f, 1.g, 1.h, 1.i, 1.j, 1.k, 1.l, 1.n, 1.o, 1.p, 1.q, 1.r, 1.s, 1.t, 1.x, 1.bb, 1.cc, 1.dd, 1.ee, 1.ff, 1.gg, and 1.hh.⁽⁶⁾

Twenty of these accounts were for past due payments for medical services that were sent to collection from July 2000 to March 2003. Three of the debts were for delinquent payments on credit cards. Three debts were delinquent payments for traffic tickets. Applicant did not begin resolving any of these debts until September 2005, years after most were due and when it became apparent that his delinquencies would affect his ability to obtain a security clearance. Applicant has paid approximately over \$10,697 on his delinquent debts.

Applicant has not paid the debts in SOR ¶¶ 1.a, 1.m, 1.u, 1.v, 1.w, and 1.v. He believes 1.v is the same debt as in 1.ii, but provided no supporting evidence. He did not know what one debt for \$3,851 was for and acknowledged one debt was for a repossessed car in the amount of \$5,791, one was a dental bill, and one was a store credit card. He believes he has paid debts in SOR ¶¶ 1.y, 1.z, and 1.aa, but did not provide documentation. These debts are for phone services. Applicant still owes over \$10,900 in delinquent debts. Applicant was unable to provide information on some of his debts because he was confused about what he may or may not have paid.

Applicant completed his security clearance application on March 6, 2003. He answered "No" to both Question 38 (*Your Financial Delinquencies-180 days-In the last 7 years, have you been over 180 days delinquent on any debt(s)*), and

Question 39 (*Your Financial Delinquencies-90 days-Are you currently over 90 days delinquent on any debt(s)*). Applicant intentionally failed to disclose his delinquencies that were both 180 and 90 days past due, violations of 18 U.S.C. § 1001, a felony. Applicant claimed that because he could not remember all of his delinquencies he was told not to list them. He admits he was aware of his delinquencies at the time he filled out his SCA. His testimony was not credible. He never went back to correct the omissions and provide correct information, until he was confronted with the information.

Days before his hearing, Applicant borrowed money from his mother-in-law to pay off one of his large debts.⁽⁷⁾ He intends on repaying her with his wife's income tax refund that they have received.⁽⁸⁾ No documentation was provided. He and his wife do not have a budget and he is unaware of how much money they have remaining at the end of the month after paying their expenses.⁽⁹⁾ He has approximately \$5,000 in a 401k account and his wife also has a 401k account, but he is unaware of its value. They own a home and have approximately \$15,000 worth of equity in the house. They have recently refinanced their house to pay off some of their debts.⁽¹⁰⁾

Some of Applicant's debts date back to 1999. He believed some of the debts were being paid by his medical insurance company.⁽¹¹⁾ When he found out he was responsible for the payments he did not have the money to make payments. He did not follow up with the insurance company to resolve the debts.⁽¹²⁾ On many of the debts Applicant is unaware of how much he has paid and what he has left to pay.

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.⁽¹³⁾ The government has the burden of proving controverted facts.⁽¹⁴⁾ The burden of proof is something less than a preponderance of evidence.⁽¹⁵⁾ 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.⁽¹⁶⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁷⁾

No one has a right to a security clearance⁽¹⁸⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁹⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽²⁰⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽²¹⁾ 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.

Guideline J-Criminal Conduct is a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. Willingness to abide by rules is an essential qualification for eligibility for access to the nation's secrets. A history of illegal behavior indicates an individual may be inclined to break, disregard, or fail to comply with regulations, practices, or procedures concerning safeguarding and handling 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, E and J.

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 accumulated significant delinquent debts. Many remained delinquent for a long period of time and he did not take any action on the debts until he applied for a security clearance and it became an obvious issue.

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's debts are recent. Even though some date back several years and were in a collection status, they are still unpaid and thus recent. FC MC E2.A6.1.3.1 does not apply. Applicant has numerous creditors and therefore his delinquencies are not isolated. FC MC E2.A6.1.3.2 does not apply. Applicant was aware of the debts, but did not focus on them until 2005, when he became motivated to pay them because of the security clearance implications. However, despite his recent payments these actions do not negate his long history of failing to make any payments on many of his debts. Although Applicant has paid off some debts and is making payments on others, the fact remains that Applicant still has outstanding debts that he has not resolved. It was also very clear that he does not have a grasp on what his financial status really is. He does not have a clear indication of what he may still owe on some debts, if he still owes on others, and how much he owes. I find FC MC E2.A6.1.3.4 does not apply. I have considered all the circumstances surrounding Applicant's actions with regards to paying his debts and conclude he did not make a good-faith effort to repay his creditors for many years and when he did it was motivated by his desire for a security clearance. He still has over \$10,000 in unpaid debts, yet has significant savings. He has paid some debts, but was not convincing that his finances are under control. I find Applicant failed to mitigate the financial considerations with regard to his security clearance.

The deliberate omission of relevant and material facts from a security clearance application is a concern and may be disqualifying. 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. ⁽²²⁾ 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 deliberately failed to divulge any of his delinquent debts on his SCA.(not a violation of DC 2 unless he deliberately failed to list them)

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*), PC MC E2.A5.1.3.4 (*Omission of material facts were caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided*), 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*). I conclude none of the mitigating conditions apply. Applicant deliberately falsified his SCA. Applicant had over \$20,000 of delinquent debt. He claims he could not remember all of his debts, so he was told not to worry about divulging any of them on his SCA, the very information the questions were seeking honest responses to. He was fully aware when he filled out the SCA that he had debts over 180 and 90 days and to answer "no" to both questions and then claim it was because he could not remember them is both disingenuous and not credible. Applicant answered two questions falsely, and although it may be isolated, Applicant did not provide the correct information voluntarily. He did not make a good faith attempt to correct the falsification before he was confronted with the facts. Applicant has not provided any evidence to show he has taken positive steps to eliminate his vulnerability. I find Applicant deliberately lied on his SCA and has failed to mitigate the security concerns regarding his personal conduct. The falsifications are recent because they are a part of his SCA.. One objective of the security clearance process is to determine all relevant and material information concerning an applicant. The process requires full and open disclosure by the applicant of all requested information. Any intentional misrepresentation or omission by an applicant materially obstructs the investigation of Applicant's security worthiness and raises serious concerns about the character and overall integrity of the individual.

Applicant's falsifications were a violation of 18 U.S.C. § 1001, a felony. Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1 (*Allegations or admissions of criminal conduct, regardless of whether the person was formally charged*), and CC DC E2.A10.1.2.2 (*A single serious crime or multiple lesser offenses*) both apply.

I have considered all the mitigating conditions and especially considered Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.3.1 (*The criminal behavior was not recent*), CC MC E2.A10.1.3.2 (*The crime was an isolated incident*), and CC MC E2.A10.1.3.6 (*There is clear evidence of successful rehabilitation*), and conclude none apply. Applicant deliberately falsified his SCA. Due to the recency of Applicant's falsification, I find CC MC E2.A10.1.3.1 does not apply. Applicant lied on two questions on his SCA, so the offenses are not isolated. (in the sentence above, you said no MC apply, now you say one does apply. I don't know if I would consider two separate lies on the same form to be isolated???)I find Applicant's explanations for not divulging the information are not credible. He has not provided clear evidence that he understands the gravity of his actions or even acknowledges the importance of being forthcoming. Despite the fact one mitigating condition applies it is not enough to overcome the disqualifying conditions. I find Applicant failed to mitigate the security concerns regarding his criminal conduct.

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 his financial considerations under Guideline F, personal conduct under Guideline E, and criminal conduct under Guideline J. 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, E and J 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 THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c-1.l: For the Applicant

Subparagraph 1.m: Against the Applicant

Subparagraph 1.n-t: For the Applicant

Subparagraph 1.u-w: Against the Applicant

Subparagraph 1.x: For the Applicant

Subparagraph 1.y-aa: Against the Applicant

Subparagraph 1.bb-hh: For the Applicant

Subparagraph 1.ii: Against the Applicant

Paragraph 2. Guideline E AGAINST THE APPLICANT

Subparagraph 2.a: Against the Applicant

Subparagraph 2.b: Against the Applicant

Paragraph 3. Guideline J AGAINST THE APPLICANT

Subparagraph 1.a: Against the 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. 73.
3. Tr. 88.
4. Tr. 93.
5. Tr. 32.
6. AE A provides documentation for debts in SOR ¶¶ 1.c, 1.f, 1.g, 1.j, 1.l, 1.t, 1.x, 1.cc, 1.ff, 1.gg; AE G provides documentation for debts in SOR ¶¶ 1.d, 1.h, 1.i, 1.k, 1.n, 1.o, 1.q, 1.r, 1.s, 1.bb; AE E provides documentation for the

debt in SOR ¶ 1.e; AE C provides documentation for SOR ¶¶ 1.p and 1.hh; and AE D provides documentation for debts in SOR ¶¶ 1.dd and 1.ee. No documentation was provided for ¶1.b.

7. Tr. 44-46.

8. *Id.*

9. Tr. 93.

10. Tr. 52.

11. Tr. 46-47.

12. *Id.*

13. ISCR Case No. 96-0277 at.2 (App. Bd. Jul 11, 1997).

14. ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

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

16. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

17. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

18. *Egan*, 484 U.S. at 531.

19. *Id.*

20. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

21. Executive Order 10865 § 7.

22. ISCR Case No. 01-06870, 2002 WL 32114535 (App. Bd. Sep. 13, 2002).