

KEYWORD: Financial; Personal Conduct; Criminal Conduct

DIGEST: Applicant has a lengthy history of financial irresponsibility that he failed to mitigate. His explanation for failing to disclose his many delinquent accounts in a security clearance application he submitted in July 2003 is not credible. Clearance is denied.

CASE NO: 05-02732.h1

DATE: 05/31/2006

DATE: May 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-02732

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Sabrina E. Redd, Esquire, Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant has a lengthy history of financial irresponsibility that he failed to mitigate. His explanation for failing to disclose his many delinquent accounts in a security clearance application he submitted in July 2003 is not credible. Clearance is denied.

STATEMENT OF THE CASE

On September 21, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F, financial considerations, Guideline E, personal conduct, and Guideline J, criminal conduct. Applicant submitted an answer to the SOR that was received by DOHA on October 27, 2005. He admitted all Guideline F allegations and the Guideline J allegation alleged in subparagraph 3.a, denied the remaining allegations, and requested a hearing.

The case was assigned to me on January 23, 2006. A notice of hearing was issued on February 13, 2006, scheduling the hearing for March 1, 2006. The hearing was conducted as scheduled. The government submitted ten documentary exhibits that were marked as Government Exhibits (GE) 1-10, and admitted into the record without objection. Applicant testified but did not submit any documentary evidence. The transcript was received on March 23, 2006.

FINDINGS OF FACT

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

Applicant is 48 years old and has been employed by a defense contractor since at least May 1991, currently as a quality assurance manager. His annual salary is approximately \$103,000.00. Applicant served on active duty in the U.S. Navy from February 1975 until September 1997, when he was separated for medical reasons. He receives \$670.00 per month disability pay from the military along with retirement benefits, including health insurance.

Applicant was first married in June 1979. That marriage ended in divorce on August 27, 1983. Applicant remarried on August 28, 1983, and has been separated from his second wife since March 1998. He has two children from his second marriage, an 18-year-old son and a 10-year-old daughter. Applicant's wife suffers from mental problems that apparently began following the birth of their daughter in 1995. She receives Social Security Disability payments due to her mental illness.

Applicant received a discharge under Chapter 7 of the bankruptcy code in February 1982. Applicant testified the bankruptcy was caused because he and his first wife were in their early 20's and "made several financial mistakes and was forced into that situation." (Tr. p. 19)

Applicant provided a statement to the Defense Investigative Service (DIS) in February 1991, apparently in connection with an earlier security clearance background investigation (GE 4). In that statement, Applicant discussed a delinquent credit card, medical bills that appear to have been submitted for collection, and a threatened mortgage foreclosure. Applicant stated at that time he sold his house to avoid the foreclosure and had paid the credit card debt in full. He claimed those debts became delinquent as a result of his wife experiencing a couple of periods of unemployment. He attributed the medical expense delinquencies to a hospital's failure to properly submit the debts to his secondary insurance company.

The SOR lists 11 debts, totaling more than \$10,500.00 that have either been charged off as bad debts, submitted for collection, or represent a deficiency owing following an automobile repossession. Those accounts were charged off or submitted for collection as far back as January 1998, and as recently as June 2005. Applicant provided a statement to the Defense Security Service (DSS) in July 2004 (GE 3) in which he acknowledged some of the debts listed in the SOR, indicated he would look into the validity of others, and make arrangements to pay those for which he was responsible. However, the only listed debt that has been settled is the military credit card debt listed in subparagraph 1.b in the amount of \$2,976.00. That debt was only satisfied by the government seizing Applicant's excess federal income withholding taxes and applying them to the account.

Applicant has serious health problems that have had some impact on his financial situation. As a result of his medical condition he has lost overtime pay, been required to make some insurance co-payments, and regularly incurs significant prescription drug expenses. However, he has not attempted to avail himself of the medical benefits, including the procurement of no-cost prescription medications, that may be available to him through the Veteran's Administration.

A federal tax lien was filed against Applicant's residence in May 2002 in the amount of \$12,378.86. Applicant explained he had failed to include his wife's disability income in tax returns he filed between 1998 and 2000 because he was not aware it was considered taxable income. He did not list the lien in a security clearance application (SF 86) he executed in July 2003. There is no evidence Applicant was ever personally served with the lien. Accordingly, his explanation that he failed to list the lien because he was unaware that it had been filed is credible.

Applicant also failed to disclose in the July 2003 SF 86 that he was then currently more than 90 days delinquent on any debts or that he had been more than 180 days delinquent on any debts in the preceding seven years. His testimony to the effect that he thought the questions were only asking about bills he was currently making payments on and that he was unaware of the other delinquencies is not credible in view of the type, number, and duration of the delinquent accounts.

Applicant was arrested in 1996 and charged with fraud for delivering a bad check. He testified he was unaware he had passed an insufficient funds check, his wife did not notify him when she received notice of the check, and, as a result, he was never presented with the opportunity to satisfy the check before he was arrested.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon 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. Considering the evidence as a whole, Guideline F, financial considerations, Guideline E, personal conduct, and Guideline J, criminal conduct, with their respective DC and MC, are most relevant in this case.

BURDEN OF PROOF

The sole 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.⁽²⁾ The government has the burden of proving controverted facts.⁽³⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence⁽⁴⁾, although the government is required to present substantial evidence to meet its burden of proof.⁽⁵⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁶⁾ 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.⁽⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

No one has a right to a security clearance⁽⁹⁾ and "the clearly consistent standard indicates that

security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹¹⁾

CONCLUSIONS

Under Guideline F, a security concern exists when a person has significant unpaid 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 his or her 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.

Applicant allowed numerous accounts, totaling more than \$10,500.00, to become delinquent and remain delinquent for many years. The single account listed in the SOR that has been resolved was only satisfied by the government's seizure of Applicant's excess federal withholding taxes. Disqualifying Conditions (DC) 1: *A history of not meeting financial obligations*: and DC 3: *Inability or unwillingness to satisfy debts* apply.

Applicant's health problems and those of his wife have unquestionably impacted his ability to pay his bills in a timely fashion. However, his documented history of financial irresponsibility dates back to at least his 1981 bankruptcy, continued through the financial distress he found himself in as reported in his 1991 DIS statement, and thereafter continued through at least the date of the hearing, despite his substantial income. Particularly troubling is Applicant's failure to take any action to resolve his delinquent debts despite his acknowledgment of liability for at least some of the indebtedness in his 2004 DSS statement and his indication that he would arrange to satisfy those debts for which he was liable. Accordingly, while Applicant is entitled to application of Mitigating Condition (MC) 3: *The conditions that resulted in the behavior were largely beyond the person's control . . .*, his failure to take any meaningful action to demonstrate he is capable of living a financially responsible lifestyle requires a finding that he has failed to mitigate the financial consideration security concerns that exist. Guideline F is decided against Applicant.

Under Guideline E personal conduct 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.

Applicant failed to disclose the existence of a tax lien filed against him, that he was then more than 90 days delinquent on any debts, or that he had been more than 180 days delinquent on any debt in the preceding seven years in a security clearance application he executed in July 2003. While his explanation for the omission of the tax lien is credible, his explanations for not disclosing the remaining indebtedness are not. DC 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 . . .* applies. No mitigating condition applies. Guideline E is decided against Applicant.

Under 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.

Applicant was arrested for a relatively minor offense in 1996. He deliberately provided false information in a security clearance application he executed in July 2003, subject to the criminal penalties imposed by title 18, United States Code, section 1001. DC 1: *Allegations or admission of criminal conduct, regardless of whether the person was formally charged*; and DC 2: *A single serious crime or multiple lesser offenses* apply.

Applicant is entitled to application of MC 1: *The criminal behavior was not recent* to his 1996 arrest. However, the deliberate falsification of the security clearance application occurred less than three years ago and was compounded by the false explanations he thereafter provided in an attempt to justify the original falsifications. No mitigating condition applies to Applicant's falsification of the security clearance application. Guideline J is decided against Applicant.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has failed to mitigate the security concerns that exist in this case. He has not overcome the case against him or satisfied his ultimate burden of persuasion. It is not clearly consistent with the national interest to grant Applicant a security clearance.

FORMAL FINDINGS

SOR ¶ 1-Guideline F: Against Applicant

Subparagraphs a-l: Against Applicant

SOR ¶ 2-Guideline E: Against Applicant

Subparagraph a: For Applicant

Subparagraphs b-c: Against Applicant

SOR ¶ 3-Guideline J: Against Applicant

Subparagraph a: For 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.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.
9. *Egan*, 484 U.S. at 528, 531.
10. *Id* at 531.

