

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 36-year-old employee of a defense contractor. He has delinquent debts and judgments totaling \$39,500.00. He deliberately omitted relevant information on his 2004 security clearance application. Applicant has not mitigated the security concerns arising from his financial difficulties and personal conduct. Clearance is denied.

CASE NO: 05-13621.h1

DATE: 06/27/2006

DATE: June 27, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-13621

DECISION OF ADMINISTRATIVE JUDGE

NOREEN A. LYNCH

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 36-year-old employee of a defense contractor. He has delinquent debts and judgments totaling \$39,500.00. He deliberately omitted relevant information on his 2004 security clearance application. Applicant has not mitigated the security concerns arising from his financial difficulties and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On January 12, 2004, Applicant submitted his security clearance application. On March 17, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant.⁽¹⁾ The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant because of security concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

In a sworn written statement, dated March 29, 2006, Applicant responded to the allegations in the SOR. He elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the government's written case on April 19, 2006. Applicant was provided a complete copy of the file of relevant material (FORM)⁽²⁾, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the government's case. Applicant received the FORM on April 21, 2006. He submitted additional evidence from the Bureau of Employment Services. The case was assigned to me on June 1, 2006.

FINDINGS OF FACT

Applicant admitted the factual allegations pertaining to financial matters under Guideline F (subparagraphs 1.a. through 1.q.) of the SOR, with the exception of 1.c., 1.d., 1.j., 1.l., 1.p.; and 1. q. ⁽³⁾ Those admissions are incorporated as findings of fact. He denied the factual allegations under Guideline E (subparagraphs 2.a. and 2.b.) of the SOR. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is an unmarried 36-year-old employee of a defense contractor. ⁽⁴⁾ He graduated from college in 1996, and has been employed as a mechanical engineer since that time.

In 1998, Applicant lost his engineering position due to downsizing. He did not receive unemployment benefits until a court ruling in December 1999 issued him a lump sum payment of \$7,254.00. ⁽⁵⁾ During the intervening period, he fell behind on his mortgage, automobile payments, and other obligations. He registered with numerous job agencies and pursued employment across the U.S. He regained full-time employment as a mechanical engineer in June 2000. In 2003, however, he was again laid off. As a result, he again was unable to pay his bills. He began his current employment in December 2003. ⁽⁶⁾

In May 2005, he filed for Chapter 7 bankruptcy. The record does not reflect if he has been discharged in bankruptcy or if the petition has been approved. All the debts listed in the SOR are listed on the petition that is not discharged. ⁽⁷⁾

Applicant's 2006 credit bureau report lists debts from 2002 through the present. His outstanding unpaid debts are as follows: ¶1.b, a civil judgment in the amount of \$6,307.00; ¶1.c, a collection account in the amount of \$600.00; ¶1.d, a collection account in the amount of \$492.00; ¶1.e, collection account in the amount of \$158.00; ¶1.f, charged off credit card in the amount of \$2,214.00; ¶1.g, charged off collection account in the amount of \$7,226.00; ¶1.h, charged off credit card account in the amount of \$512.00; ¶1.i, charged off account in the amount of \$112.00; ¶1.j, mortgage 120 days past due in the amount of \$1,892.00; ¶1.k, charged off account in the amount of \$9,242.00; ¶1.l, charged off account in the amount of \$1,811.00; ¶1.m, credit card account in the amount of \$264.00; ¶1.n, credit card account in the amount of \$2,149.00; ¶1.o, charged off account in the amount of \$6,291.00; ¶1.p, collection account in the amount of \$71.00; and ¶1.q, collection account in the amount of \$158.00. ⁽⁸⁾

Applicant's monthly (gross) salary is \$6,186.00. He reports \$3,325.00 in monthly expenses. His personal financial statement shows a monthly net remainder of \$694.00. Applicant provided no evidence of payments or a structured repayment plan for the delinquent debts. He reports he is current on his car loan and student loans. Applicant claimed he did not know about some of the creditors. He reported the delinquent accounts were due to his unemployment, but he has not paid even the smallest debt listed on his recent credit report. ⁽⁹⁾

When completing his January 12, 2004 security clearance application, Applicant responded "no" to the following:

Question 38. **Your Financial Delinquencies - 180 days**

In the last 7 years, have you ever been over 180 days delinquent on any debt(s)?

Applicant did not list any of his debts. After receiving the SOR in 2006, Applicant denied several of the debts, but admitted to the majority of them. For the debts he denied, he provided several reasons for not owing the debts, but he has not provided any reason for failing to answer "yes" to Question 38. [\(10\)](#)

Question 21: **"Your Police Record - Felony Offenses**

Have you ever been charged with or convicted of any felony offense. (Include those under the Uniform Code of Military Justice.) For this item, report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607."

Applicant stated he was convicted of *misdemeanor* assault. In fact, Applicant was arrested on August 13, 1991, and charged with felonious assault and criminal damage. On August 29, 1991, the court nolle prossed the felonious assault charge, but sentenced him on two misdemeanor charges. [\(11\)](#)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (disqualifying conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (mitigating conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section

E.2.2, Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision.

The Adjudicative Process factors to consider are: (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. Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interest of national security.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines pertinent to an evaluation of the facts of this case:

Guideline F - Financial Consideration: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Guideline E - Personal Conduct: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

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.⁽¹²⁾ If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation, or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate that it is clearly consistent with the national interest to grant or continue the applicant's clearance.⁽¹³⁾

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that 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. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of national security. [\(14\)](#)

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be, "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to each allegation set forth in the SOR.

Financial Considerations

The government has established its case under Guideline F. Applicant accumulated debt over a period of several years totaling more than \$35,000.00. He has a history of not meeting his financial obligations, leading to numerous judgments and delinquent debts. I conclude the available evidence is sufficient to raise Financial Considerations Disqualifying Condition (FC DC) E2.A.6.1.2.1 (*a history of not meeting financial obligations*), and FC DC E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*).

The security concerns arising from Applicant's financial difficulties can be mitigated. However, the delinquent debts remain unpaid over a period of years and are recent. Thus, Financial Considerations Mitigating Condition (FC MC) E2.A6.1.3.1 (*the behavior is not recent*) and FC MC E2.A6.1.3.2 (*it was an isolated incident*) do not apply in this case.

Applicant was unemployed for several periods of time which caused his delinquent and unpaid debts. 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 turndown, unexpected medical emergency, or a death, divorce, or separation)*) applies.

Applicant did not receive financial counseling or establish a debt repayment program. 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*) does not apply.

Finally, Applicant did not resolve his bankruptcy. The debts are not discharged under his petition. He has not met his burden of proof to show any good-faith efforts to repay overdue creditors. 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.

Personal Conduct

Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

The government has established its case under Guideline E. Applicant failed to inform the government about his overdue debts, in response to question 38 on the security clearance application he submitted in January 2004. Applicant acknowledges most of his debts in his answer to the SOR, but did not list them on any of them on the application, Even if he believed they were all covered under the bankruptcy petition, that was not discharged. Also, even if he disputes some of them, the current credit report that Applicant himself attached to his interrogatories show the various debts and past due items. Considering all the evidence, I conclude Applicant deliberately provided a false response to question 38.

Applicant denied that he falsified his response to question 21 concerning any felony charges or convictions. In his answer to the SOR, Applicant stressed he believed he had a conviction for a *misdemeanor assault*. The question asks for *charges and convictions*. He recalled the conviction as a misdemeanor, but he knew he was initially charged with a felonious assault. Considering all the evidence, I find Applicant intended to deceive the government when he denied felonious charges or convictions in response to question 21. This gives rise to Personal Conduct Disqualifying Condition E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire*).

It is possible to mitigate the security concerns arising from personal conduct. I considered carefully all the potentially mitigating conditions and find that none apply. Considering all the circumstances in light of the "whole person" concept,

Applicant failed to mitigate the security concerns arising from his falsification of his security clearance application.

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: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m: Against Applicant

Subparagraph 1.n: Against Applicant

Subparagraph 1.o: Against Applicant

Subparagraph 1.p: Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against 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.

Noreen A. Lynch

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. The government submitted nine items in support of its contentions.
3. Item 3 (Applicant's Answer, dated March 29, 2006) at 1.
4. Item 4 (Applicant's Security Clearance Application (SF 86), dated January 12, 2004) at 1-7.
5. Applicant Exhibit Notice of Determination of Benefits, dated December 7, 1999.
6. Applicant Response to FORM, dated May 9, 2006 and attachments.
7. Item 6 (Chapter 7 Bankruptcy Petition, United States Bankruptcy Court, Western District of Virginia) signed on April 26., 2005 at 1-32.

8. Item 7 (Credit report, dated January 12, 2006) at 1-4; and Item 8 (Credit report, dated June 22, 2004) at 1-9.
9. Item 5 (Applicant's Answer to DOHA Interrogatories, dated January 6, 2006) at 1-38.
10. *Id.*
11. Item 9 (Criminal Records Check, Federal Bureau of Investigation, dated June 23, 2004) at 1-2.
12. Directive, ¶ E3.1.14.
13. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
14. Directive, Enclosure 2, ¶ E2.2.2