

KEYWORD: Personal Conduct; Financial

DIGEST: Applicant had five delinquent debts that have now been paid off or are being resolved. On his security clearance application (SF 86), Applicant answered "No" to two financial-related questions and omitted any mention of the five alleged debts. As to three of the five debts, the record does not establish that the debts were delinquent at the time Applicant completed the SF 86. As to the other two debts, Applicant's explanations are supported by his overall conduct to the degree that mitigation has been adequately established. Clearance is granted.

CASENO: 05-03472.h2

DATE: 04/05/2007

DATE: April 5, 2007

In Re:)	
)	
-----)	
SSN: -----)	ISCR Case No. 05-03472
)	
Applicant for Security Clearance)	
)	

**DECISION ON REMAND OF ADMINISTRATIVE JUDGE
BARRY M. SAX**

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire, Department Counsel

FOR APPLICANT

Elizabeth L. Newman, Esquire
Kalijarvi, Chuzi, & Newman

SYNOPSIS

Applicant had five delinquent debts that have now been paid off or are being resolved. On his security clearance application (SF 86), Applicant answered “No” to two debt-related questions and did not mention of the debts. As to three debts, the record does not establish they were delinquent when he signed the SF 86. As to two other debts, Applicant’s explanations are supported by sufficient evidence so that mitigation has been adequately established. Clearance is granted.

STATEMENT OF THE CASE

On July 29, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On August 22, 2005, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The matter was assigned to me on October 21, 2005. On February 10, 2006, a Notice of Hearing was issued, setting the hearing for March 7, 2006. At the hearing, the Government introduced five (5) exhibits, which were marked as Government’s Exhibits (GX) 1-5. Applicant testified and introduced seven (7) exhibits, which were marked as Applicants Exhibits (AX) A-G. A timely post hearing submission was also received (AX H). The transcript was received on March 15, 2006.

On March 12, 2007, the Appeal Board issued a Decision remanding the case to this Administrative Judge, with instructions to issue a new decision taking into account the Appeal Board’s findings and directions. As the Appeal Board stated, at page 2: “Department Counsel did not appeal the Judge’s favorable ruling regarding the underlying debts [i.e., 1.a.-1.e]. Therefore, it is necessary to recite the facts concerning Applicant’s indebtedness only insofar as they relate to the falsification issues that form the basis for this appeal.” In compliance with the Remand order, I have reevaluated the evidence in the case file and issued this Decision on Remand.

FINDINGS OF FACT

Applicant is a 36-year-old employee of a defense contractor. The SOR contains five (5) allegations under Guideline F (Financial) and two allegations under Guideline E (Personal Conduct). Applicant admits allegations 1.a., 1.c., and 1.e, and denies 1.b. and 1.d. He also denies allegations 2.a and 2.b. All admissions are accepted and incorporated herein as Findings of Fact.

After considering the totality of the evidence, I make the following additional FINDINGS OF FACT as to the status of each SOR allegation.

Guideline F (Financial)

Applicant has a history of five (5) past due debts (delinquent, charged off, referred for collection, or reduced to judgment) to the following creditors in the approximate amounts cited:

1.a. - Creditor A -----\$1,507.00. The debt amount has been reduced to \$307.42, as of March 11, 2006 and is now current (AX H4);

1.b. - Medical Provider B -----\$80.00. This debt has been paid off (AX C and Tr at 20, 21);

1.c. - Military Exchange C ----- \$413.00. This debt has been paid off (AX H2);

1.d. - Collection Agency D -----\$1,923.00. Applicant has been in contact with this creditor. To his previous knowledge, the debt had been charged off (AX H). Currently, he has set up a payment plan to resolve this debt (Tr at 21).

1.e. - Finance Company E -----\$14,108.00. This car payment debt amount has been reduced to \$12,182.05, and is being treated by the creditor as current, as of April 3, 2006 (AX H5 and AX H6).

Guideline E (Personal Conduct)

Applicant did not knowingly falsify material facts on his October 13, 2003 security clearance application (SCA) when he responded as follows:

2.a. - Question **38 Your Financial Delinquencies - 180Days** [in the last seven years], when he answered “No.”

2.a. - Question **39 Your Financial Delinquencies - 90Days** [currently], when he answered “No.”

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant the conduct, to include knowing 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is “clearly consistent with the national interest” for an individual to hold a security clearance. An applicant’s admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant’s admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E.2.2.2., “any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation’s security.”

CONCLUSIONS

Guideline F (Financial Conduct) and Guideline E (Personal Conduct)

1.a - This debt of \$1,507.00 arises from a student loan account (two credit reports, GX 4 and GX 5). The debt arose from studies by Applicant while he was away on active duty (Tr at 19). On both credit reports, the debt is listed as an unpaid collection account with a list date of March 2004 and a last activity date of August 2003. Applicant testified that he was on active duty in the Navy and understood that the Veterans Administration was paying off his education expenses. By the time he learned that the debt had not been paid under Navy allotments, he had been out of the service for several months. It was later determined that the Government would no longer provide this benefit and the bills for his education benefits were then passed on to him. Applicant testified that he was not “aware of that fact until several months later and way after I did the background investigation” (Tr at 19, 20).

Applicant admits the debt, but claims the original amount of \$1,507.00 has been reduced by payment(s) to \$1,407.00 (AX A, last bill as of 08/15/2005, and AX B, receipt for \$100 payment). He has been paying on the debt since June 2005 (Tr at 20). He promised that the debt would be paid off by December 2005 (Response to SOR). The latest evidence shows that, as of March 11, 2006,

the debt had been reduced to \$307.42 (AX H3, H4).

Applicant's answers in his response to the SOR and the hearing testimony contain admissions of awareness of past due debts and general expressions of regret that he had not researched the matter before answering Questions 38 and 39 on his SF 86. At the same time, he essentially denies that he had any arrearage that fell within the parameters of the two questions and he does not reference any of the specific debts cited in the SOR. And, as stated in the Appeal Board's Decision: "The record does not conclusively establish that the debt cited in 1.a. was 180 days delinquent during the seven years period prior to October 13, 2003, or was 90 days delinquent on the date Applicant completed his SF 86."

Based on the Appeal Board's guidance, I conclude that Applicant's admissions do not necessarily prove that he was required to report the debt under Questions 38 and 39. Applicant's statements do not fill in the evidentiary gap that exists in the written record as to this debt, as well as to the debts cited in 1.b. and 1.e.

1.b. - Applicant acknowledges this debt of \$80.00 to a medical provider (credit report of June 2005, GX 4, and credit report of September 2005, GX 5), but claimed he had forwarded the debt to an insurance company he claimed should/would pay the debt (Response to SOR). He was awaiting notice of such a payoff, at which time he would notify the credit reporting service to correct and update his account.

As of October 13, 2003, the date Applicant completed the SF 86, no other relevant evidence appears in the record. In his testimony, Applicant introduced a monthly statement from the health care provider, dated April 5, 2004 (AX C). The bill stated that Applicant owed \$80.44, but that the account was "current" as of that date. The bill also indicated that it was for goods and services provided in March 2004, which was some five months after Applicant completed the SF 86 in October 2003. Prior to the hearing, Applicant sent the creditor a check for \$80.44 (AX C and Tr at 20, 21), so that this debt is no longer owing.

1.c. - This debt of \$413.00 is to a military exchange (credit reports of June 6, 2005, GX 4, and September 12, 2005, GX 5). The June 6, 2005 credit report indicates that the account was opened in 1993, the credit information was reported in April 2005, wherein an amount of \$222.00 was reported as delinquent, with the last account activity being in 1999. Both credit reports state that the account was closed at Applicant's request on an unspecified date. Applicant admitted the existence of the debt in his response to the SOR, but did not mention the date of origin or delinquency history. Applicant made a partial payment in August 2005 (AX D). At the hearing, Applicant testified that he paid off the debt at some unspecified date and that the debt was then 30 days delinquent (Tr at 21). Applicant's post hearing exhibits confirm that the debt was paid off in April 2006 (Tr at 21, AX H1 and AX H2).

1.d. - In his SOR, Applicant stated that he denied any knowledge of this debt of \$1,923.00, and had begun an investigation to discover the truth. On November 23, 2003, he sent a letter to the

credit reporting service, disputing the debt and asking for an investigation and response (AX E and AX F). As stated in the Appeal Board's Decision, the first of two credit reports, dated June 6, 2005 (GX 4) states the debt amount as \$222.00, and the second, of September 12, 2005 (GX 5), and both give the year of last account activity as 1999. At first, Applicant did not think this debt was his (Answer to SOR), but he came to realize this is his debt, just one that originated under another creditor's name (Tr at 21). He has set up a payment plan to resolve the outstanding debt (*Id.*). The 2004 credit report (GX 3) cites the debt as being "current" and contains the notation "pays as agreed." The two 2005 credit reports (GX 4 and 5) indicate that as of then, the account had fallen into arrears and the vehicle had been repossessed. Since the SF 86 was completed in October 2003, the record evidence does not show that the debt was delinquent at that time, nor that Applicant had any reason to believe it to be so.

1.e. - Applicant admits this debt of \$14,108.00 (auto repossession), which he claims has been reduced to \$13,821.00 and has become current. He also claims that the auto loan was reinstated, after some confusion caused by his mother was straightened out. In any case, he is now current and making monthly payments (Response to the SOR). He has submitted a statement from the creditor, dated "08/24/2005," showing a \$454.00 payment on "07/29/2005" and a balance due of \$13,821.15 (AX G). As is the case with SOR 1.a and 1.b., the Appeal Board has concluded that there is no record evidence indicating that the debt was "historically delinquent" (180 days within the seven years prior to completion of the SF 86, nor 90 days prior to the date of completion of the SF 86).

Since Department Counsel did not appeal my previous Decision's favorable findings and conclusions under Guideline F (Financial Considerations), the remaining issue is to evaluate the evidence under:

Guideline E (Personal Conduct)

As to three of the falsifications alleged in SOR, 1.a., 1.b., and 1.e., "there is no record evidence that these debts were historically (within seven years) 180 days delinquent or were 90 days delinquent at the time Applicant completed his answers to Questions 38 and 39" (Appeal Board Decision at page 5). -The remaining unresolved issue pertains to SOR 1.c. and 1.d. The issue to be decided is two-fold; (1) whether Applicant was required to cite the debts alleged under SOR 1.c. and 1.d.; and if so, whether his failure to do so was deliberate.

2.a. and 2.b. - Applicant's overall explanation for not citing the debts alleged under 1.a. - 1.e. is that he "honestly does not recall being that late for that length of time (Response to SOR). His explanation at the hearing was that he was in the second day of his new job, he had already had a clearance for about 10 years, and he was just trying to get it done as quickly as possible. He "oversighted" these questions and didn't take the time to research them (Tr at 23). The last time he had looked at his credit report was in 1995 (Tr at 29).

As noted above, the debts cited in SOR 1.a., 1.b., and 1.e., have not been shown to have been delinquent at the time the SF 86 was completed in October 2003, to the extent they were required

to have been reported in response to Questions 38 and 39. Therefore, the issue of Applicant's state of mind does not arise.

As to the debts cited in SOR 1.c. and 1.d., there is some evidence showing they were delinquent, as that term is used in Questions 38 and 39 (Appeal Board Decision at page 6), but the issue remains as to whether Applicant knew of the delinquency and deliberately omitted any mention of these two debts only, not the five discussed in the original decision. The clarity provided in the Appeal Board Decision, as discussed above under 1.c. and 1.d., leads me to conclude that it has not been definitively established that Applicant actually knew the two debts were delinquent and should have been reported at the time he completed the SF 86 and answered "No" to Questions 38 and 39.

In particular, the 2004 credit report (GX 3) cites the debt as being "current" and contains the notation "pays as agreed." The two 2005 credit reports (GX 4 and 5) indicate that as of then, the account had fallen into arrears and the vehicle had been repossessed. Since the SF 86 was completed in October 2003, the record does not show that the debt was delinquent at that time, nor that Applicant had any reason to believe it was delinquent.

The stated *Guideline E* concern is that 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.

Disqualifying Conditions: None that are established by the record. As discussed above, the record evidence does not definitively establish that Applicant intentionally falsified his answers as to Questions 38 and 39, as to any of the five debts alleged in paragraph 1 of the SOR.

In summary, as to the financial allegations, the Government's financial concerns have been mitigated and, as to the Personal Conduct allegations, the Government has not established that Applicant falsified his answers to Questions 38 or 39 as to any of the five debts alleged under Guideline F. The overall record compels a conclusion that Applicant presently possesses the good judgment, reliability, and trustworthiness required of anyone seeking access to the nation's secrets.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

<i>Guideline F (Financial Considerations)</i>	For the Applicant
Subparagraph 1.a.	For the Applicant
Subparagraph 1.b.	For the Applicant
Subparagraph 1.c.	For the Applicant
Subparagraph 1.d.	For the Applicant
Subparagraph 1.e.	For the Applicant

Guideline E (Personal Conduct)

For the Applicant

Subparagraph 2.a.

For the Applicant

Subparagraph 2.b

For the 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.

BARRY M. SAX
ADMINISTRATIVE JUDGE