

KEYWORD: Financial; Personal Conduct

DIGEST: Between 1994 and 2001, Applicant accrued three delinquent debts in the approximate amount of \$13,500. He did not list them, as required, on a 2005 security clearance application. During the past year, he satisfied one in its entirety, and has made a good-faith effort to satisfy the others. His security clearance omissions were the result of a clerical error instead of an intent to conceal any financial information. Applicant has mitigated the financial considerations and personal conduct security concerns. Clearance is granted.

CASENO: 06-25734.h1

DATE: 10/03/2007

DATE: October 3, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-25734
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
MARC E. CURRY**

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

_____ Between 1994 and 2001, Applicant accrued three delinquent debts in the approximate amount of \$13,500. He did not list them, as required, on a 2005 security clearance application. During the past year, he satisfied one in its entirety, and has made a good-faith effort to satisfy the others. His security clearance omissions were the result of a clerical error instead of an intent to conceal any financial information. Applicant has mitigated the financial considerations and personal conduct security concerns. Clearance is granted.

STATEMENT OF THE CASE

On June 7, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) explaining why it was not clearly consistent with the national interest to grant or continue a security clearance. 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. He answered the SOR on July 22, 2007, and requested a hearing.

The case was assigned to me on July 23, 2007. On August 14, 2007, DOHA issued a notice of hearing scheduling it for September 13, 2007. During the hearing, I received four government exhibits, 15 Applicant exhibits, and Applicant's testimony. DOHA received the transcript on September 24, 2007.

FINDINGS OF FACT

_____ Applicant admitted all of the allegations in SOR except subparagraph 1.b, and they are incorporated into the findings of fact. In addition, I make the following findings of fact.

Applicant is a 56-year-old man with two adult children. He has been divorced since 1994. He is a U.S. Air Force veteran, serving from 1971 until retirement in 1997. Since then, he has worked for a defense contractor as an aircraft electrician. He earned two years of college credits in the early 1970s.

Applicant is highly respected on the job and in his community. According to his supervisor, he is a man of high integrity (Exhibit F). A former Air Force colleague characterized him as "one of the most honest people [she] has ever met(Exhibit E).

As of January 2007, Applicant owed three creditors approximately \$13,500 in delinquent debt (Answer). Approximately \$2,500 is owed on a department store credit card he used to purchase a washing machine and dryer (subparagraph 1.a). The other two debts, as listed in subparagraphs 2.b and 2.c, constitute miscellaneous credit card charges.

Applicant did not have any financial problems until after his divorce in 1994. He then had difficulty balancing his credit card payments with his child support obligations (Tr. 25). By approximately 2001, his accounts had grown delinquent. He initially attempted to resolve them at that time, but stopped after growing frustrated with the collection agents (Tr. 27).

In January 2007, Applicant resumed negotiating with creditors to satisfy the delinquencies. He satisfied subparagraph 1.b (Letter from Collection Agency to Applicant, dated February 9, 2007,

as included in Answer at 4). Also, he successfully negotiated a reduced amount for subparagraph 1.a (Letter from Collection Agent to Applicant, dated January 30, 2007, as included in Answer at 2), and he agreed to satisfy subparagraph 1.c with \$50 monthly payments (Letter from Creditor to Applicant, dated January 31, 2007, as listed in Answer at 5). He has been making scheduled payments since February 2007 (Exhibits L through O).

Applicant has approximately \$134,000 invested in a 401K savings account. As of the date of the hearing, he had an outstanding loan balance of \$143 against it. Once he satisfies the balance, he is going to borrow \$10,000 from his 401K account, and use it to satisfy 1.a and 1.c in their entirety (Tr. 47).

Applicant does not own any credit cards. He makes \$90,000, and has approximately \$400 remaining each month after expenses (Tr. 47).

Applicant completed a security clearance application (SF 86) in 2005. He did not list any of his delinquencies in response to Question 38 (*Your Financial Delinquencies -180 days In the last 7 years, have you been over 180 days delinquent on any debt(s)?*), and Question 39 (*Your Financial Delinquencies - 90 days Are you currently over 90 days delinquent on any debt(s)?*). Before completing the SF 86, he completed a handwritten rough draft which he gave a secretary to input into a computer (Exhibit K). He disclosed four delinquencies including one listed in the SOR. The secretary inputted the information from the rough draft into the computer, but overlooked financial information (Tr. 48). When she returned it to Applicant, he signed it without proofreading it (*Id.*).

POLICIES

The adjudicative guidelines, as revised December 29, 2005, and implemented September 1, 2006, apply to the analysis of this case. In addition to brief introductory explanations for each guideline, they 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).

Because the entire process is a 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. Specifically these are: (1) the nature 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 age of the applicant; (5) the extent to which the participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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.

The following adjudicative guidelines are raised:

Guideline F - Financial Considerations: Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can

raise questions about an individual's reliability, trustworthiness and ability to protect classified information.

Guideline E -Personal Conduct: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Conditions pertaining to these adjudicative guidelines that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, are set forth and discussed in the conclusions below.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is "clearly consistent with the national interest."¹ In reaching this decision, I have drawn only those conclusions that are based on the evidence contained in the record.

The Government is responsible for presenting evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the Government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

CONCLUSIONS

Financial Considerations

Applicant's history of financial problems triggers the application of Financial Considerations Disqualifying Condition (FC DC) 19(a): *inability or unwillingness to satisfy debts*, and FC DC 19(c): *a history of not meeting financial obligations*. Applicant's began struggling financially after a 1994 divorce. His debts began growing delinquent approximately six years later. He did not take concrete steps to resolve them until 2006. Financial Considerations Mitigating Condition (FC MC) 20(b): *the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation), and the individual acted responsibly under the circumstances*, does not apply.

Nevertheless, Applicant satisfied one of the debts in its entirety, has been making payments on another for eight months, and is in the process of borrowing enough money from his 401k plan to satisfy the remaining debts in their entirety. He no longer uses credit cards, and has \$400 of remaining monthly income after expenses have been paid. FC MC 20 (c): *the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control*, and FC MC 20 (d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*, apply.

¹See generally, Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

Any negative inference generated by the length of time that elapsed before Applicant began to satisfy them is greatly outweighed by the applicable mitigating conditions. Applicant began getting his finances under control approximately six months before the issuance of the SOR. Moreover, he testified persuasively about the frustration with the collection agencies that stalled his efforts at resolving the delinquencies six years ago. He has mitigated the financial considerations security concern.

Personal Conduct

Applicant's omission of the delinquencies from his SF 86 raises the issue of whether Personal Conduct Disqualifying Condition (FC DC) 16 (a): *deliberate omission, concealment, or falsification of relevant 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. Applicant listed financial delinquencies on an SF 86 rough draft that were omitted from the final draft because of a clerical oversight. His failure to proofread before signing the SF 86 that the secretary typed was an honest mistake. FC DC 16 (a) does not apply.

Whole Person Concept

Applicant's financial problems began after a 1994 divorce. He ignored them for approximately six years. However, within the past eight months, he has renewed efforts at debt satisfaction. One is satisfied, another is being paid through a plan, and a third will be satisfied as soon as a 401k loan is executed. Evaluating Applicant's current financial status, his recent track record, and his strong character, I am confident he will eliminate the remaining debt as promised. The potential for coercion and the likelihood of continuation or recurrence are minimal. Clearance is granted.

FORMAL FINDINGS

Paragraph 1 – Guideline F:	FOR APPLICANT
Subparagraphs 1.a -1.c:	For Applicant
Paragraph 2 Guideline E:	FOR APPLICANT
Subparagraphs 1.a -1.b	For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Marc E. Curry
Administrative Judge