

KEYWORD: Financial; Criminal Conduct; Personal Conduct

DIGEST: Applicant is a 31-year-old employee of a defense contractor. He was convicted in 1996 for soliciting prostitution, and drove regularly for numerous years with a suspended or revoked driver's license resulting in several citations and convictions. He has accrued a number of unpaid debts. Applicant did not intentionally falsify his security clearance application, or fail to cooperate with an investigator, as alleged. Applicant mitigated the personal conduct concerns, but failed to mitigate the financial considerations and criminal conduct concerns. Clearance is denied.

CASENO: 06-05784.h1

DATE: 04/11/2007

DATE: April 11, 2007

In re:)	
)	
)	
-----)	ISCR Case No. 06-05784
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

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

APPEARANCES

FOR GOVERNMENT

Fahryn Hoffman, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 31-year-old employee of a defense contractor. He was convicted in 1996 for soliciting prostitution, and drove regularly for numerous years with a suspended or revoked driver's license resulting in several citations and convictions. He has accrued a number of unpaid debts. Applicant did not intentionally falsify his security clearance application, or fail to cooperate with an investigator, as alleged. Applicant mitigated the personal conduct concerns, but failed to mitigate the financial considerations and criminal conduct concerns. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On July 21, 2006, DOHA issued a Statement of Reasons¹ (SOR) detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on August 4, 2006 and September 12, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on February 5, 2007. A notice of hearing was issued on February 16, 2007, scheduling the hearing for March 9, 2007. Applicant waived the 15-day notice requirement. With the consent of the parties, 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. The Government offered seven exhibits that were marked as Government Exhibits (GE) 1 through 7, and admitted without objection. Applicant testified, but did not offer any exhibits. The record was left open to allow Applicant an opportunity to submit additional material. Applicant did not submit any additional material.² DOHA received the hearing transcript (Tr.) on March 19, 2007.

RULINGS ON PROCEDURE

Department Counsel moved to amend the Statement of Reasons. The motion was marked as Hearing Exhibit (HE) I. Applicant was provided a copy of the motion in advance of the hearing. Department Counsel moved to add two allegations, SOR ¶¶ 2.h and 2.i, as contained in HE I. Applicant did not object. I granted the motion. Department Counsel moved to amend SOR ¶ 2.e, by changing the words, “subparagraph 1.c.” in the third line to “subparagraph 1.a.” Applicant did not object, and I granted the motion. Department Counsel further moved to amend SOR ¶ 3.b, by inserting “2.h. and 2.i.” after “2.e.” That motion was denied.³

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 31-year-old employee of a defense contractor. Applicant has several years of college, but does not have a degree. He is single with one child, who lives with the child’s mother.⁴

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).

²See Department Counsel’s Memo, HE III.

³Tr. at 90-96, 104-105.

⁴Tr. at 32; GE 1.

Applicant admits he owes the delinquent debts in SOR ¶¶ 1.a through 1.i. He attributes his financial problems to being young and irresponsible.⁵

The debt in SOR ¶ 1.a is a judgment for \$3,447 entered in 2000, for a delinquent student loan for college tuition. Applicant received a garnishment summons to appear in August 2006. The summons showed the judgment of \$3,447, with a credit of \$1,344, and additional interest and costs of \$2,007, for a balance owed of \$4,110.⁶ Applicant testified that his wages have been garnished and that he is paying \$100 per month additional to the garnishment. Applicant estimates that the debt is now less than \$2,000. Applicant submitted no documentation to verify any payments.⁷

The debt in SOR ¶ 1.b is a debt of \$140 to a state agency for overpaid unemployment benefits. Applicant testified that the state took money from his state income tax refund for this debt. He believes that the debt is now \$43. The most recent credit report shows the debt at \$63.⁸

SOR ¶ 1.c alleges a judgment of \$7,265 entered in 2001, for a delinquent student loan for college tuition. Applicant disputed the underlying debt because he stated he had a scholarship. He stated he contacted the school but they referred him to their attorneys. He has no further information on this debt.⁹

The debt in SOR ¶ 1.d is a debt of \$513 to a bank for overdrafts. The debt is unpaid. Applicant stated he is looking into a debt consolidation loan to address this and his other delinquent debts.¹⁰

SOR ¶¶ 1.e through 1.g are three medical debts to unknown providers in the amounts of \$146, \$155, and \$230. SOR ¶ 1.h lists a judgment of \$272, entered in 2004 on behalf of a hospital. Applicant was in a car accident a few years ago in which he was a passenger. He states that all the medical bills are related to that accident. Applicant states he recently received a settlement for the accident and that any medical debts will be paid.¹¹ Based upon the evidence presented, it is unclear if any of the debts in SOR ¶¶ 1.e through 1.g, were the underlying debt that resulted in the judgment in SOR ¶ 1.h.

⁵Tr. at 53; Applicant's response to SOR.

⁶GE 2 at 3.

⁷Tr. at 35-37; Applicant's response to SOR; GE 2 at 2-3; GE 3 at 1; GE 4 at 1.

⁸Tr. at 37-40; Applicant's response to SOR; GE 2 at 4-5; GE 3 at 2; GE 4 at 2.

⁹Tr. at 44-45; Applicant's response to SOR; GE 2 at 2; GE 3 at 1; GE 4 at 1.

¹⁰Tr. at 45-47; Applicant's response to SOR; GE 3 at 1; GE 4 at 2.

¹¹Tr. at 47-49; Applicant's response to SOR; GE 2 at 4; GE 3 at 1; GE 4 at 1.

Applicant admitted to the debt in SOR ¶ 1.i, in the amount of \$381 for a delinquent phone bill. He has not paid this debt.¹²

The credit report of March 6, 2007, lists a new delinquent debt of \$153 for a cell phone. This debt was initiated in about May 2006. Applicant admitted he still owed this debt.¹³

Applicant has never received financial counseling.¹⁴ He has a plan is to pay his debts through a debt consolidation loan from his credit union, but has done little thus far to voluntarily pay his debts.

Applicant was stopped by the police in July 1995, and cited for driving on a revoked/suspended license, a misdemeanor, as alleged in SOR ¶ 2.a. Applicant admits that he was driving on a suspended license. He does not remember whether he knew at the time that his license had been suspended. The case was dismissed after Applicant provided proof to the court that his license had been reinstated.¹⁵

Applicant was charged in September 1996, with soliciting prostitution, a misdemeanor, as alleged in SOR ¶ 2.b. He was found guilty, and paid approximately \$315 in fines and court costs.¹⁶

Applicant was stopped by the police in February 1999, and cited for driving on a revoked/suspended license, a misdemeanor, as alleged in SOR ¶ 2.c. The charge was Nolle Prosequi, i.e., dismissed. Applicant admits that he was driving on a suspended license. He does not remember whether he knew at the time that his license had been suspended. Applicant continued to drive after this incident, knowing that his license was expired.¹⁷

Applicant was stopped by the police in July 2001, and cited for not having a driver's license, a misdemeanor, as alleged in SOR ¶ 2.d. He was found guilty and ordered to pay a \$100 fine and \$40 court costs.¹⁸

¹²Tr. at 49-50; Applicant's response to SOR; GE 3 at 2; GE 4 at 2.

¹³Tr. at 51-54; GE 4 at 1. This debt is not considered for disqualifying purposes, but may be considered when analyzing the "whole person," and the potential application of mitigating conditions.

¹⁴Tr. at 54.

¹⁵Tr. at 65-68; Applicant's response to SOR.

¹⁶Tr. at 69-70; Applicant's response to SOR; GE 5 at 3; GE 6 at 2.

¹⁷Tr. at 71-73; Applicant's response to SOR.

¹⁸Tr. at 73-74; Applicant's response to SOR; GE 7 at 1.

Applicant was stopped by the police in April 2002, and cited for driving while suspended, amended to not having a driver's license, a misdemeanor, as alleged in SOR ¶ 2.h. He was found guilty and ordered to pay a \$25 fine and court costs of \$164.¹⁹

Applicant was arrested on a capias warrant on about July 18, 2002, for failure to appear, as alleged in SOR ¶ 2.e. A court may issue a capias should a person fail to appear in court pursuant either to a summons or a subpoena. The capias requires the arrest of the accused and a subsequent bail hearing. At the hearing triggered by the capias, the court may fine or jail the person for failing to appear.²⁰ In this case the capias was dismissed.²¹ There is insufficient evidence of any criminal responsibility on Applicant's part, as relates to this warrant and arrest.

Applicant was stopped by the police in October 2002, and cited for driving on a revoked license, a misdemeanor, as alleged in SOR ¶ 2.i. The charge was Nolle Prosequi.²²

Applicant was stopped by the police on about August 12, 2004, and cited for driving on a revoked/suspended license, a misdemeanor, as alleged in SOR ¶ 2.f. A capias warrant was issued on about September 23, 2004, for Applicant's failure to appear, as alleged in SOR ¶ 2.g. The warrant was dismissed in February 2005, when Applicant was found guilty and sentenced to 90 days in jail, suspended, a fine of \$100 and court costs of \$178.²³ I find Applicant criminally responsible for the misdemeanor offense of driving on a revoked/suspended license, but there is insufficient evidence to find him criminally responsible for failure to appear.

Applicant admitted that he regularly drove from about 1999 to at least 2004, knowing that his license was suspended or revoked. He testified that he has possessed a valid driver's license for about six to eight months, and that he has not driven with a suspended or revoked license for more than a year.²⁴

Applicant submitted a security clearance application, Standard Form 86 (SF-86), on August 3, 2004. Question 26 of the SF-86 asked, "In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in modules 21, 22, 23, 24, or 25? (Leave out traffic fines of less than \$150 unless the violation was alcohol or drug related.). For this item, report information regardless of whether the record in your case has been 'sealed' or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the

¹⁹Tr. at 85-88; GE 7 at 1, 6.

²⁰See, www.courts.state.va.us/mag/page1.htm.

²¹Tr. at 74-82; Applicant's response to SOR; GE 5 at 3; GE 6 at 2; GE 7 at 1-2.

²²Tr. at 88-90; GE 7 at 1, 7.

²³Tr. at 82-84; Applicant's response to SOR; GE 7 at 1, 3.

²⁴Tr. at 73-74, 83, 97, 110-111; GE 4 at 1. The times that Applicant drove without a license, which were not alleged in the SOR, are not considered for disqualifying purposes, but may be considered when analyzing the "whole person," and the potential application of mitigating conditions.

Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607.” Applicant answered “NO.”²⁵

Applicant stated he answered “NO” because he misunderstood the question. Applicant thought the question asked to list arrests for the offenses listed in modules 21 to 25. Applicant was still not certain at the hearing if he should have listed his offenses.²⁶ The only time Applicant was truly arrested during the period in question was when he was picked up for the failure to appear warrant. That warrant was dismissed. Applicant was not arrested for the driving related charges; he was issued citations to appear in court. He had several traffic-related convictions during the period in question, but none of them carried a fine of more than \$150. After considering all the evidence, and gauging Applicant’s credibility, I find Applicant did not intentionally falsify his SF-86 by omitting the information contained in SOR ¶¶ 2.c through 2.e, 2.h, and 2.i.

Question 37 of the SF-86 asked, “In the last 7 years, have you had any judgments against you that have not been paid?” Applicant answered “YES,” and listed a 2001 judgment of \$7,000. He did not specifically list the judgment in SOR ¶ 1.a.²⁷ Applicant was unsure why he did not list the additional judgment, but was adamant that he did not intentionally falsify the security clearance application.²⁸ I find Applicant did not intentionally falsify his SF-86 by only listing one judgment in response to Question 37.

Applicant was scheduled to be interviewed during his background investigation in about late February 2005, and then again in early March 2005. Applicant testified he had scheduling conflicts and was unable to attend either scheduled interview. He attempted to contact the investigator about the meetings but was unable to do so. No other evidence was introduced. He was interviewed by an investigator in December 2005.²⁹

POLICIES

“[N]o one has a ‘right’ to a security clearance.”³⁰ 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

²⁵GE 1 at 6.

²⁶Tr. at 98-105.

²⁷GE 1 at 7.

²⁸Tr. at 61-65.

²⁹Tr. at 105-110; Applicant’s response to SOR.

³⁰*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

access to such information.”³¹ 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.”³² 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.³³ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.³⁴ 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.³⁵

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.

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 accumulated numerous delinquent debts

³¹*Id.* at 527.

³²Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

³³ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

³⁴*Id.*; Directive, ¶ E2.2.2.

³⁵Exec. Or. 10865 § 7.

that remain unsatisfied. I resolve SOR ¶¶ 1.e through 1.g, in Applicant's favor, as there is insufficient evidence to show that these were not the underlying debts that resulted in the judgment in SOR ¶ 1.h.

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*).

Applicant has numerous delinquent debts accrued over a several year period. Most remain unpaid. FC MC E2.A6.1.3.1 and FC MC E2.A6.1.3.2 do not apply.

Applicant attributed his financial issues to youth and irresponsibility. Four of the debts were medical debts, and related to a car accident in which Applicant was a passenger. The total of the four debts is \$803, a small figure compared to the total amount owed. Applicant is given some credit under FC MC E2.A6.1.3.3 for his medical debts. The other debts did not result from conditions that were largely beyond Applicant's control.

Applicant has not received counseling for his financial problem, nor has he shown that his financial problems are being resolved or under control. Applicant continues to accrue new delinquent debt, as evidenced by the delinquent cell phone bill. While he states he has a plan to resolve his problems, he has not implemented that plan. FC MC E2.A6.1.3.4 is not applicable.

Applicant has done almost nothing to voluntarily pay the debts in issue. Applicant's wages are being garnished for the debt in SOR ¶ 1.a. Applicant testified, but did not provide supporting documentation, that he has paid several hundred dollars in additional payments toward this same debt. Money has been taken out of Applicant's state income tax refunds for the debt in SOR ¶ 1.b. Applicant's actions do not constitute a good-faith effort to repay overdue creditors or otherwise resolve debts. FC MC E2.A6.1.3.6 does not apply.

Guideline J, Criminal Conduct

A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness.

Applicant was convicted of soliciting prostitution in 1996. He has numerous citations and convictions for driving on a suspended or revoked license. Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1 (*Allegations or admissions of criminal conduct, regardless of whether the person was formally charged*), and CC DC E2.A10.1.2.2 (*A single serious crime or multiple lesser offenses*) both apply.

I have considered all the mitigating conditions and especially considered Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.3.1 (*The criminal behavior was not recent*), CC MC E2.A10.1.3.2 (*The crime was an isolated incident*), and CC MC E2.A10.1.3.6 (*There is clear*

evidence of successful rehabilitation). Applicant drove regularly for a number of years with a suspended or revoked driver's license. He knew he was violating the law every time he did so. While it has been more than two years since Applicant's last conviction, his testimony was that he has possessed a valid driver's license for only about six to eight months, and that he has not driven with a suspended or revoked license for more than a year. Under these circumstances, I conclude that no mitigating condition applies.

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.

Based on all the evidence, I have considered the Personal Conduct Disqualifying Conditions (PC DC) and concerns addressed in E2.A5.1.1.1 (*Refusal to undergo or cooperate with required security processing, including medical and psychological testing*), E2.A5.1.1.2 (*Refusal to complete required security forms, releases, or provide full, frank, and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personnel security or trustworthiness determination*), and 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*).

I do not find a refusal to cooperate with the investigators on Applicant's part. He testified that he had a scheduling conflict that caused him to miss the first two meetings, but that he unsuccessfully attempted to contact the investigator to reschedule. No evidence was presented to rebut this. I conclude SOR ¶ 3.a in Applicant's favor.

As discussed above, Applicant did not list all his criminal activity under Question 26 of his SF-86. The criminal activity in question was an arrest pursuant to a warrant, which was then dismissed, and traffic convictions. His traffic offenses were criminal, but carried fines of less than \$150. Applicant was still uncertain at the hearing if he was required to list the traffic-related convictions. I do not find an intentional falsification. SOR ¶ 3.b is concluded in Applicant's favor.

Applicant listed one judgment in response to Question 37, but did not list his other judgment. After considering all the evidence, I find this was not an intentional attempt to conceal information. I conclude SOR ¶ 3.a 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 every finding of fact and conclusion discussed above.

Subparagraph 3.a:	For Applicant
Subparagraph 3.b:	For Applicant
Subparagraph 3.c:	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