

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has approximately \$16,000 in delinquent debt. He has taken no action to resolve these delinquent accounts. His failure to disclose a judgment on a questionnaire for a national security position was not deliberate. He has not mitigated the security concerns raised under financial considerations. Clearance is denied.

CASENO: 06-23710.h1

DATE: 07/30/2007

DATE: July 30, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-23710
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
ERIN C. HOGAN**

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has approximately \$16,000 in delinquent debt. He has taken no action to resolve these delinquent accounts. His failure to disclose a judgment on a questionnaire for a national security position was not deliberate. He has not mitigated the security concerns raised under financial considerations. Clearance is denied.

STATEMENT OF CASE

On February 23, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.¹ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006.

In a sworn statements, dated March 13, 2007 and April 25, 2007, Applicant responded to the SOR allegations and elected to have his case decided on the written record, in lieu of a hearing. Department Counsel submitted the government's file of relevant material (FORM) on May 10, 2007. The FORM was mailed to Applicant on May 15, 2007, and received on May 22, 2007. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond. The case was assigned to me on July 19, 2007.

FINDINGS OF FACT

In his SOR response, Applicant admits SOR ¶¶ 1.a, 1.f, and 1.g and denies SOR ¶¶ 1.b, 1.c, 1.d, and 1.e. He does not admit or deny SOR ¶ 2.a, but claims he did not know about the judgment that he was alleged to have deliberately omitted on his security clearance application. I treat this statement as a denial. Applicant's admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 44-year-old man employed with a Department of Defense contractor who is applying for a security clearance. He is married.² He has children but the number is unknown because he did not list any children on his security clearance application. He admits that his wages are being garnished for child support.³

¹This 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 Item 4.

³ Item 3; Item 4, section 27.

On December 21, 2005, Applicant completed an electronic questionnaire for investigative processing (e-QIP).⁴ In response to Section 27(d) Your Financial Record, "In the last 7 years, have you had any judgments against you that have not been paid?", he answered, "No." He did not disclose that he had a judgment filed against him by a mortgage company in the amount of \$2,782 (SOR ¶ 1.a).⁵ In his response to the SOR, Applicant claims that his wife was the primary applicant on the account. He was the co-applicant. He did not know that he had a judgment filed against him when he filled out his e-QIP application.⁶

A credit report, dated January 25, 2007, was obtained during Applicant's background investigation. The credit report listed six delinquent accounts consisting of the \$2,782 judgment on behalf of a mortgage company obtained in March 2003 (SOR ¶ 1.a); a \$167 unpaid medical account placed for collection in May 2003, creditor unknown (SOR ¶ 1.b); an \$86 unpaid medical account placed for collection in May 2004, creditor unknown (SOR ¶ 1.c); a \$221 unpaid medical account placed for collection in April 2006, creditor unknown (SOR ¶ 1.d); an \$849 collection account for a cell phone (SOR ¶ 1.e); and a \$12,339 charged off account related to a vehicle repossession in approximately August 2003 (SOR ¶ 1.f).⁷

Applicant's wages are being garnished \$750 per month for child support.⁸ SOR ¶ 1.g alleges that Applicant has an \$1,800 child support arrearage. There is nothing in the record evidence to support this assertion. Applicant disclosed that his wages were being garnished on his e-QIP form and indicates in his response to the SOR that the garnishment continues.⁹ I find for Applicant with respect to SOR ¶ 1.g.

Applicant admits the debts alleged in SOR ¶ 1.a. and 1.f. He states that these accounts became delinquent when his wife was unemployed and they had trouble making payments on his income alone. No payments have been made towards either account.¹⁰

Applicant denies the three medical debts alleged in SOR ¶¶ 1.b, 1.c, and 1.d. He does not recognize the accounts. There is nothing in the file which indicates the identity of the creditors for these medical accounts. I find for the Applicant regarding these three accounts since the allegation is not pled with sufficient specificity to allow Applicant the opportunity to respond to the allegations.

⁴ Item 4.

⁵ Item 5 at 1.

⁶ Item 3 at 2.

⁷ Item 5.

⁸ Item 3; Item 4, Section 27.

⁹ *Id.*

¹⁰ Item 3.

Applicant denies the delinquent cell phone account turned over for collection alleged in SOR ¶ 1.e. He claims that he does not recognize the account.¹¹ He does not indicate that he made any attempt to dispute his credit report or to contact the creditor in order to determine whether it is his account.

Applicant intends to make arrangements to set up payment plans for the debts that he admits that he owes (SOR ¶¶ 1.a and 1.e).¹² At the close of the record, he provided no evidence that he took steps to do so.

POLICIES

The President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.”¹³ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. The revised Adjudicative Guidelines, approved by the President on December 29, 2005 and implemented by the Department of Defense, effective September 1, 2006, sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.¹⁴

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.¹⁵

¹¹ Item 3.

¹² *Id.*

¹³ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

¹⁴ Revised AG, dated August 2006, ¶ 18.

¹⁵ Revised AG, dated August 2006, ¶ 15.

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

“The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk.”¹⁶ An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person. An administrative judge should consider the following factors: (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 extent to which 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.¹⁷

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.¹⁸ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts admitted by the applicant or proven by Department Counsel. The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision.¹⁹ “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”²⁰

A person granted access to classified information enters into a special relationship with the government. 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. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. I make the following conclusions.

Guideline F - Financial Considerations

¹⁶ Revised AG, dated August 2006, ¶ 2(a).

¹⁷ *Id.*

¹⁸ Directive ¶ E3.1.14.

¹⁹ Directive ¶ E3.1.15.

²⁰ Revised AG, dated August 2006, ¶ 2(b).

Applicant's poor financial history raises a security concern. He encountered financial problems over the past several years, accumulating six delinquent accounts, totaling approximately \$16,444. 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*) apply to Applicant's case. Even though I find for the Applicant regarding three of the delinquent accounts due to the vagueness of the pleading, three delinquent accounts remain with an approximate total balance of \$15,970.

The financial considerations concern can be mitigated. I find that no mitigating conditions apply. Applicant has provided no proof of any attempts to resolve his delinquent accounts. A promise to pay in the future is not sufficient mitigation under the financial considerations concern. Financial Considerations Mitigating Condition ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances*) potentially could be applied. Applicant mentioned that his wife was unemployed for awhile and they had difficulty paying bills on his income alone. He did not indicate how long his wife was unemployed and provided no evidence of his household's current financial situation. I cannot conclude that Applicant has acted responsibly under the circumstances because he has not taken steps to resolve his delinquent accounts.

Guideline F is decided against Applicant.

Guideline E - Personal Conduct

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance or in other official matters is a security concern. It is deliberate if it is done knowingly and willfully.

Applicant is alleged to have falsified his e-QIP application, dated December 21, 2005, because he did not list the judgment alleged in SOR ¶ 1.a in response to section 27(d). Applicant claims he did not list the judgment because he was unaware of the judgment at the time he completed the questionnaire. I find Applicant had no intent to mislead the government pertaining to this judgment. I find his statement that he was unaware of the judgment to be credible.

I considered all the evidence provided and also considered the “whole person” concept in evaluating Applicant’s risk and vulnerability in protecting our national interests. I find Applicant has failed to mitigate the security concerns raised by the financial considerations concern. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance.

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:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Paragraph 2. Guideline E:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

DECISION

In light of all of the evidence presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

Erin C. Hogan
Administrative Judge