

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is 35 years old and works for a federal contractor. Since 2001, he accumulated a significant amount of debt that he has not paid or resolved. When he completed his security clearance application in December 2004, he did not disclose an automobile repossession and two unpaid judgments. He mitigated the security concerns raised by his personal conduct, but did not mitigate those raised by financial considerations. Clearance is denied.

CASENO: 06-00635.h1

DATE: 08/29/2007

DATE: August 29, 2007

In re:)	
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SSN: -----)	ISCR Case No. 06-00635
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
SHARI DAM**

APPEARANCES

FOR GOVERNMENT

James F. Duffy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 35 years old and works for a federal contractor. Since 2001, he accumulated a

significant amount of debt that he has not paid or resolved. When he completed his security clearance application in December 2004, he did not disclose an automobile repossession and two unpaid judgments. He mitigated the security concerns raised by his personal conduct, but did not mitigate those raised by financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On December 30, 2004, Applicant submitted a security clearance application (SCA). On August 30, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended. The SOR detailed reasons under Guidelines F (Financial Considerations) and E (Personal Conduct) why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

On October 18, 2006, Applicant filed his Answer and elected to have the case decided on the written record in lieu of a hearing. On April 25, 2007, Department Counsel prepared a File of Relevant Material (FORM), containing twelve Items, and mailed Applicant a complete copy on April 27, 2007. Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on May 21, 2007, and timely submitted additional information without an objection from Department Counsel. I marked the documents as Applicant Exhibit (AX) A. The case was assigned to me on July 16, 2007.

FINDINGS OF FACT

Based on the entire record, including Applicant's admissions in his Answer to the SOR, I make the following findings of fact:

Applicant is a 35 year- old security technician who works for a federal contractor. He began his current position in November 2001. Prior to this job, he worked in private industry for seven years. (*Id.* at 2). In December 2004, he completed a SCA. (Item 5).

In response to specific questions on the SCA, Applicant disclosed adverse information. He noted a citation for a firearm's offense in response to Question 22. He included two wage garnishments in response to Question 34. He listed a student loan that was more than 180 days delinquent under Question 38 and a car loan that was more than 90 days delinquent under Question 39. He did not disclose a November 2004 vehicular repossession under Question 35, or two unpaid judgments as requested in Question 37. (Item 5).

During a meeting with a government investigator in June 2005 regarding his finances and his answers to the financial questions in the SCA, Applicant acknowledged various debts. He was not able to pay his debts because he was supporting his father and paying his mortgage through a bankruptcy proceeding. (Item 6 at 1 & 7). He denied having knowledge of any judgment entered against him. (*Id.* at 1). He believed his debts totaled approximately \$9,000-10,000 in June 2005. (*Id.* at 6). He also submitted a budget indicating a total net monthly income of \$2,400 and expenses of \$1,000, leaving approximately \$860 for other expenses. The only delinquent debt listed on the budget was a garnishment for his student loan. (Item 7). Credit reports confirm his financial problems began in 2001. (Items 9 & 10).

In August 2006, the Government filed a SOR. Paragraph 1 of the SOR alleged that Applicant's fifteen delinquent debts totaled \$12,358. In his Answer, Applicant admitted owing all of the debts. He asserted that he entered into a debt management agreement to pay six debts (¶¶ 1.a, 1.b, 1.f, 1.g, 1.i, and 1.k), and that he was making monthly payments on them. (Item 4; AX A at 3). He located another debt management company to handle the debts noted in ¶¶ 1.c, 1.d, 1.e, and 1.m. (AX A at 3). He submitted proof of payment for ¶¶ 1.h and 1.l, which was the same debt. (AX A at 4). The debts alleged in ¶¶ 1.j, 1.n, 1.o, have been paid, albeit through garnishments. (Item 12).

In his response to the FORM, Applicant stated that he did not answer Question 35 correctly "because [he] honestly overlooked item 35, resulting in the repossession not be [sic] listed on the clearance application." (Item 4 at 3). He failed to include two judgments under Question 37 because he was unaware of them when he completed the SCA. (Item 6). Applicant reiterated in his response that after he started taking care of his elderly father in 2002, including his finances, he began experiencing his additional financial difficulties. (AX A at 4).

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, sets forth criteria, which must be evaluated when determining security clearance eligibility. Within those adjudicative guidelines are factors to consider in denying or revoking an individual's request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual's request for access to classified information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence in order to reach a fair, impartial and common sense decision.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct an administrative judge should consider: (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 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.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not only the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. Directive ¶ E2.2.2. The decision to deny an individual a security clearance is not necessarily a judgment about an applicant's loyalty. Exec. Or. 10865, § 7. Instead, it is a determination that an applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *Departments of the Navy v. Egan*, 484 U.S. 518, 531 (1988). The Directive presumes a rational connection between past proven conduct under any disqualifying conditions and an applicant's present security suitability. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence in refutation, extenuation, or mitigation sufficient to overcome the position of the government. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his clearance." *Id.*

CONCLUSIONS

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

Guideline F: Financial Considerations

Guideline F articulates the Government's concern regarding financial problems. "A security concern may exist when an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Failure to live within one's means 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. *See* ISCR Case No. 98-0810 at 4 (App. Bd. June 8, 2000).

Based on 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 to this case. Since 2001, Applicant has a history of being unable to meet his financial obligations as evidenced by his admissions and credit reports.

After the Government produced substantial evidence of those two FC DC, the burden shifted to Applicant to produce evidence of mitigating condition. Five Financial Considerations Mitigating

Conditions (FC MC) are potentially applicable. Because Applicant's financial troubles began in approximately 2001 and continued to the present, FC MC E2.A6.1.3.1 (*The behavior was not recent*), and FC MC E2.A6.1.3.2 (*It was an isolated incident*) are not applicable. Applicant claimed he was unable to pay some of his delinquent debts because he was helping his elderly father manage his finances and paying his mortgage. Such monetary assistance is sufficient to provide some mitigation under FC MC E2.A6.1.3.3 (*The condition that resulted in the behavior were largely beyond the person's control*). However, there is no evidence that Applicant participated in counseling for his financial difficulties or that the problems are resolved or under control, as required by FC MC E2.A.6.1.3.4 (*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*). The record contains proof that five debts are paid. Applicant asserted that he was managing the other debts through consolidation payment plans. Although he submitted a letter from one company acknowledging an agreement, he did not submit any evidence to verify his compliance with the agreement or the balance owed on the debts covered by the agreement. Nor did he submit evidence of the additional repayment plan he recently negotiated. Thus, he did not provide sufficient documentary evidence to trigger full application of FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Guideline E: Personal Conduct

Guideline E articulates the Government's concern under personal conduct. "A security concern may exist when 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."

The Government alleged in SOR ¶¶ 2. a and 2.b that Applicant falsified his SCA by failing to disclose an automobile repossession and two unpaid judgments, which established a disqualification under Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2 (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*). Applicant asserted that his failure to disclose the repossession was an oversight and that he was unaware of the unpaid judgments.

When a falsification allegation is controverted or denied, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. June 9, 2004)).

Applicant disclosed a delinquent automobile loan in response to Question 39 on the SCA. That disclosure, along with the other adverse information he provided under Questions 22, 34 and 38, demonstrates his intention to be truthful in completing his SCA, and corroborate his explanations that the omission of information was negligent and not intentional. Hence, the evidence does not establish deliberate falsification. This Guideline is found in his favor.

"Whole Person" Analysis

In addition to the enumerated disqualifying and mitigating conditions, I considered the general adjudicative guidelines related to the whole person concept under the Directive. Although Applicant made some progress in resolving the SOR debts and asserted a commitment to paying the others, he failed to provide evidence that he has addressed the remaining ten debts. He is 35 years old, sufficiently mature to be fully responsible for his obligations. His decision to incur more debt than he could manage over the last several years was voluntary. While I recognize the value of the assistance he provided to his father, his decision to abandon his obligations without a repayment plan, exhibited poor judgment. Until he establishes a budget documenting his repayment plans and a track record of consistent financial management, which demonstrates reliability and good judgment, I am concerned that he will continue having financial difficulties, despite assertions to the contrary.

After weighing the disqualifying and mitigating conditions and all facts in the context of the whole person, I conclude he has not mitigated the security concerns pertaining to financial considerations. For the reasons stated, I conclude he is not eligible for access to classified information at this time.

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 as follows:

Paragraph 1: Guideline F (Financial Considerations) **AGAINST APPLICANT**

Subparagraphs 1.a through 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	For Applicant

Paragraph 2: Guideline E (Personal Conduct) **FOR APPLICANT**

Subparagraphs 2.a and 2.b:	For Applicant
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DECISION

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

Shari Dam
Administrative Judge