

SYNOPSIS

Applicant, a 44-year-old defense contractor, has a history of financial problems. Specifically, he has a history of being unable to pay his debts and thereafter failing to take reasonable steps to satisfy his creditors. He has delinquent debt totaling \$41,385.42. Applicant has not set up adequate plans to resolve his delinquencies, although he initially consulted his creditors. Applicant failed to provide accurate answers regarding his delinquent debts on his security clearance application. Applicant has not mitigated the security concerns arising from his financial difficulties, or his falsification of material matters on his security clearance application. Clearance is denied.

STATEMENT OF THE CASE

On June 7, 2006, the Defense Office of Hearings and Appeals, (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and *Department of Defense Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (Directive)*, dated Jan. 2, 1992), as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn, written statement, received on July 31, 2006, Applicant responded to the allegations in the SOR. He elected to have his case decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's case on April 26, 2007.¹ Department Counsel provided a complete copy of the file of relevant material (FORM) to Applicant, along with his notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on May 15, 2007. On June 5, 2007, Applicant submitted additional materials in response to the SOR, without an objection. The case was assigned to me on June 6, 2007.

FINDINGS OF FACT

Applicant admitted factual allegations of subparagraphs 1.a. through 1.f. of the SOR under Guideline F.² Applicant admitted factual allegations of subparagraph 2.a. through 2.c. under Guideline E. He denied factual allegation 1.g. because he disputes this debt. The admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact.

¹The Government submitted 15 items in support of its case.

²Item 2 (Applicant's Answer to SOR dated July 31, 2006) at 1 and 2.

Applicant, a 44-year-old, employed with a defense contractor, seeks to obtain a security clearance.³ He graduated from high school in 1982 and then served in the United States Marine Corps (USMC) from 1982 until 1993 when he was medically discharged due to a training accident. Applicant was an aviation instructor. He received his Master's Degree in 2004, and is currently in a Ph.D. program. His first marriage ended in divorce in 2003.⁴ He is now remarried with one child. He completed a public trust application on July 13, 2004, and a security clearance application on January 27, 2005.⁵

Applicant was gainfully employed within the civil aviation field for many years. In 2001 after September 11, his employer began lay offs and salary reductions. At first, Applicant's salary was reduced which caused some financial hardship. Shortly after that, his wife decided to file for divorce. He had one income. This made covering the marital debts impossible.⁶

In March 2002, Applicant's salary was again reduced. By April there was another round of reductions. He then lost his job. When Applicant became unemployed, he contacted his creditors and told them he would not be able to pay all his debts due to his financial problems. He asked them to work with him. Up until then his credit was fine. Some did work with him, but others turned the accounts over to a collection agency. At this point his credit rating fell.⁷

In August 2002, Applicant accepted employment with a new company in another state. He had fallen behind in his mortgage payments on his home and when he relocated he decided he would sell the house. Unfortunately, the house did not sell. He lost the home to foreclosure in 2003. Since he could not afford both a house and a new place to live, his debt increased.

The debt in allegation 1.a is not in dispute. Applicant opened the credit card account and was current until 2002. He notified the company, but the account was turned over to a collection agency. Applicant believes the amount owed is approximately \$900. He has not heard from the collection agency, but stands ready to pay the unpaid balance in full.⁸

Applicant has two judgments (allegation 1.b and 1.f). A judgment in the amount of \$22,079.84 was entered in 2003 (1.f.). This was a second mortgage. He made payments until 2002. When the house was foreclosed, a judgment was entered in October 2003. Applicant maintains that he did not know about the judgment until 2004 when he looked at his credit report. He is awaiting contact from the collection agency to pay this amount. The judgment in allegation 1.b. in the amount of \$4,130.95 was entered in 2002. Applicant states he will pay it when he is contacted. He also states he is unaware of the nature of the judgment.

³Item 5 (Security Clearance Application (SF 86) dated January 27, 2005), at 1-9.

⁴*Id.* at 4.

⁵Item 4 (Public Trust Application (SF 85P), dated July 13, 2004.

⁶Item 2, *supra* at note 2.

⁷*Id.*

⁸Item 13 at 1-2.

As to the debts in allegations 1.c, 1.d., and 1.e, Applicant does not recognize the account numbers and believes some of them may be the same accounts sold to various collection agencies. In his 2005, affidavit, he received an offer for settlement for the debt in 1.e., and stated he would accept the offer.⁹ In a 2006 statement, he stated that the accounts remain.¹⁰

In August 2004, Applicant wrote a second letter disputing the debt in the SOR 1.g. in the amount of \$452. He denies opening this account. As to the debts in allegation 1.c. and 1.d., he does not recognize the accounts and believes some of them may be the same accounts sold to various collection agencies.

Applicant and his current spouse together have a total net monthly income of \$5,852. The Personal Financial Statement prepared by Applicant in May 2005 shows a net remainder, after monthly expenses, of \$1,334. He is current on his mortgage and other credit card payments. Applicant listed assets worth \$255,000, a bank savings account and stocks and bonds.¹¹ Although he is paying on his current obligations, he has not consolidated the debts listed in the SOR with a repayment schedule. A savings account of approximately \$20,000 helped to pay for his current wife's student loan for her undergraduate degree and his student loan for his Ph.D. program.¹²

On July 13, 2004, Applicant signed a Public Trust Application Form (SF 85P). In response to question 22 b. *Are you now over 180 days delinquent on any loan or financial obligation?* He answered "no." Applicant completed his security clearance application (SF 86) on January 27, 2005. He answered "no" to questions 38: *In the last 7 years, have you been over 180 days delinquent on any debts* and question 39: *Are you currently over 90 days delinquent on any debt(s)*. Applicant provided incorrect answers on his SF 85P to question 22 b., and on his SF 86 to both questions 38 and 39. Applicant admitted allegations 2.a., 2.b., and 2c. in his answer to the SOR, with the explanation that he believed that it was appropriate to answer "no" because he had not received any contact from collection agencies or creditors. At the time he completed the two forms, he also stated he did not know about a judgment until much later in time after the 2004 SF 85P application. However, in the 2004 application he responded "yes" to question 22 a. about a 2003 judgment. In his most recent response to the FORM, he stated that he answered the questions in the 2004 and 2005 applications in the negative because he was not delinquent on current obligations.¹³

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions)

⁹Item 9 (Applicant's Affidavit, dated May 27, 2005) at 1-9.

¹⁰Item 13 (Response to Interrogatories, dated April 18, 2006) at 1-7.

¹¹Item 12 (Personal Financial Statement of Applicant, dated May 27, 2005).

¹²Letter from Applicant in response to FORM, dated June 2007.

¹³*Id.* at 1.

and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E.2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision.

The Adjudicative Process factors to consider are: (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 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. Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interest of national security.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines pertinent to an evaluation of the facts of this case:

Guideline F - Financial Consideration: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

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 applicant may not properly safeguard classified information.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information.¹⁴ If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation, or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate that it is clearly consistent with the national interest to grant or continue the applicant's clearance.¹⁵

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that

¹⁴ICR Case No. 96-0277 (July 11, 1997) at page 2.

¹⁵ICR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Para E3.1.15.

the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of national security.¹⁶

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of the Executive Order 10865 specifically provides that industrial security clearance decisions shall be, "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned". Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty or patriotism.

CONCLUSIONS

Upon consideration of all facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the following with respect to each allegation set forth in the SOR:

Applicant does not deny his long history of debts and inability to pay since 2001. As indicated above, Applicant has a history of financial difficulty. Specifically, his answers to the SOR provide information on debts that resulted from his salary reductions and unemployment after September 2001. His overall financial activity and subsequent inactivity give rise to Financial Considerations Disqualifying Conditions (FC DC) ¶E2.A6.1.2.1. (*a history of not meeting financial obligations*) and ¶E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*).

A security concern based on financial problems can be mitigated in several ways. Applicant's debt problems have been ongoing for a number of years, and are not recent. Thus, he has not established a mitigating condition under Financial Considerations Mitigating Condition (FC MC) E2.A6.1.3.1 (*the behavior was not recent*). Since there are multiple debts, FC MC ¶E2.A6.1.3.2 (*it was an isolated incident*) does not apply.

Applicant submits that his divorce and unemployment in 2002 caused the financial difficulty. The fact that Applicant did nothing to resolve any of these accounts for so many years following his divorce deprives him of application of (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)*). Applicant maintains that it is his intention to pay all his bills. However, a significant amount of delinquent debt remains outstanding and has been for several years, according to Applicant's credit report. Although Applicant stated he intends to pay all his debts, he has not done so. A promise to pay in the future is not sufficient.

¹⁶Directive, Enclosure 2, Para. E2.2.2

Applicant has not received financial counseling, and there is no evidence that Applicant has resolved any of his debts in the SOR. Thus, 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*) does not apply. Applicant has not provided documentation to support his contention that some of the debts are in fact duplicates.

Applicant contacted his creditors in 2001 and asked that they work with him to resolve the debt. He also contested one debt. However, since then he has made no effort to pay. Instead he maintains his good intentions but is waiting for collection agencies to contact him. FC MC ¶E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) does not apply in this case.

Under these circumstances, I find insufficient evidence of timely or positive action on Applicant's part to pay off his outstanding debts. Instead, I find unexplained delays in addressing his outstanding financial obligations and no clear plan to avoid future financial problems. I find Applicant has failed to mitigate or overcome the government's case. Accordingly, allegations 1.a. through 1.g of the SOR are concluded against Applicant.

Personal Conduct

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance or in other official matters is a security concern. It is deliberate if it is done knowingly and willfully. It is not deliberate if the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or thought that the time period did not apply.

Applicant did not disclose his financial problems concerning delinquent debts in the SF 85P, he submitted in 2004 by answering "no" to question 22 b. He did list the judgment against him in that same application in response to question 22 a. Applicant maintained that he did not list any delinquent debts or judgments in Questions 38 and 39 in his 2005 security clearance application because he did not become aware of the judgment until after the initial filing of the SF 86. Applicant has a long history of debt and history of financial difficulties. He admits to the factual allegation regarding falsification of material facts but then declared it was an oversight. The questions are clearly worded. His inconsistency in his answers coupled with his admissions do not persuade me that he misunderstood the questions.

Here, based on the record evidence as a whole, the Government established its case under Guideline E. Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2. I find, that Applicant deliberately omitted information about his finances in response to questions 22 b., 38, and 39 on the security clearance applications. Therefore, subparagraphs 2.a, 2.b, and 2.c are decided against the

Applicant. 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 responsibilities.*”) applies in his case.

In his answer to the SOR, Applicant admitted to the alleged debts except for allegation 1.g. Applicant was required to list any debts more than 180 or 90 days late on his security applications. He did not, and so, the issue is whether his negative answers to the questions were deliberately false. I am persuaded it was. Applicant has had a long history of debts. He did list one judgment. I do not find it reasonable that the other debts would be forgotten as an oversight.

I have reviewed the mitigating conditions under the guideline and conclude none apply. Accordingly, Guideline E is decided against Applicant.

Whole Person Analysis

I have considered both the record and Applicant in light of the “whole person” concept. He is a mature individual who has served in the USMC. He is highly educated and enjoys his work. His unemployment and divorce in 2001 contributed to his financial difficulties. While Applicant was unable to pay his debts initially, he now has resources to begin a payment plan. He has promised to pay all his debts, but they remain unpaid. This is not a question of his loyalty to the United States, but his resolve to pay his financial responsibilities. The ultimate burden of persuasion rests with Applicant to demonstrate evidence of refutation, extenuation or mitigation to overcome the Government’s case against him. Unpaid debts have security significance under Guideline F and E. In addition, Applicant was not forthcoming in his two applications in 2004 and 2005. This creates doubt and any doubt must be resolved in favor of the Government in security clearance cases.

To conclude, Applicant has failed to meet his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I have considered the record evidence as a whole, the whole person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive.

FORMAL FINDINGS

In accordance with Section E.2.2. of Enclosure 2 of the Directive, the following are the formal findings as to each allegation in the SOR:

Paragraph 1, Financial Considerations (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

Paragraph 2, Personal Conduct (Guideline E): Against Applicant

Subparagraph 2.a.	Against Applicant
Subparagraph 2.b.	Against Applicant
Subparagraph 2.c.	Against Applicant

DECISION

In light of all 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.

Noreen A. Lynch
Administrative Judge