

KEYWORD: Financial

DIGEST: Applicant is a 61-year-old decorated combat veteran of the U.S. Army Reserve, currently employed by a defense contractor. Applicant co-signed a car loan for his son. His son missed a few payments. The car was repossessed, and a judgment was awarded against Applicant and his son. Applicant paid the judgment. Applicant has mitigated the financial considerations concern. Clearance is granted.

CASENO: 05-14397.h1

DATE: 08/03/2007

DATE: August 3, 2007

In re:)	
)	
-----)	
SSN: -----)	ISCR Case No. 05-14397
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
EDWARD W. LOUGHRAN**

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 61-year-old decorated combat veteran of the U.S. Army Reserve, currently employed by a defense contractor. Applicant co-signed a car loan for his son. His son missed a few payments. The car was repossessed, and a judgment was awarded against Applicant and his son. Applicant paid the judgment. Applicant has mitigated the financial considerations concern. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On June 26, 2006, DOHA issued a Statement of Reasons¹ (SOR) detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on August 25, 2006, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s written case on November 7, 2006. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on December 28, 2007, and responded on January 18, 2007. Department Counsel replied to Applicant’s response on July 16, 2007. The case was assigned to me on July 26, 2007.

RULINGS ON PROCEDURE AND EVIDENCE

Department Counsel submitted Item 4, Personal Subject Interview, Report of Investigation (ROI), Office of Personnel Management (OPM), conducted on November 4, 2004, as part of the documentary evidence to support the allegations in the SOR. This document is void of the interviewer’s name, signature, and any other type of authentication. Department Counsel contends Item 4 is admissible “because Applicant chose to have an administrative determination without a hearing and by doing so alleviated the authentication requirement of Paragraph 20 of the Additional Procedural Guidance, pursuant to the Appeal Board caselaw.”² In support of his position, Department Counsel cites ISCR Case No. 95-0817 (App. Bd. Feb. 21, 1997). Specifically he notes in that case, the Appeal Board considered the “Certified Results of Interview,” which involved Applicant’s admissions against interest made to an agent of the Defense Investigative Service and otherwise admissible under Rule 803(6) of the Federal Rules of Evidence (FRE). Department Counsel’s reliance on this Appeal Board decision is misplaced. The Appeal Board decision addressed the admissibility of a Certified Results of Interview under Paragraph 22 of the Additional Procedural Guidance, not the authentication requirement for an ROI established by Paragraph 20 of the Additional Procedural Guidance. Paragraph 22 specifically involves adverse statements made against applicants by third parties. That situation is not applicable in this case. Paragraph 20 states in part: “Official records of evidence compiled in the regular course of business, other than DoD personnel background reports of investigation (ROI), may be received and considered by the Administrative Judge without authenticating witnesses.” It elaborates “An ROI may be received with an authenticating witness provided it is otherwise admissible under the Federal Rules of Evidence.” Department Counsel cites FRE 803(6) in support of his position. FRE 803(6), Hearsay Exceptions; Availability of Declarant Immaterial, permits various types of documents to be admitted into evidence provided they were “made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of regularly conducted business activity, all as shown

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

²FORM *see* footnote 1.

by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11), Rule 902(12), or a statute permitting certification.” Item 4 is an unsworn “Personal Subject Interview” conducted by an unknown person, that is not signed by the interviewer nor interviewee, nor authenticated by an appropriate witness. It does not comply with FRE 902, which requires the document to be certified by the custodian or other person authorized to make the certification. Stated plainly, Item 4 is an ROI, not a Certified Results of Interview. If Item 4 was a Certified Results of Interview, signed and “authenticated” by the agent who conducted the interview, it would be admissible.³ The Government is misguided in its interpretation of Paragraphs 20 and 22 of the Additional Procedural Guidance, the Appeal Board case cited, and the FRE. Department Counsel has not offered any authoritative reference that states authentication of personal interview statements is not required when the applicant elects not to have a hearing. The Government may request a hearing and circumvent the evidentiary issues raised here. They have chosen not to do so, and should not be permitted to use in a FORM what they could not in a hearing. Nonetheless, Applicant did not object to Item 4, possibly because he relied on Department Counsel’s erroneous recitation of the law, or because it contained information that was favorable to Applicant. Item 4 is admitted as evidence in this case. I will consider those portions of the document that support Applicant’s position in this case. The nature of the document will be considered when determining the weight to be accorded the remaining information in Item 4.

FINDINGS OF FACT

Applicant is a 61-year-old employee of a defense contractor. Applicant attended college overseas from 1965 to 1968. It is unclear what degree he holds, if any. He is married with at least one child.⁴

Applicant served in the U.S. Marine Corps from 1969 through 1972. He then served in the U.S. Army Reserve. Applicant was activated in September 1990, and served on active duty until June 1991, in support of Operation Desert Shield/Desert Storm. He served in Kuwait as a member of Task Force Freedom. Applicant received the Army Commendation Medal and the Army Achievement Medal for his service.⁵

Applicant was activated in 2001 to 2002, in support of a homeland security mission. He was activated again in February 2003, in support of Operation Iraqi Freedom. He deployed to Iraq from April 2003 to December 2003, as a Sergeant First Class in a military police company. Applicant was separated from active duty in January 2004. Applicant has since retired from the Army Reserve. Among other awards, Applicant received the Bronze Star Medal for his service.⁶ The citation reads:

For exceptionally meritorious performance of duty during Operation Iraqi Freedom. His outstanding dedication to duty during ground combat in Iraq contributed to the

³ISCR Case No. 02-25196 at 3-4 (App. Bd. Jul. 10, 2007).

⁴Item 3.

⁵*Id.*; Applicant’s response to FORM.

⁶Items 2-4; Applicant’s response to FORM.

overwhelming success of [*****] Corps. His actions are in keeping with the finest traditions of military service and reflect great credit upon himself, [*****] Corps, and the United States Army.⁷

In a recommendation for one of his awards, Applicant's Company Commander wrote, "[Applicant's] action that night showed great resolve and bravery. His actions saved the lives of a family of innocents, including 2 children and 2 pregnant women in their 3rd trimester." His Battalion Commander commented, "[o]utstanding actions by one of the best soldiers in the battalion. [Applicant's] actions inspired his subordinates and saved numerous lives."⁸

Applicant's military awards include the above mentioned Bronze Star Medal, Army Commendation Medal (5th award), Army Achievement Medal (4th award), Meritorious Unit Commendation, Army Reserve Components Achievement Medal, National Defense Service Medal (3rd award), Vietnam Service Medal, Southwest Asia Service Medal with three Bronze Service Stars, Armed Forces Reserve Medal, Noncommissioned Officer's Professional Development Ribbon with Numeral 3, Army Service Ribbon, Army Reserve Components Overseas Training Ribbon (3rd award), Kuwait Liberation Medal, Kuwait Liberation Medal (K), and Kuwait Liberation Medal (SA).⁹

In 1999, Applicant co-signed for a car loan for his son, with his son to make the payments on the loan. In 2000 to 2001, Applicant's son experienced financial difficulties, and fell behind on a few of the payments. Applicant was activated at the time in support of homeland security. His son thought he made payment arrangements with the finance company, but the car was repossessed without notice from Applicant's garage. Applicant's son was unaware the car was repossessed. He believed it was stolen, and reported it to the police. A few months later, they received notice that the car was sold at auction. In about 2003, Applicant's son received a letter from a collection agency, demanding the full payment of the car loan, or be taken to court.¹⁰

In 2004, Applicant and his son were sued by the collection agency. In July 2005, a judgment was awarded against Applicant and his son in the amount of \$16,149, with costs, for a total judgment of \$16,619.¹¹

Applicant's son made payment arrangements with the creditor, and agreed to pay \$100 to \$200 per month until satisfied. Applicant provided proof of four payments made between August 2005 and November 2005, totaling \$600. With accrued interest, the debt rose to \$17,294, as of

⁷Applicant's response to FORM.

⁸*Id.*

⁹*Id.*

¹⁰*Id.*; Items 2, 4.

¹¹Item 5.

February 2006. On October 4, 2006, Applicant paid the judgment with a check for \$18,155. The check cleared on October 10, 2006.¹²

Applicant had several delinquent debts from a number of years ago that were all paid in 2004, or earlier. A federal tax lien was filed in October 1997, for \$11,248. The tax resulted when Applicant changed employment and withdrew an IRA, incurring a tax liability. Applicant thought the taxes were withheld from the disbursement. The tax was paid in 1998. The other debts were incurred when Applicant was deployed. The credit bureau report (CBR) of June 15, 2006, lists the tax lien and the amount owed for the judgment, but lists no other delinquent debts.¹³

POLICIES

“[N]o one has a ‘right’ to a security clearance.”¹⁴ 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.”¹⁵ 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.”¹⁶ 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.¹⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹⁸ 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.¹⁹

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

¹²Item 2; Applicant’s response to FORM.

¹³Items 4, 6-7. While the CBR of June 15, 2006 (Item 6) still reports the tax lien, the CBR of May 13, 2004 clearly reports the lien as paid. Applicant’s old debts were not alleged in the SOR, and are not considered for disqualifying purposes, but may be considered when analyzing the “whole person,” and the potential application of mitigating conditions.

¹⁴*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹⁵*Id.* at 527.

¹⁶Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

¹⁷ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹⁸*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

¹⁹Exec. Or. 10865 § 7.

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.

Based on all the evidence, 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 in this case. Applicant co-signed for his son's auto loan, accepting responsibility if his son did not maintain payments for this debt. The car was repossessed and a judgment was obtained against Applicant and his son.

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*).

The judgment was not paid until October 2006, so the behavior is recent and FC MC E2.A6.1.3.1 does not apply. There is only one debt listed in the SOR, but Applicant had several other debts, which were all resolved by 2004. Since 2004, the judgment has to be considered an isolated incident. FC MC E2.A6.1.3.2 is partially applicable.

Applicant co-signed for his son's car loan. While he was activated, it was repossessed because his son did not maintain the payments. Those are conditions that were largely beyond Applicant's control. Applicant did not address the problem himself until October 2006. Applicant merits partial application of FC MC E2.A6.1.3.3.

There is no evidence Applicant received counseling, so FC MC E2.A6.1.3.4 is not applicable. Applicant paid the only debt listed in the SOR in October 2006. Applicant's old debts were resolved several years ago. He is now current on all his debts. FC MC E2.A6.1.3.6 is applicable.

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.

Applicant is a combat veteran, who served our country through three conflicts. The accolades by his superiors in Iraq are truly inspiring. The only listed concern in the SOR is a judgment incurred because Applicant co-signed a car loan for his son, and the car was repossessed while Applicant was activated. The debt has been paid. This one paid debt does not make Applicant a security risk.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

DECISION

In light of all of 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.

Edward W. Loughran
Administrative Judge