

KEYWORD: Financial: Personal Conduct, Criminal Conduct

DIGEST: Applicant is 45 years old and has worked for a federal contractor since June 2004. In 2002, Applicant changed jobs, was paid significantly less than he had been making and experienced financial difficulties. During this time he also lived beyond his means. Applicant has been consistently employed since then and has more than \$51,000 in delinquent debt that he has not made any attempt to pay in the past four years. Applicant was embarrassed and intentionally did not list all of his debts on his SF 85. Later on, despite having an opportunity to correct his application, he reaffirmed his falsification. Applicant failed to mitigate the trustworthiness concerns under Guidelines F, financial considerations, Guideline E, personal conduct, and Guideline J, criminal conduct. Applicant's eligibility for assignment to a sensitive position is denied.

CASENO: 05-03939.h1

DATE: 03/03/2006

DATE: March 3, 2006

In re:

SSN: -----

Applicant for ADP I/II/III Position

ADP Case No. 05-03939

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Melvin Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 45 years old and has worked for a federal contractor since June 2004. In 2002, Applicant changed jobs, was paid significantly less than he had been making and experienced financial difficulties. During this time he also lived beyond his means. Applicant has been consistently employed since then and has more than \$51,000 in delinquent debt that he has not made any attempt to pay in the past four years. Applicant was embarrassed and intentionally did not list all of his debts on his SF 85. Later on, despite having an opportunity to correct his application, he reaffirmed his falsification. Applicant failed to mitigate the trustworthiness concerns under Guidelines F, financial considerations, Guideline E, personal conduct, and Guideline J, criminal conduct. Applicant's eligibility for assignment to a sensitive position is denied.

STATEMENT OF THE CASE

On July 15, 2004, Applicant submitted an application for a position of public trust-an ADP I/II/III position. The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Regulation 5200.2-R, *Personnel Security Program*, (Jan. 1987), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive").⁽¹⁾ On September 9, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. 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 October 3, 2005, Applicant responded to the SOR allegations and requested a hearing. In his SOR response, Applicant admitted all of the allegations under Guideline F, and denied allegations under Guidelines E and J. The case was assigned to me on November 29, 2005. A notice of hearing was issued on January 19, 2006, scheduling the hearing for February 8, 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 one exhibit that was marked as Applicant's Exhibit A. The exhibit was admitted without objection. Department Counsel requested I take administrative notice, which I did, for

a document I marked as AJ I, which provides guidance on ADP cases. DOHA received the hearing transcript (Tr.) on arch 1, 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 45 years old and has worked for a federal contractor since June 2004. He recently was promoted to customer service representative. He served in the Air Force for twenty years, retired with the grade of E-7, and receives a military pension. He is married, but has been separated from his wife since 2000. He anticipates his divorce will be final in May 2006. He has no children.

Applicant was gainfully employed up until 2002 when he decided to change jobs. This new job paid approximately half of what he had been previously making. Applicant had several jobs between 2002 and 2004, and during one six-month time period Applicant was severely underemployed. Applicant experienced financial difficulties. He lived beyond his means and accumulated numerous delinquent debts.

On July 15, 2005, Applicant completed and signed a Public Trust Position Application (SF 85). He answered "Yes" to Question 20 (*Your Financial Record-180-Day Delinquencies-Are you now over 180 days delinquent on any loan or financial obligation? Include loans or obligations funded or guaranteed by the Federal Government.*), and listed two credit card debts. He deliberately and intentionally failed to list his other seven delinquent debts.

On September 21, 2005, Applicant was asked to reaffirm his SF 85 and redate it. It is unknown why he was asked to do this or who made the request. Applicant had an opportunity at that time to correct the information he failed to list or to advise the requestor that he had additional debts. He failed to do either. Applicant reaffirmed the information on his SF 85. Applicant's falsifications were violations of 18 U.S.C. § 1001, felonies. ⁽²⁾

Applicant was interviewed by an investigator on November 17, 2004, and provided a sworn affidavit. ⁽³⁾ He stated "My current financial situation is an extreme embarrassment to me, which I have not shared with anyone, excepting my spouse and my mother who is now deceased." ⁽⁴⁾ He went on to say "I did not include information regarding all my delinquent accounts on the security questionnaire which I filled out because I was embarrassed to admit to the number

of the delinquent debts I had accumulated." [\(5\)](#) At the hearing, Applicant stated he did not list the debts because he did not have all the information he needed to list them and the computer would not allow him to put generic information on the form. Applicant did not seek assistance from his security facilities officer, nor did he ask anyone else for assistance. Applicant's testimony was not credible.

Applicant has nine delinquent debts totaling more than \$51,000. He has been aware that these debts were a concern regarding his ADP application since at least November 2004, when he was confronted with the debts by an investigator. Applicant did not voluntarily acknowledge the debts to the investigator, but was provided a credit report and asked for explanations regarding his debts. Since then, Applicant has called one creditor [\(6\)](#) and attempted to negotiate a settlement plan. He could not meet the terms of the settlement offer and has not done anything else. With regards to his other creditors Applicant has made no attempt to research any of his debts, contact any of the creditors, nor has he made any payments toward any of his debts. Applicant received phone calls from the creditors and promised to pay them. After a period of time he would avoid the phone calls, so as not to have to discuss his delinquencies. Applicant provided no explanation for why he has failed to make any effort to pay even the smallest of his debts. He claims he intends to pay the debts in the future, but provided no plan on how he intends to do so. He acknowledges it had been four years since he first began experiencing financial difficulties. Applicant acknowledged all the debts in the SOR, but could not remember what the vast majority of his purchases were for, although he did admit he purchased clothes and took more than one trip.

Applicant recently received a promotion. His supervisor considers him to be dependable, honest, trustworthy, and reliable in the performance of his duties. He has not given his supervisor any reason to suspect his integrity or loyalty to his job, company, or country. [\(7\)](#)

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." [\(8\)](#) The President provided that eligibility for access to classified information shall be granted only to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." [\(9\)](#)

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in DoD 5200.2-R. "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties

[\(10\)](#)

is clearly consistent with the interests of national security." The Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.⁽¹¹⁾ The adjudicative guideline at issue in this case is:

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.

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.

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 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."⁽¹²⁾ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽¹³⁾ 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.⁽¹⁴⁾

DoD contractor personnel are afforded the right to the procedures contained in DoD Directive 5220.6 before any final unfavorable access determination may be made.⁽¹⁵⁾ 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.⁽¹⁶⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁽¹⁷⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽¹⁸⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽¹⁹⁾

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. ⁽²⁰⁾ It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

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) 1 (*A history of not meeting financial obligations*), and FC DC 3 (*Inability or unwillingness to satisfy debts*), apply in this case. Applicant has nine delinquent debts totaling more than \$51,000. He began experiencing financial problems in 2002, was aware of the concerns about his debts in 2004, and only attempted to settle one debt. The attempt failed, and Applicant has not followed through on paying anything on any of his debts. Applicant could not identify what he purchased and admitted to living beyond his means.

I considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC 1 (*The behavior was not recent*), FC MC 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 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 6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). All of Applicant's debts are recent because none of them have been paid. FC MC 1 does not apply. FC MC 3 might have applied because Applicant had a period of underemployment; however, he voluntarily accepted a position that paid half of what he was making and clearly did not cover his expenses. He admits living beyond his means and failed to show any action on his debts in the past four years to resolve these debts. Applicant states he intends to pay his creditors, but has not provided any plan on how he will do it. In addition, he has not sought out any credit counseling, nor did he provide a budget to show how he is cutting his expenses to repay his debtors. The other mitigating conditions do not apply because there is no evidence the problem is under control and being resolved or he is making any good faith effort to repay his creditors.

The deliberate omission of relevant and material facts from a trustworthy determination application is a concern and may be disqualifying. 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. ISCR Case No. 01-06870, 2002 WL 32114535 (App. Bd. Sep. 13, 2002). 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) 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.

I have considered all the mitigating conditions and especially considered Personal Conduct Mitigating Condition (PC MC) 2 (*The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*), PC MC 3 (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*), and PC MC 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 concealed the full extent of his delinquencies on his SF 85. Two months after completing the application, he was asked to reaffirm it, and knowing he did not complete it honestly he did not take this opportunity to correct it, but rather he swore to its accuracy again. He acknowledged to an investigator, after another two months, that he falsified the application because he was embarrassed about how many delinquent debts he had. Yet at his hearing, he claimed he did not have the proper paperwork to answer the question, and the computer would not let him include all of the information required in the SF 85. His conduct was not isolated and he did not make an effort to correct it, despite having an overt opportunity to do so, until he was confronted by an investigator. PC MC 2, PC MC 3, and PC MC 5, do not apply. I find none of the other mitigating conditions apply under Guideline E. Applicant has failed to mitigate the security concerns with regard to his personal conduct.

It is a criminal offense to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation or knowingly make or use a false writing in any matter within the jurisdiction of the executive branch of the Government of the United States. 18 U.S.C. § 1001. Trustworthy determinations are within the jurisdiction of the executive branch of the Government of the United States. ⁽²¹⁾ Applicant provided false information in his SF 85 he completed for the purpose of obtaining a trustworthiness determination. I am convinced he did so deliberately. An applicant may be disqualified if allegations of criminal conduct are raised against him. Criminal Conduct (CC DC) 1 (*any conduct, regardless of whether the person was formally charged*) applies. Applicant was not truthful on his SF 85. He had an opportunity to correct his application two months later and reaffirmed his falsification.

I have considered all the mitigating conditions and especially considered Criminal Conduct Mitigating Condition (CC MC) 1 (*the behavior was not recent*), CC C 2 (*the crime was an isolated incident*), and CC MC 6 (*there is clear evidence of successful rehabilitation*). Applicant's conduct was recent because it related to his current SF 85 application and he did not initiate action to correct it, but rather waited until he was confronted by an investigator. The criminal offense was an isolated incident. Nonetheless, after weighing the disqualifying and mitigating conditions, the finding is against Applicant. I find there is not clear evidence of successful rehabilitation. Applicant failed to mitigate the security concerns under Guideline J.

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthy determination process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. 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 have considered all the evidence and the "whole person" in evaluating Applicant's trustworthiness. An applicant with a good or even exemplary work history may engage in conduct that has negative trustworthy implications. Although Applicant's loyalty to the United States is not in question, I am persuaded by the totality of the evidence that he failed to mitigate the trustworthiness concerns regarding Guidelines F, E, and J, and that it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

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: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: Against the Applicant

Subparagraph 1.g: Against the Applicant

Subparagraph 1.h: Against the Applicant

Subparagraph 1.i: Against the Applicant

Paragraph 2: Guideline E AGAINST THE APPLICANT

Subparagraph 2.a: Against the Applicant

Paragraph 3: Guideline J AGAINST THE APPLICANT

Subparagraph 3.a: Against the Applicant

DECISION

In light of all the evidence presented in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960 as amended.
2. SOR ¶ 2.a. only alleged a violation of 18 U.S.C. § 1001 regarding the SF 85 dated, July 15, 2004. Applicant reaffirmed his answers on his SF 85, swore to it and signed it again on September 21, 2004. I will only consider the second application when considering the whole person and not as a separate disqualifying allegation.
3. GE 2 at 4.
4. *Id.*
5. *Id.*
6. SOR ¶ 1.b.

7. AE A.
8. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
9. Exec. Or. 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995).
10. DoD 5200.2-R, ¶ C6.1.1.1.
11. *Id.* at Appendix 8.
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.* at ¶ C8.2.1.
16. Directive , ¶ E3.1.14.
17. *Id.* at ¶ E3.1.15.
18. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
19. Directive, ¶ E2.2.2.
20. Exec. Or. 10865 § 7.
21. *See Egan*, 484 U.S. at 527.