



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
SSN:)	ISCR Case No. 09-06441
)	
Applicant for Security Clearance)	

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: *Pro se*

March 30, 2010

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 6 November 2009 the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines J, Criminal Conduct, E, Personal Conduct, and F, Financial Considerations.¹ Applicant answered the SOR 24 November 2009, and requested a decision without hearing. DOHA assigned the case to me 19 March 2010. The record in this case closed 8 March 2010, the day Department Counsel indicated no objection to Applicant's response to the FORM.²

¹DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) effective within the DoD on 1 September 2006.

²The response to the FORM was identical to the supplemental materials Applicant provide with his Answer.

Findings of Fact

Applicant admitted the SOR allegations, except for SOR 3.b. and 3.i. He is a 36-year-old range maintenance technician employed by a defense contractor since March 2009. He has not previously held a security clearance.

In July 2007, Applicant was charged with larceny, forgery, and false official statement under the Uniform Code of Military Justice, and referred to trial by general court-martial [Item 5]. In August 2007, Applicant, with the advice of counsel, requested to be discharged in lieu of court-martial. His request acknowledged in some detail his criminal culpability [Item 8]. In separate correspondence, he provided character references and asked for a General Discharge (Under Honorable Conditions). In September 2007, his request was approved and he was discharged.

The Defense Finance and Accounting Service (DFAS) has placed Applicant's account for collection of \$31,000 in improper payments [Item 10]. Applicant's answer and response to the FORM reflect that Applicant repaid DFAS about \$6,800 for four vouchers totaling nearly \$12,000 in late February/early March 2007. He has claimed in various documents that this constitutes full repayment of amounts improperly paid to him. He also claims, without corroboration, that he voluntarily reported the improper payments to DFAS.

In March 2009, Applicant completed a clearance application in which he misrepresented the circumstances of his separation from the military.³ As a past employment, Applicant did not report his discharge as an adverse employment action [13 (c)]. Although he disclosed the fact of his referral to court-martial, he disclosed only one of the three charges against him and claimed he was referred to a special court-martial, a lesser forum [§ 15]. He claimed to have only taken a discharge because he felt the military was treating him unfairly concerning the charges [§ 22]. He certified that his statements were "true, complete, and correct to the best of my knowledge and belief and are made in good faith." [Item 4] During an interview with a government investigator in May 2009, Applicant insisted that, contrary to express statements in his request for discharge, he had violated no regulation and had committed no crime.

The SOR alleged, and government exhibits confirmed, 11 delinquent debts totaling nearly \$49,000. Applicant admitted nine debts totaling over \$36,000. The bulk of the debt, \$31,000, is to DFAS, although Applicant questions the amount owed. Applicant denies a utility debt (1.b) claiming it belongs to his father,⁴ and claims that a

³These misrepresentations were not alleged in the SOR, but provide essential context for assessing the alleged false statements made to the government investigator in May 2009.

⁴Although Applicant reported it on his clearance application as his past due debt.

joint debt for a repossessed car (1.I) was assigned to his ex-wife in their divorce decree.⁵ He has not been in contact with any of his creditors.

Applicant divorced his wife in May 2006, and is currently engaged. He offered no explanation for his indebtedness, and appears to have been continuously employed since May 2000.

Applicant provided no work or character references. He does not have a budget and has not received financial counseling.

Policies

The revised Adjudicative Guidelines (AG) list factors to be considered in evaluating an Applicant's suitability for access to classified information. Administrative judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial commonsense consideration of the factors listed in AG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline J (Criminal Conduct), Guideline E (Personal Conduct), and Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁶

⁵Applicant provided no divorce records to substantiate this claim.

⁶See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

Analysis

The government established a case for disqualification under Guideline J, and Applicant did not mitigate the criminal conduct security concerns. Applicant stole from the government, using forged documentation to request voucher repayment.⁷ He breached his fiduciary duty to the government. He appears to have made only partial restitution of the amounts he stole, and demonstrates no remorse—insisting despite his written statements to the contrary—that he did nothing wrong.⁸ I resolve Guideline J against Applicant.

The government established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns. His statements to the government investigator misrepresented the full circumstances attendant to his discharge from the military in September 2007.⁹ Applicant's misrepresentations on his clearance application lead me to conclude that his misrepresentations during the interview were deliberate, and designed to influence the direction of the investigation.

None of the Guideline E mitigating conditions apply. The concealed information was relevant to a clearance decision. Applicant did not give a full account of the circumstances of his discharge.

Applicant's concealment of relevant and material information demonstrates a lack of candor required of cleared personnel. The government has an interest in examining all relevant and material adverse information about an applicant before making a clearance decision. The government relies on applicants to truthfully disclose that adverse information in a timely fashion, not when it is perceived to be prudent or convenient. Further, an applicant's willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the government relies on to perform damage assessments and limit the compromise of classified information. Applicant's conduct suggests he is willing to put his personal needs ahead of legitimate government interests. I resolve Guideline E against Applicant.

The government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant has significant delinquent

⁷¶31(a) a single serious crime or multiple lesser offenses; (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;

⁸¶32(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or judgment; (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, . . . good employment record . . .

⁹¶16(a) 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, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

debt dating back several years, for which he has no ameliorating explanation.¹⁰ The major debt is directly attributable to his criminal actions. It may be inferred that he submitted fraudulent travel claims because he needed the money.

Applicant satisfies none of the mitigating factors for financial concerns. His financial difficulties are both recent and multiple.¹¹ The debts do not appear to be due to circumstances beyond his control, and he has not acted responsibly in addressing his debts.¹² He has not sought credit counseling, made a budget, or devised a plan to address his debts, so I cannot conclude he has brought the problem under control.¹³ He has made no efforts to contact or repay his creditors, so there has been no good-faith effort to satisfy his debts.¹⁴ I conclude Guideline F against Applicant.

Beyond the specific guidelines alleged by the government, the generally applicable disqualifying and mitigating conditions lead to the same result. Theft, breach of fiduciary duty, and falsifications are core security concerns [AG ¶2(a)(1)]. His behavior was deliberate and not due to circumstances beyond his control [AG ¶2(a)(2); AG ¶2(a)(5)]. His misconduct was both recent and frequent [AG ¶2(a)(3)]. Applicant was not a neophyte when he made his falsifications [AG ¶2(a)(4.)]. Rehabilitation and other behavioral changes are difficult to measure under these circumstances, as he produced no evidence to corroborate his claims [AG ¶ 2(a)(6)]. He clearly sought to mislead the government about his discharge [AG ¶2(a)(7)].

Applicant's willingness to put his personal needs ahead of legitimate government interests increases his potential vulnerability and he has not demonstrated that the misconduct is unlikely to recur [AG ¶ 2(a)(8); AG ¶ 2(a)(9)]. The concern is whether Applicant would disclose situations or circumstances, whether deliberate or inadvertent, that raise security concerns. Overall, the record evidence leaves substantial doubt about Applicant's eligibility and suitability for a security clearance. Accordingly, I conclude Applicant has not mitigated the security concerns arising from his criminal conduct, falsification, and financial problems.

¹⁰¶ 19(a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations.

¹¹¶ 20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur .

¹²¶ 20(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances.

¹³¶ 20(c) 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.

¹⁴¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Formal Findings

Paragraph 1. Guideline J:	AGAINST APPLICANT
Subparagraph a:	Against Applicant
Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraph a:	Against Applicant
Paragraph 3. Guideline F:	AGAINST APPLICANT
Subparagraph a-j	Against Applicant

Conclusion

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 denied.

JOHN GRATTAN METZ, JR
Administrative Judge