

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On April 4, 2006, DOHA issued a Statement of Reasons¹ (SOR) detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on April 24, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on February 16, 2007. A notice of hearing was issued on April 3, 2007, scheduling the hearing for April 20, 2007. The notice was sent to Applicant via e-mail on the same day. A written notice was mailed on April 5, 2007. The hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on April 30, 2007.

RULINGS ON EVIDENCE AND PROCEDURE

Department Counsel submitted a Motion to Amend the Statement of Reasons, marked as Hearing Exhibit (HE) I. The motion requested the addition of an allegation to the SOR under ¶ 1, as follows:

n. You are indebted to [creditor] on an account that was placed for collections in about August 2004 in the approximate amount of \$11,263. As of February 9, 2007, this debt had not been paid.

Department Counsel submitted the Motion prior to introducing any evidence. Applicant objected at that time to the Motion. The Motion was denied. After the Government presented its exhibits, Department Counsel again moved to amend the SOR. Applicant did not object this time. The Motion to Amend the Statement of Reasons was granted. SOR ¶ 1.n is added as stated in HE I.

The Government offered nine exhibits that were marked as Government Exhibits (GE) 1 through 9. The Government's list of exhibits was marked as HE II. Applicant did not object to GE 1 through 8, and they were admitted. GE 9 is a report of investigation from Applicant's background investigation. Applicant was advised of his right under ¶ E3.1.20 of the Directive to object to its admission. Applicant objected to GE 9. His objection to GE 9 was sustained, and it was not admitted. The Government submitted a document, marked as HE III, containing a matrix of how Department Counsel viewed the evidence. I considered this as a type of demonstrative evidence or hearing memorandum, and considered it for that limited purpose. Applicant testified and offered five exhibits that were marked Applicant Exhibits (AE) A through E, and admitted without objections. The record was left open to allow Applicant an opportunity to submit additional material. He did so in a timely manner. The documents were sent to Department Counsel as attachments to e-mail, and forwarded by Department Counsel via fax. Several of the documents were difficult to read, and I asked Department Counsel to forward better copies. Department Counsel forwarded better copies via e-mail. Department Counsel's letter forwarding the documents is marked HE IV. Department

¹Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive).

Counsel's fax cover sheet is marked HE V. The far right side of the first page of AE I was cut off. I asked Department Counsel to contact Applicant to forward a better copy. Applicant did so and a better copy was received by Department Counsel, and forwarded via e-mail. The e-mail is marked HE VI. Applicant submitted 13 documents which were marked AE F through R, and admitted without objections. The documents are Applicant's e-mail of May 10, 2007 (AE F), Department of Treasury letter of April 21, 2006 (AE G), three receipts (AE H), creditor's letters and account summary (AE I), three voided checks (AE J), Applicant's second e-mail of May 10, 2007 (AE K), page from April 26, 2006 credit report (AE L), page from February 9, 2007 credit report (AE M), collection agency letter of April 19, 2006 (AE N), collection agency letter of May 23, 2006 (AE O), collection agency letter of May 2, 2007 (AE P), credit union letter of December 23, 2005 (AE Q), and credit union letter of May 2, 2007 (AE R).

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 49-year-old employee of a defense contractor. He has been married since 2002. Applicant was married and divorced three times before this marriage. He has four children. His two oldest children are adults and on their own. There are two children living with Applicant and his wife overseas. Applicant has some college credits, but does not have a degree.²

Applicant served in the U.S. Army from 1975 to 1978, the Army National Guard from 1978 to 1980, and the U.S. Army from 1980 until he retired in 1996, as a Staff Sergeant (E-6). Applicant has lived and worked overseas since 1996. He was employed by the U.S. Government for a year, and since for defense contractors in support of the U.S. Army.³

Applicant worked for a defense contractor from 1998 to 2001. The company provided Applicant with a corporate credit card. When Applicant left the company in 2001, he owed almost \$5,000 to the card company. Applicant submitted a security clearance application on January 23, 2003. He listed a delinquent debt to this credit card company in the amount of \$5,000. The credit bureau report (CBR) of January 30, 2003, lists a debt to the same credit card company as a bad debt and charged off, with a balance of \$4,934.⁴ In a statement for his background investigation on July 1, 2003, Applicant addressed this debt:

I was employed with [*****] and had a corporate card from [credit card company]. Although I knew it was a "poor judgment" call, I helped out a friend (co-worker) who needed to have his TDY hotel room and other expenses paid for and I got stuck with the bill, when he didn't come through. He is no longer with the company. The

²Tr. at 98-102; GE 1-2.

³Tr. at 45-48; GE 1 at 7.

⁴Tr. at 48-56; GE 1 at 10; GE 7 at 6.

original agreement was that it would be taken from my pay. A few months later a shortage of work came up . . . and I was one of about 8 people that received layoff notices. The amount is still in arrears (\$5k).⁵

Applicant responded to interrogatories on January 9, 2006. He was asked to address the status of several debts. He listed the current balance owed to the above creditor as “0,” and wrote “credit report attached.” He attached a joint CBR for him and his wife, dated June 13, 2005. The CBR did not list a debt to this creditor. The CBR of January 30, 2003, lists the date of last activity of this debt as March 1998.⁶

SOR ¶ 1.a alleges a delinquent debt to the above creditor in the amount of \$4,934. In his response to the SOR, Applicant denied this debt, and stated, “[t]o the best of my knowledge, I’ve never knowingly applied to, nor received credit/financial aid from this institution.”

Applicant testified that he made payments over several years on this debt, and that he believed the bulk of it, if not all of it, was paid off. He submitted no supporting documentation of payments at the hearing.⁷

Applicant was provided an opportunity to submit documents after the hearing. He provided no documentation about this debt in his post-hearing submission. In his post-hearing e-mail, he appears to be linking this debt to the debt in the amount of \$13,357, as alleged in SOR ¶ 1.k:

There have been only phone conversations with this entity. It seems that these agencies are connected, in that one has bought the “debt” from another and added additional charge[s] each time. There were multiple answers regarding the type and origin of the debt during our call. The first explanation is it’s either a personal loan or a credit card. It was also explained this had to be a “walk in” and sign type of transaction. Since the origin dates given were 26 March 98 (Sold to [creditor listed in SOR ¶ 1.k] on 22 March 02) and I’ve not lived in the US since September 96, it is impossible that I would/could have done this. The one factor they emphasized is that this is/was NOT a corporate card account. This agency is refusing to send any documentation they may have proving the validity of this account, therefore I am contesting this through the Credit Reporting Agencies.⁸

Applicant responded to interrogatories on January 9, 2006. He attached a joint CBR for him and his wife, dated June 13, 2005. The CBR lists Applicant’s wife as “B” for borrower, Applicant as “C” for co-borrower, and “J” for joint debts.⁹ The CBR lists the debts as alleged in SOR ¶¶ 1.b,

⁵GE 3 at 2.

⁶GE 7 at 6.

⁷Tr. at 53-56, 107-110.

⁸AE F at 2.

⁹GE 4.

1.c, 1.d, 1.e, 1.f, 1.g, 1.h, 1.i, 1.j, and 1.l, as incurred by Applicant's wife.¹⁰ Those debts total approximately \$7,374. Applicant submitted a notarized letter from his wife stating that the debts in SOR ¶¶ 1.b, 1.e, 1.g, 1.i, 1.j, and 1.l were incurred by her or her former husband, and that Applicant has not signed any documentation which would make him responsible for the debts.¹¹

Applicant acknowledged his wife was responsible for the debt in ¶ 1.b.¹² He denied any knowledge of the debts in ¶¶ 1.c, and 1.f.¹³ He stated the debts in ¶¶ 1.d, 1.g, 1.h, 1.i, and 1.j have been paid.¹⁴ Applicant's wife disputes the debts in ¶¶ 1.e, and 1.l.¹⁵

Applicant provided documentation that the debt in SOR ¶ 1.g, to a credit union in the amount of \$647, has been paid.¹⁶ The debt in SOR ¶ 1.j, to a collection agency on behalf of a jewelry company in the amount of \$479, has also been paid.¹⁷

The CBR of June 13, 2005, lists the debt in SOR ¶ 1.k in the amount of \$13,537, as belonging to Applicant. The CBR lists the date of last activity on the account as occurring in November 1998. Applicant disputed this debt, and stated he was not in the country in 1998, when it was incurred.¹⁸ In his post-hearing submission, Applicant linked this debt to the debt in SOR ¶ 1.a, as addressed above. There is nothing in the two CBRs that list the debts in SOR ¶¶ 1.a and 1.k, which would indicate these represent the same debt.¹⁹

The CBRs of September 13, 2006 and February 9, 2007, list the debt in SOR ¶ 1.n in the amount of \$11,263. Applicant denied any knowledge of this debt. In his post-hearing submission, Applicant stated he contacted the credit reporting agency, and provided them with his and his wife's information, but it "yielded no results with our SSN's or names."²⁰

When Applicant retired from the Army in 1996, he owed \$3,188 to a military exchange. He stopped paying this debt, and it was transferred to collection where it continued to accrue finance

¹⁰*Id.*

¹¹AE A.

¹²Tr. at 56-57.

¹³Tr. at 57-62, 65.

¹⁴Tr. at 62-63, 65-69.

¹⁵Tr. at 64-65, 73.

¹⁶AE B, Q, R.

¹⁷AE N-P.

¹⁸Tr. at 69-73; GE 4.

¹⁹GE 4, 7 at 6.

²⁰AE F at 1-2.

and penalty charges.²¹ The CBRs of March 23, 2001 and January 30, 2003, list this debt as delinquent in the amount of \$3,351.²² Applicant's security clearance application of January 23, 2003, lists a delinquent debt to a different exchange from 1998, in the amount of \$4,000.²³ The CBRs of March 23, 2001 and January 30, 2003, list a delinquent debt to the second exchange in the amount of \$299.²⁴ In his statement of July 1, 2003, Applicant wrote that he had a debt to the second exchange for more than \$4,000, but that it was being paid and was at that time less than \$300.²⁵ The debts to the two exchanges appear to be two separate debts. The documents from the exchange system, which Applicant submitted after the hearing, reflect a balance of \$6,353 as of May 4, 2007, which includes a balance of \$6,157 for a deferred payment plan, and a balance of \$196 for a credit card. The documents also show an account balance added to their collections system in March 2004, in the amount of \$193.²⁶ This amount would appear to be the balance of the account which Applicant stated was paid. When Applicant responded to interrogatories on January 9, 2006, he listed the current balance owed to the two exchange accounts as "0," and wrote "credit report attached."²⁷ At the hearing, Applicant testified money was taken out of his retirement pay for this debt, and the debt was paid.²⁸ The evidence Applicant presented in his post-hearing submission shows four involuntary payments made between April 2006 and July 2006, totaling \$1,877. Three voluntary payments of \$212 each were made between March 6, 2007 and May 1, 2007. The balance of \$6,353 as of May 4, 2007, did not yet reflect the last payment of \$212.²⁹

While Applicant worked overseas as a defense contractor, he did not file federal income tax returns. On October 18, 2005, the Internal Revenue Service levied Applicant's wages in the monthly amount of \$394, to pay his delinquent tax debt of \$4,389. Applicant stated that he thought because he was overseas in a "tax-exempt" or "tax-free" status, he was not required to file returns. The debt to the IRS has been satisfied.³⁰

²¹AE I.

²²GE 7 at 4; GE 8 at 4.

²³GE 1 at 10.

²⁴GE 7 at 6; GE 8 at 6.

²⁵GE 3 at 2.

²⁶AE I. The debts to the exchange system were not listed as allegations in the SOR, possibly because of Applicant's assertions that they were paid. The evidence that the exchange debts remain unpaid came from Applicant in his post-hearing submission. This information is not considered for disqualifying purposes, but may be considered in assessing Applicant's credibility, when analyzing the "whole person," and the potential application of mitigating conditions.

²⁷GE 4 at 2.

²⁸Tr. at 105-107.

²⁹AE F-I.

³⁰Tr. at 102-105; GE 4. This information is not considered for disqualifying purposes, but may be considered in assessing Applicant's credibility, when analyzing the "whole person," and the potential application of mitigating conditions.

Applicant provides financial support to his elderly disabled mother. He and his wife also support her mother.³¹ His wife served in the U.S. Army for 24 years and retired in 2004, as an E-7. She does not work because she is disabled as a result of her military service. She receives retirement and disability pay.³²

Applicant is a combat veteran, having served in Operation Desert Storm. He is highly regarded by people who know him from his time in the Army, and during his current employment. He has received a number of awards and accolades for his service in support of the U.S. Army. His supervisor is aware of Applicant's financial issues and is working with Applicant and an Army legal assistance attorney to resolve Applicant's financial and credit issues. He believes Applicant is a decent and honest man and recommends him for a security clearance.³³

POLICIES

“[N]o one has a ‘right’ to a security clearance.”³⁴ 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.”³⁵ The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”³⁶ An applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.³⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.³⁸ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.³⁹

³¹AE C.

³²Tr. at 80-81.

³³GE 4; AE D, E.

³⁴*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

³⁵*Id.* at 527.

³⁶Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

³⁷ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

³⁸*Id.*; Directive, ¶ E2.2.2.

³⁹Exec. Or. 10865 § 7.

The Directive sets forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in ¶ 6.3 and ¶ E2.2.1 of the Directive.

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

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline F: Financial Considerations

An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations.

I do not find Applicant responsible for the debts in his wife's name. They are relevant to Applicant's overall financial situation, and will be considered for that purpose. Applicant provided contradictory information about the status of several of his debts. In his security clearance application in 2003, Applicant listed a \$5,000 delinquent debt to the credit institution reflected in SOR ¶ 1.a. He admitted he still owed the debt when he submitted a statement in July 2003. In his response to interrogatories in January 2006, he listed the balance owed as \$0. In his response to the SOR, Applicant denied ever having an account with this institution. At the hearing, Applicant admitted having this account, but testified that most, if not all of it, was paid. Applicant did not provide proof of payment in his post-hearing submission. Instead, he once again denied ever being responsible for this debt. Applicant's contradictory responses cause me to give less credence to his explanations regarding the debts in SOR ¶¶ 1.k and 1.n.

The Government did not submit any admissible evidence to support the allegation in SOR ¶ 1.m. That allegation is resolved in Applicant's favor.

I conclude Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*) and FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*) apply to SOR ¶¶ 1.a, 1.k, and 1.n.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC E2.A6.1.3.1 (*The behavior was not recent*), FC MC E2.A6.1.3.2 (*It was an isolated incident*), FC MC E2.A6.1.3.3 (*The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)*), FC MC E2.A6.1.3.4 (*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), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

I find the three debts are still owed. Applicant's financial problems are recent and not isolated. FC MC E2.A6.1.3.1 and FC MC E2.A6.1.3.2 do not apply.

Applicant testified that he accrued the one debt because he paid another employee's hotel bill with his corporate credit card, and the employee did not pay him back. He later denied ever having an account with that creditor. Applicant's testimony was inconsistent and not credible. He did not present credible evidence that his financial issues were beyond his control. FC MC E2.A6.1.3.3 does not apply.

Applicant is working with an Army legal assistance attorney to resolve his financial and credit issues. He presented evidence that several of his wife's debts have been paid. The debt to the IRS was paid through an involuntary levy on his wages. Most of the payments to the military exchange were made involuntarily. Applicant has not made enough voluntary payments on his debts to establish a good-faith effort to repay overdue creditors or otherwise resolve debts. I also do not find a clear indication that the problem is being resolved or is under control. FC MC E2.A6.1.3.4 and FC MC E2.A6.1.3.6 do not apply.

Guideline E: Personal Conduct

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.

Applicant denied SOR ¶ 2.a. The Government did not have submit any admissible evidence to support this allegation. SOR ¶ 2.a is resolved in Applicant's favor.

Whole Person Analysis

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. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive. I have also considered all the evidence, and every finding of fact and conclusion discussed above.

I considered Applicant's long history of faithful service to this country, and the favorable character evidence on his behalf. I also considered all the adverse financial information. Applicant's contradictory responses regarding certain debts cause me concern. I am unable to grant him any credibility when he first acknowledges he owes a debt, then states that it was paid, then denies ever having an account with the creditor, then again states it was paid, and then finally denies again that he ever had the account.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on his financial issues.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

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:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.I:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	Against Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a: 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 continue a security clearance for Applicant. Clearance is denied.

Edward W. Loughran
Administrative Judge