

KEYWORD: Financial; Personal Conduct; Criminal conduct

DIGEST: Applicant failed to mitigate his history of not meeting his financial obligations. Though he mentioned a divorce in 1998 and reduced employment earnings as reasons for his indebtedness, he provided no specific information on how these events impacted his financial responsibility to pay the bills six years later. He has also failed to explain how his reduced income prevented him from at least contacting the creditors to negotiate some kind of settlement or repayment plan. Clearance is denied.

CASENO: 05-04846.h1

DATE: 06/26/2006

DATE: June 26, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-04846

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate his history of not meeting financial obligations. Though he mentioned a divorce in 1998 and reduced employment earnings as reasons for his indebtedness, he provided no specific information on how these events impacted his financial responsibility to pay his bills six years later. He has also failed to explain how his reduced income prevented him from at least contacting the creditors to negotiate some kind of settlement or repayment plan. In addition, Applicant's inconsistent and contradictory explanations for his "no" answers in the security application (SCA) convince me he deliberately omitted material information on the form. His deliberate dishonesty under the personal conduct guideline also represents criminal conduct under Guideline J. Clearance is denied.

STATEMENT OF CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On October 12, 2005, under Executive Order 10865 and Department of Defense Directive 5200.6, DOHA issued a Statement of Reasons (SOR) detailing the reasons for its security concerns raised under the financial considerations guideline (Guideline F), the personal conduct guideline (Guideline E), and the criminal conduct guideline (Guideline J) of the Directive. In his answer dated November 5, 2005, Applicant requested a decision be made on the record in lieu of a hearing. A copy of the Government's File of Relevant Material (FORM, the Government's evidence in support of the SOR) was sent to Applicant on May 19, 2006. Applicant received the FORM on May 25, 2006. Applicant's response to the FORM dated May 26, 2006, was received by DOHA on June 5, 2006. The case was assigned to me for decision on June 9, 2006.

FINDINGS OF FACT

Applicant admitted seven of the eight financial allegations except for subparagraph 1.b. He admitted both allegations under the personal conduct guideline. Applicant is 58 years old and employed as a security guard by a defense contractor. He seeks a secret clearance.

Financial Considerations. On January 20, 2005, Applicant provided information (sworn statement, Item 5) concerning the debts listed under paragraph 1 of the SOR. Applicant opened a credit card account with the first creditor (1.a.) in 1996; his last payment on the account was in October 1998. ⁽¹⁾ The account was transferred to a collection agency, and, as of August 2005 (a current credit bureau report) Applicant owes \$3,702.00.

Subparagraph 1.b. identifies a delinquent debt of \$90.00 for flowers. Applicant denies he owes the debt and has formally disputed the account (Item 7) as noted in one of the credit bureau reports. Subparagraph 1.b. is found in Applicant's favor.

Applicant obtained the credit card (1.c.) in December 1995 and made his last payment on the card in June 2000. As of August 2005, Applicant owes \$2,447.00 on this joint revolving account.

Applicant recalled receiving the credit card (1.d.) in 1998 and making \$200.00 in payments. With the interest that has been accruing since February 2001, Applicant owes \$1,295.00 on the account.

The debt identified in 1.e. of the SOR represents a past due medical bill (\$75.00). Applicant's insurance company did not pay for services rendered. No additional explanation was provided.

Applicant owes a collection agency \$1,847.00 (1.f.) for an account that was transferred for collection in August 2004. Applicant admitted the account is his, but provided no other details.

Applicant attached a personal financial statement (PFS) to his January 2005-sworn statement. In that PFS (1.g.), Applicant indicated he had a \$70.00 monthly remainder after payment of his bills and expenses. He claims he was using the remainder to help his sister pay for some of his mother's nursing home costs. No additional information was provided. The PFS shows that Applicant was not making any payments on his delinquent debts (1.a. through 1.f.).

Applicant accused his wife of running up the credit card charges after their divorce in October 1998. Applicant also said, "I overextended my budget and became in debt more than I could afford, through my own fault." (Item 5) Applicant also did not know when he would be in position to repay the debt because he does not make much money.

Personal Conduct. Applicant executed a security clearance application (SCA) on July 14, 2004. In response to question 38, asking about debts in the last 7 years more than 180 days delinquent, Applicant answered "no." In response to question 39, asking information about debts more than 90 days delinquent, Applicant also answered "no." Applicant admitted the "no" answers to both questions but stated,

I didn't realize I was 180 days delinquent at the time I put no down on the initial clearance paperwork by mistake. It was not done deliberately, I knew I owed money due to my ex wives charges on credit cards. It was on a mistake on how many days and that is all. (Supplemental answer to SOR, received by DOHA November 5, 2005)

The most important characteristic about the debts is that they are five to six years overdue. Each one of the accounts indicates Applicant has singular or joint liability. Even though his former wife charged up each account at the end of their marriage, he still has full responsibility for each account in his name.

Applicant provided five observations for his current financial status. First, he is a veteran of foreign wars and had never experienced any bankruptcies, garnishments, or repossessions of any kind. Second, his wife is to blame for using all the credit in each of the cards. When his wife used up the credit cards, Applicant had less money available to pay bills for his parents who were in senior citizen homes. Third, Applicant reiterated his intention of repaying his overdue creditors. Fourth, Applicant paid off his bank loan and the florist account. Fifth, Applicant concludes his security clearance should be reinstated so he can work at this job and serve the country.

POLICIES

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

Burden of Proof

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *See Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

Financial Considerations (Guideline F)

Being financially overextended or unable to pay debts on time places an individual at risk of having to engage in illegal acts to generate funds.

Personal Conduct (Guideline E)

Untrustworthiness, dishonesty, or unwillingness to comply with rules could indicate the person may not properly safeguard classified information.

Criminal Conduct (Guideline J)

A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

CONCLUSIONS

Financial Considerations (FC). An individual who is financially overextended (not able to pay their bills as they become due) is at risk of engaging in illegal acts to generate funds. The circumstances of this case raise security concerns under FC disqualifying condition (DC) E2.A6.1.2.1. (*a history of not meeting financial obligations*) as Applicant has collected more than \$9,456.00 in overdue debt to six creditors or collection agencies. The 1.a., 1.b. and 1.c. debts have been delinquent by more than 180 days before the date Applicant executed his SCA in July 2004. Applicant's inability to pay also triggers FC DC E2.A6.1.2.3. (*inability or unwillingness to satisfy creditors*).

Conditions that may mitigate security concerns associated with overdue indebtedness includes FC mitigating condition (MC) E2.A6.1.3.1. (*the behavior was not recent*) and FC MC E2.A6.1.3.2. (*it was an isolated incident*). Neither of these conditions apply as the debt in 1.f.

became delinquent less than two years ago, and, except for the florist debt, Applicant has taken no action to repay the other creditors.

FC MC E2.A6.1.3.3. (*the conditions that resulted in the behavior were largely beyond the person's control*) may mitigate or extenuate when unforeseen events emerge to prevent a person from paying their bills. Applicant's three reasons for having \$9,456.00 in delinquent debt are: (1) his former wife created large credit card debt after their divorce in 1998, (2) Applicant's jobs since his divorce have paid less than \$20,000.00; and, (3) he took on more debt than he could afford.

Applicant's first reason is not probative because he has provided no detail of how his former wife misused his credit cards. The only detail of the delinquent debts comes from the credit bureau reports that show he is responsible for the five creditors. The fact that he has only been able to get employment at lower paying jobs since 1998 is not mitigating. Reaping lower earnings means that Applicant does not have the resources to pay off some of the larger debt but it does not stop him from at least confronting his creditors with his tight budget circumstances, and negotiating his debt through settlement or establishing a repayment plan. In sum, Applicant's divorce in 1998 and unexplained assistance for his mother's nursing home expense, entitles him to very little mitigation under FC MC E2.A6.1.3.3.

FC MC E2.A6.1.3.4. (*the person has received or is receiving counseling for the problem and there are clear indications the problem is being resolved or is under control*) does not apply under the facts of this case as there is no evidence of counseling, and no plan as to how he intends to repay these creditors. Without a plan, there is no credible basis to believe the debts are under control. With neither a plan nor evidence to demonstrate Applicant has repaid or even contacted any of the creditors (except for the creditor in 1.b.), FC MC E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) does not apply. Considering the third reason acknowledging fault for taking on more debt than he could handle, I find against Applicant under subparagraphs 1.a. and 1.c. through 1.f. Subparagraph 1.g. (that has also been found against Applicant) provides additional evidence showing Applicant has made no attempt to repay the creditors, even the medical debt of \$75.00 (1.e.).

Personal Conduct (PC). Applicant admits he answered "no" to both SCA questions, but denied he entered the negative answer deliberately. Rather, he claims he was confused about the number of days that passed between when the debts became delinquent and when he executed his SCA. Having weighed and balanced the date of his divorce (May 1998) with his belief his former wife increased his credit card debt after the divorce, and the date he executed the SCA (July 2004), I have difficulty believing his claim of confusion over the amount of time that passed between 1998 and July 2004. Due primarily to (1) the passage of six years between his divorce and his execution of the SCA, and (2) his age (54) when he executed the SCA, Applicant's claim of confusion is not persuasive, and, I find against him under 2.a. and 2.b.

Criminal Conduct (CC). Applicant's conduct under the PC guideline also represents CC conduct under Guideline J as CC DC E2.A10.1.2.1. (*allegations or admission of criminal conduct, regardless of whether the person was formally charged*). When Applicant deliberately falsified his SCA in July 2004, he also intentionally omitted material information from a government form used by the government to ascertain security suitability. The omitted information was clearly material in that it could have changed the direction of the government investigation. Because the intentional falsification occurred in July 2004, CC MC E2.A10.1.3.1. (*the criminal behavior was not recent*) and CC MC E2.A10.1.3.2. (*the crime was an isolated incident*) are not applicable as the falsification occurred less than two years ago. Although the falsification occurred only once, the recency of the falsification rules out the application of CC MC E2.A10.1.3.2. CC MC E2.A10.1.3.6. (*there is clear evidence of successful rehabilitation*) generally applies when the record shows substantial steps taken by an applicant to improve his financial situation or purge himself of the criminal conduct. Applicant's continuing denial of deliberately omitting material information from his SCA eliminates CC MC E2.A10.1.3.6. from favorable consideration. I find against Applicant under both guidelines. My adverse findings have also included an evaluation of these facts under the whole person concept of the Directive. Though Applicant has said he will pay the past due debt, his failure to take any action for the past six years demonstrates his financial problems will persist in the future.

FORMAL FINDINGS

Paragraph 1(Financial Considerations, Guideline F): AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant.

Subparagraph 1.b. . For 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.

Paragraph 2 (Personal Conduct, Guideline E): AGAINST THE APPLICANT.

Subparagraph 2.a. . For the Applicant.

Subparagraph 2.b. . For the Applicant.

Paragraph 3 (Criminal Conduct, Guideline J): AGAINST THE APPLICANT.

Subparagraph 3.a. Against the 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.

Paul J. Mason

Administrative Judge

1. In the same month, Applicant received a divorce from his supposedly spendthrift wife.