

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has a history of failing to meet his financial obligations dating back to 2001. As of the date of his hearing, he had four accounts, owing approximately \$5,000 that have been delinquent for many years. His financial problems were, to a limited extent, the result of circumstances beyond his control. Notwithstanding, Applicant's evidence is insufficient to show he has a track record of financial responsibility. More importantly, he deliberately falsified his security clearance application. Clearance is denied.

CASENO: 06-07554.h1

DATE: 04/30/2007

DATE: April 30, 2007

In re:)	
)	
-----)	ISCR Case No. 06-07554
SSN: -----)	
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
JUAN J. RIVERA**

APPEARANCES

FOR GOVERNMENT
Daniel Crowley, Esq., Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

Applicant has a history of failing to meet his financial obligations dating back to 2001. As of the date of his hearing, he had four accounts, owing approximately \$5,000 that have been delinquent for many years. His financial problems were, to a limited extent, the result of circumstances beyond his control. Notwithstanding, Applicant's evidence is insufficient to show he has a track record of financial responsibility. More importantly, he deliberately falsified his security clearance application. Clearance is denied.

STATEMENT OF THE CASE

On September 21, 2005, Applicant submitted a security clearance application.¹ On June 12, 2006, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The SOR informed Applicant that, based on information available to the Government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant him access to classified information and recommended that his case be submitted to an administrative judge for a security determination.² On June 29, 2006, Applicant answered the SOR (Answer) and requested a hearing.

The case was assigned to me on February 27, 2007. On March 29, 2007, I convened a hearing at which the government presented one witness and six exhibits, marked GE 1-6, to support the SOR. Applicant testified on his own behalf, and presented six exhibits, marked AE 1-6, which were admitted without objection. DOHA received the transcript (Tr.) on April 11, 2007.

FINDINGS OF FACT

Applicant denied all SOR allegations with explanations. His explanations are incorporated herein as findings of fact. After a thorough review of the pleadings, Applicant's testimony, and the evidence, I make the following additional findings of fact:

Applicant is a 40-year-old information technology technician. He attended college and received a bachelor's degree in electrical engineering. (Tr. 5) He has no military service. Applicant has never been married and disclosed no children. He has worked for his current employer, a defense contractor, since June 2004, and requires access to classified information to retain his job.

In his September 2005 security clearance application, Applicant answered "No" to questions 28a and 28b, and failed to list any debts over 180 days delinquent he had during the last seven years, or any current debts over 90 days delinquent (respectively). The subsequent background investigation revealed he had four outstanding delinquent accounts which have been alleged in SOR ¶¶1.a - 1.d.

At his hearing, Applicant admitted he acquired the alleged debts and that they are outstanding. Applicant testified he is not legally responsible for the alleged debts and does not intend to pay off the debts. SOR ¶1.a concerns a \$4,329 debt currently in collection by a collection agency for a credit card account Applicant opened around June 2001. After Applicant became delinquent, the credit card company charged off the debt and sold it to the collection agency around June 2002.³ Applicant testified the credit card was sent to him by mail, unsolicited, and that he has no obligation

¹ GE 1 (Electronic Questionnaires for Investigations Processing (e-QIP), dated September 21, 2005).

² See Executive Order 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) (Directive), as amended.

³ GE 2 (Credit bureau report (CBR), dated October 2005, and GE 6 (CBR, dated March 2007).

to pay the debt because he did not sign a contract with the credit card company. He claimed he asked the credit card company twice to take the card back and they told him to keep it. He used the card when he was unemployed to pay for day to day living expenses. He averred he only charged approximately \$1,500. (Tr. 40, 66) Applicant claimed he made some payments on the account, but he was unemployed/underemployed, and his lack of earnings prevented him from making any more payments. In 2002, the credit card company went out of business. He has refused to recognize the collection agency as the credit holder of the debt. He refused to make payments to the collection agency, because his contract was with the credit card company. He presented evidence showing the credit card company went out of business in 2002.⁴

SOR ¶1.b concerns a \$360 suit (approximately value) Applicant purchased on credit in October 2002. He made some payments, but ultimately defaulted on the account. He claimed he attempted to contact the seller several times to make payments, but was not able to pay/contact the seller who had gone out of business (bankrupt). The seller charged off \$174 in October 2003, and the account was sold to a collection agency. Applicant has refused to pay the collection agency because his business was with the seller, not with the collection agency.

SOR ¶1.c concerns a \$443 collection for a wireless phone service account. Applicant opened the account sometime in 2004.⁵ He entered into a dispute with the company concerning repairs to his cell phone, and the length of his service contract. The company refused to acknowledge that he only had a one year service contract, and he refused to pay the debt. AE 6 (an invoice from the same wireless provider, dated March 22, 2007), shows Applicant has a current account with the provider and is making regular payments.

SOR ¶1.d concerns a \$112 collection for another wireless account. Applicant testified the \$112 was for roaming charges he refused to pay. When he entered into the wireless service contract, he was told he would not be billed for roaming charges. After a month's use, he received a statement collecting roaming charges and he refused to pay them. He claimed he paid other valid charges in the account, but disputed the roaming charges with the provider. He presented no evidence, other than his testimony, to substantiate his claims.

On November 22, 2005, Applicant was interviewed by a government-contracted investigator as part of his background investigation. He was confronted with the four debts alleged in the SOR, and asked about his intentions with respect to the four delinquent debts. He stated he had no intention to pay off the debts.⁶

At his hearing, Applicant testified he is not legally responsible for the alleged debts and does not intend to pay off the debts. Concerning SOR ¶¶ 1.a and 1b, he explained that the original creditors are out of business and he has no contract with the collection agencies. He is disputing the debts alleged in SOR ¶¶ 1.c and 1d, and as such, he stated he is not going to pay them. Additionally, he averred that all four debts are more than seven years old. As such, he believes the debts are not legally enforceable under the state's statute of limitations, and should have been dropped off from

⁴ AE 5.

⁵ GE 2.

⁶ GE 3 (Personal Subject Interview, dated November 22, 2005).

his CBRs. Applicant further claimed that he resolved (discharged) the alleged debts by filing a UCC Financing Statement in July 12, 2006. At his hearing, Applicant presented a convoluted financial theory (UCC/Redemption Process), under which Applicant claimed he has able to discharge his debts by filing a UCC Financial Statement and offering his personal credit to offset the debts.⁷

Applicant testified, and the evidence shows, that he is current in all of his other financial obligations. Since taking his current job in June 2004, Applicant has had a monthly remainder of approximately \$1,000 after paying his debts and living expenses. He claimed that his financial problems were the result of periods of unemployment. The evidence shows he was unemployed from 1993 to 1995, from January to July 2000, and from April to May 2004. While unemployed, he did not have enough income to support himself and to pay for his delinquent debts. From 1998 to the present he has worked as a mathematics teacher, program coordinator, sales representative, substitute teacher, and IT technician.

Applicant testified he did not intend to falsify his security clearance application. He believed that, because he was not legally obligated to pay the debts, he was not required to disclose them. He considers himself to be reliable, trustworthy, and with good judgment. In support of his assertions, he submitted 33 character reference letters from supervisors, co-workers, and friends. Applicant is characterized as a hard-working person, with exceptional on-duty performance, excellent technical knowledge, and outstanding work ethics. In general, his references attest to Applicant's honesty, trustworthiness, good judgment, and dependability. There is no evidence Applicant has mishandled, or caused the compromise of classified information while employed by a defense contractor.

POLICIES

The Directive sets forth adjudicative guidelines which must be considered in evaluating an Applicant's eligibility for access to classified information. Foremost are the disqualifying and mitigating conditions under each adjudicative guideline applicable to the facts and circumstances of the case. However, the guidelines are not viewed as inflexible ironclad rules of law. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive,⁸ and the whole person concept.⁹ Having considered the record evidence as a whole, I conclude Guideline F (Financial

⁷ Tr. 72-75, 83. See AE 2, AE 3, and AE 4 for an explanation of Applicant's financial theory.

⁸ Directive ¶ 6.3. Each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2.

⁹ Directive ¶ E2.2.1. ". . . The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. . . ." The whole person concept includes the consideration of the nature and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the age of the applicant; the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation; and the probability that the circumstances or conduct will continue or recur in the future.

Considerations) and Guideline E (Personal Conduct) are the applicable relevant adjudicative guidelines.

BURDEN OF PROOF

The purpose of a security clearance decision is to determine whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.¹⁰ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest to ensure each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own.

The government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the government must establish by substantial evidence¹¹ a prima facie case that it is not clearly consistent with the national interest for the applicant to have access to classified information. The responsibility then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, the applicant carries a heavy burden of persuasion.¹² The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.¹³

¹⁰ See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

¹¹ ISCR Case No. 98-0761 at 2 (App. Bd. Dec. 27, 1999)(Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.); ISCR Case No. 02-12199 at 3 (App. Bd. Apr. 3, 2006)(Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.); Directive ¶ E3.1.32.1.

¹² *Egan*, 484 U.S. 518, at 528, 531.

¹³ See, *id.*; Directive ¶ E2.2.2.

CONCLUSIONS

Applicant has a history of failing to meet his financial obligations dating back to around 2001. He accumulated approximately \$5,000 in four debts resulting from periods of unemployment and the use of his credit to pay for day to day living expenses. As of the day of the hearing, he still had the same four delinquent/charged off debts, owing approximately \$5,000. Financial Considerations Disqualifying Condition (FC DC) 1: *A history of not meeting financial obligations*; and FC DC 3: *Inability or unwillingness to satisfy debts*, apply in this case.

Appellant established mitigating factors that I have considered as circumstances beyond his control contributing to his inability to pay his debts -- i.e., his three periods of unemployment. Financial Considerations Mitigating Condition (FC MC) 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)*, applies, but only to a limited extent. The evidence also shows that since 2001, Applicant ignored his delinquent debts and took little or no action to pay or resolve his debts. Since June 2004, he has had means to pay but refused to do so. Accordingly, his indebtedness, since at least when he was hired for his current job, has not been beyond his control at all.

I specifically considered FC MC 6: *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*, and conclude it does not apply. Applicant's uncorroborated claims of contacts with creditors to make/attempt payments and to dispute his financial obligations are not sufficient to trigger the applicability of this mitigating condition.

Applicant claimed his financial obligations are old and not legally enforceable (because of the passing of the statute of limitations), that the debts should have been removed from his CBRs after seven years, and that he resolved the debts by filing a UCC Financial Statement. His arguments are not persuasive. On balance, and after careful consideration of all information, Applicant's evidence is not sufficient to show he has dealt responsibly with his financial obligations. Applicant presented little or no evidence to show he paid debts, established or sought settlements/negotiations, established payment plans, budgets, sought financial assistance/counseling before or after receipt of the SOR. Applicant's financial history and lack of favorable evidence preclude a finding that he has established a track record of financial responsibility.

Considering Applicant's age, education, and work experience, his claim that he believed he could resolve/discharge his financial obligations by filing a UCC Financial Statement is preposterous and disingenuous. He solicited credit and obtained goods and services based on his promise to repay his financial obligations. Unable to repay his financial obligations, a reasonable, responsible person would have used legally recognized means available to all United States citizens to revolve his credit problems, i.e., settlements, negotiations, payment plans, and filing for bankruptcy protection. Instead, he chose to disregard his financial obligations and waited for the passing of the statute of limitations.

Notwithstanding the circumstances beyond his control, Applicant demonstrated a lack in judgment and trustworthiness in the handling of his financial affairs. He failed to present sufficient evidence to demonstrate good faith efforts to resolve his debts, or of the reasons that prevented him from discharging his financial obligations. Guideline F is decided against Applicant.

Under Guideline E, personal conduct is always a security concern because it asks the ultimate question – whether a person’s past conduct instills confidence the person can be trusted to properly safeguard classified information. An applicant's conduct is a security concern if it involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Such behavior could indicate that the person may not properly safeguard classified information.¹⁴

The government established, and Applicant admitted, that he failed to disclose the debts alleged in SOR ¶¶ 1.a - 1.d in his response to questions 28a and 28b of his security clearance application.

Considering the record as a whole, I am convinced Applicant deliberately failed to disclose his delinquent debts. Numerous factors weighed in my analysis to reach that conclusion, including: Applicant’s age, his level of education, his employment history, his demeanor and testimony, the number and value of the debts, his long term disregard of the debts, and the submission of his unrealistic financial theory to justify his behavior. I also considered the same reasons previously outlined under the Guideline F discussion, incorporated herein. 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, applies.*

I specifically considered all Guideline E Mitigating Conditions and concluded that none apply. The evidence available in this case is not sufficient to support the applicability of any of the mitigating conditions. Although the falsification occurred in 2005, considering the totality of the circumstances in Applicant’s case, the passage of time alone is not sufficient to mitigate the security concerns raised by his behavior. The falsification occurred on the same security clearance application that is now under adjudication. Additionally, for the same reasons outlined above under the discussion of Guidelines F, incorporated herein, I conclude Applicant’s behavior shows questionable judgment, lack of reliability, and untrustworthiness. Guideline E is decided against Applicant.

I have carefully weighed all evidence, and I applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guidelines. I applied the whole person concept. I specifically considered Applicant’s maturity, his years of good performance working for a defense contractor, and his good reputation. Considering the totality of Applicant’s circumstances, Applicant demonstrated a lack in judgment and trustworthiness in the handling of his financial affairs. He failed to provide credible information to justify or mitigate his unwillingness to satisfy his delinquent debts. Moreover, Applicant failed to present sufficient evidence to mitigate the overall judgment, honesty, and trustworthiness security concerns raised by his falsifications.

¹⁴ Directive, ¶ E2.A5.1.1.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Financial Considerations (Guideline F) Subparagraphs 1.a - 1.e	AGAINST APPLICANT Against Applicant
Paragraph 2, Personal Conduct (Guideline E) Subparagraphs 2.a - 2.c	AGAINST APPLICANT 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.

Juan J. Rivera
Administrative Judge