



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



In the matter of:)
)
) ISCR Case No. 09-08207
)
Applicant for Security Clearance)

Appearances

For Government: Marc G. Laverdiere, Esquire, Department Counsel
For Applicant: *Pro se*

April 29, 2011

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ Applicant's clearance is denied.

On 17 August 2010, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guidelines E, Personal Conduct and F, Financial Considerations.² Applicant timely answered the SOR, requesting a hearing. DOHA assigned the case to me 21 October 2010, and I held a hearing 18 November 2010. DOHA received the transcript 24 November 2010.

Findings of Fact

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-10, and Applicant exhibit (AE) A (submitted post-hearing).

²DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG) effective within the DoD on 1 September 2006.

Applicant admitted being disciplined and then fired from his job with the state police, but denied falsifying his clearance application and failing to disclose his firing to a government investigator. He admitted the financial allegations of paragraph 2, except for SOR 1.c and 1.j. He is a 36-year-old security supervisor employed by a defense contractor since December 2008. He has also worked part-time for another defense contractor since December 2008. He was married in August 2001 and divorced in October 2007. He has two children, one from this marriage and one from another relationship, for whom he pays child support. He has not previously held an industrial clearance.

Applicant worked as a state trooper from June 1999 to October 2008. In June 2008, he was charged with three instances of misconduct relating to his police work in October 2007 (GE 6).³ Applicant's disciplinary hearing was in October 2008. According to Applicant (Tr. 43-46), both before and after his hearing, the state representative proposed that Applicant be allowed to resign because he had no prior record of misconduct. Applicant claims, without corroboration, that he elected to resign. However, he did not keep a copy of the resignation letter (Tr. 44), and cannot get one from his attorney because he later filed a bar complaint against him over the quality of his representation (Tr. 49). Applicant claims to have not considered his resignation as a resignation in lieu of firing.

Applicant's assertions are directly contradicted by the documentary evidence. Applicant was fired from his job after the hearing (GE 5), and was notified of the effective date of his termination later in October 2008 (GE 4). Incredibly, Applicant claimed to have not received the termination letter (Tr. 29, 47) even though it was sent to the same address where he currently resides.

When Applicant applied for a security clearance in April 2009 (G.E. 1), he answered "no" to a series of questions [13C. (employment record)] designed to elicit any adverse employment history in the last seven years. He failed to disclose that he had been fired from his job with the state police in October 2008. During a subject interview with a government investigator in October 2009, he again failed to disclose this information.

Applicant claims, without corroboration, to have initially completed a clearance application before he was fired from his job in October 2008, but had to redo it because of procedural issues that kept him from submitting the application then (Tr. 28-29). However, disciplinary action from the state police had been pending since June 2008 (GE 6). When he resubmitted the clearance application in April 2009, he claimed, again without corroboration, to have told his employer that he had changes to make on his

³The details of the conduct are irrelevant to this proceeding because the state termination action is final. From all appearances, the case was fully litigated at the disciplinary hearing and Applicant did not appeal the termination.

electronic application but was told by his employer to use the information he had already entered into his application.

The SOR alleges, and government exhibits confirm, ten delinquent debts totaling nearly \$35,000. Applicant denies two debts totaling \$390, but admits the rest. He was unemployed for about two months after being fired from the state police, where he had been making \$80,000 per year including overtime. The job he got in December 2008 paid \$38,000 per year with no overtime because he was a supervisor.

Applicant claims, without corroboration, to be working with an attorney to help resolve his debts. The attorney recommended a chapter 7 bankruptcy, but because Applicant was expecting a settlement for work-related injuries (Tr 33; AE A) he planned to file a chapter 13 re-payment plan and use the settlement money to make the payments. However, no plan has been filed to date.

Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guidelines are 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 substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to 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 judgement, 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.⁴

⁴See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

Analysis

The Government established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns. Given his recent termination from employment as a state trooper, I conclude he deliberately concealed that information from the Government.⁵ He knew that he had been the subject of adverse action from the state police, yet there is no indication anywhere on his clearance application that this was the case. Even accepting his claim that he thought he had resigned voluntarily, this still constituted leaving a job for other reasons under unfavorable circumstances, information he was required to disclose.

None of the Guideline E mitigating conditions apply. The concealed information was relevant to a clearance decision. Applicant did not disclose his being fired even at his subject interview.⁶ Applicant's failure to disclose his firing shows 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 adverse information in a timely fashion, not when they perceive disclosure 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 also established a case for disqualification under Guideline F, which he failed to mitigate. Applicant has a history of financial difficulties dating to his firing, brief unemployment, and subsequent underemployment.⁷ However, these consequences were the direct result of his being fired for misconduct in October 2008.

The mitigating factors for financial considerations provide Applicant little relief. His financial difficulties are both recent and multiple.⁸ The debts were not due to circumstances beyond his control; he was fired from his well-paying state police job and had to take lower paying jobs. He certainly did not act responsibly during the course of his financial problems, having taken no action until recently to address his debts. His

⁵¶ 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. . . ;

⁶¶ 17(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

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

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

recent consideration of his bankruptcy options does not, under the situation presented so far, constitute responsible handling of his debts.⁹ Further, there is no evidence that he has sought credit counseling or otherwise brought the problem under control, although should he proceed with a bankruptcy petition, counseling will be required.¹⁰ He has made no payments, timely or otherwise, and thus no good-faith effort to satisfy his debts.¹¹ I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline E: AGAINST APPLICANT

Subparagraphs a-e: Against Applicant

Paragraph 2. Guideline F: AGAINST APPLICANT

Subparagraphs a-j: Against Applicant

Conclusion

Under 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

⁹¶ 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;

¹⁰¶ 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;

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