

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant failed to mitigate financial considerations security concerns arising from delinquent debts of \$62,000 including a repossession of \$57,000 by failing to resolve the debts or make any concrete efforts pay them. While he recently engaged the services of a credit counselor the action was too late with little effect. He did mitigate personal conduct allegations for failure to report delinquent debts on his SF 86 by a showing of confusion and lack of experience with the application process. Clearance is denied.

CASENO: 05-08385.h1

DATE: 02/09/2007

DATE: February 9, 2007

In Re:)	
)	
-----)	
SSN:-----)	ISCR Case No. 05-08385
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
CHARLES D. ABLARD**

APPEARANCES

FOR GOVERNMENT

Nicole Noel, Esq. , Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate financial considerations security concerns arising from delinquent debts of \$62,000 including a repossession of \$57,000 by failing to resolve the debts or make any concrete efforts pay them. While he recently engaged the services of a credit counselor the

action was too late with little effect. He did mitigate personal conduct allegations for failure to report delinquent debts on his SF 86 by a showing of confusion and lack of experience with the application process. Clearance is denied.

STATEMENT OF CASE

_____ On June 9, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On June 20, 2006, Applicant responded to the SOR allegations and requested a hearing. The matter was assigned to another judge who scheduled a hearing on October 16, 2006. The hearing was convened and Applicant requested an extension of time to prepare his case, and it was postponed to an indefinite date. The matter was assigned to me on November 1, 2006. A notice of hearing was issued on November 17, 2006, for a hearing on December 4, 2006, and held that day. The government offered five exhibits and Applicant offered two into evidence. All were accepted. Applicant requested an opportunity to submit additional material and the request was granted to allow submissions until January 15, 2007. Nothing was received. The transcript was received on December 15, 2006.

FINDINGS OF FACT

_____ Applicant admitted all SOR allegations relating to delinquent debts with explanation for some and admitted the withholding information regarding them on his applicant for security clearance with explanation. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 42-year-old employee of a defense contractor who has worked as a security officer for the past three years. He is married with three pre-teenage children. He incurred debts totaling approximately \$62,000 over several years that have become delinquent. The largest debt is for \$57,000 for a mobile home repossession. The remaining seven debts are relatively small. He retained a credit counseling service in early November 2006 and they are working to repair his debts (Exh. A).

Applicant and his wife both work and their respective annual salaries are \$43,000 and \$12,000 (Tr. 34). They have over \$400 left each month after payment of all expenses (Tr. 38). He owns a 2004 truck that he purchased new and makes payments of \$500 per month (Tr. 42). They have lived at a variety of addresses over the past ten years and that may account for some of the

difficulties in keeping track of bills. Applicant has never held a security clearance but now needs one to obtain access to some buildings where his employer wants to assign him to work. He is highly regarded by his supervisor for hard work, dependability, and for going the “extra mile” to accomplish his tasks (Exh. B).

Applicant was interviewed by a security investigator in 2001 and advised him that he would start to make payments (Exh. 2). He has not yet done so. In 2005 he submitted answers to interrogatories posed by the government and advised that he was going to seek the assistance of a credit counselor (Exh. 3). He did not do so until over a year later.

Applicant omitted information concerning the delinquent debts at Questions 38 and 39 relating to delinquent debts of 180 and 90 days on his application for a security clearance (SF 86) dated November 13, 2003. It was his first experience with the security clearance process.

The following is an analysis of the status of the eight delinquent debts alleged in the SOR:

1. SOR 1.a.: \$1,308. Credit counselor is attempting to contact.
2. SOR 1.b.: \$57,551. Repossession of a mobile home that Applicant purchased for \$65,000. A relative moved in and failed to make payments and it was repossessed for non payment. Applicant has not been solicited to pay the debt since discussing it with creditor two years ago when a settlement offer for \$10,000 was made by the creditor.
3. SOR 1.c.: \$346 Creditor charged off the debt in 2001 but nothing has been done since.
4. SOR 1.d.: \$543. Cable company installed a box which was returned. Debt has not been settled since placed for collection in 2001.
5. SOR 1.e.: \$1,212 Security system left in a former residence. Still outstanding since placed for collection in 2001.
6. SOR 1.f.: \$426 Telephone bill that is still outstanding since placed for collection in 2002.
7. SOR 1.g.: \$498 Telephone bill that is still outstanding since 2002.
8. SOR 1.h.: \$193 Electric bill that is still outstanding since placed for collection in 2003.

POLICIES

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, 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.” *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances

surrounding the conduct; (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 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, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

_____ Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating it is clearly consistent with the national interest to grant or continue a security clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

Applicant's eight delinquent debts prompted the allegation of security concern under Guideline F since an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of inability or unwillingness to satisfy debts. (E2.A6.1.2.3.) Mitigating Conditions (MC) might include the fact that the conditions that resulted in the behavior were largely beyond the person's control (E2.A6.1.3.3.), 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 (E2.A6.1.3.4.), and the person has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.).

There is little evidence the debts resulted from conditions beyond his control. He is now receiving counseling help but only engaged the service after the first hearing was held in this matter. It is also unclear whether he has instructed the counselor to work out a payment program or only to try to identify errors in his credit reports. However, it is clear that the credit problems are not now resolved. While he has initiated an effort to resolve his problems he has waited too late for the mitigating conditions to be applicable. He requested a continuance to begin work on his financial problems, received it, and over a month later could only show that he had retained credit counseling services. He was also given an opportunity to provide information after the second hearing and failed to respond.

Applicant's failure to report his financial delinquencies at Questions 38 and 39 on his SF 86 raises issues under Guideline E that might indicate questionable judgment, unreliability, and unwillingness to comply with rules and regulations and could indicate that the person may not properly safeguard classified information (E2.A5.1.1.). Specifically, the deliberate omission, concealment, or falsification of relevant and material facts from a personnel security application could raise a security concern and be disqualifying. (E2.A5.1.2.2.) Applicant's explanation of the circumstances of the filing and his lack of knowledge of the process and an understanding of the questions in 2003 is believable and thus, I cannot conclude that it was deliberate.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Applicant impressed me at the hearing as a hard-working person who was unfamiliar with the process and may have had good intentions but not the ability to resolve them to the government's satisfaction.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude that a security clearance should not be granted.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

_____ Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
_____ Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	Against Applicant
_____ Paragraph 2. Guideline E:	FOR APPLICANT
Subparagraph 2.a.:	For Applicant
Subparagraph 2.b.:	For Applicant

DECISION

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

Charles D. Ablard
Administrative Judge