

KEYWORD: Financial; Personal Conduct; Criminal Conduct

DIGEST: Applicant resolved a \$12,780 credit card debt, but only after it had been charged off for four years and he had worked for his current employer for three years. He admitted falsifying his security clearance application by intentionally failing to disclose the delinquent credit card debt. Security concerns based on financial considerations, personal conduct, and criminal conduct are not mitigated. Clearance is denied.

CASENO: 06-11522.h1

DATE: 08/30/2007

DATE: August 30, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-11522
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
LEROY F. FOREMAN**

APPEARANCES

FOR GOVERNMENT

James F. Duffy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant resolved a \$12,780 credit card debt, but only after it had been charged off for four years and he had worked for his current employer for three years. He admitted falsifying his security

clearance application by intentionally failing to disclose the delinquent credit card debt. Security concerns based on financial considerations, personal conduct, and criminal conduct are not mitigated. Clearance is denied.

STATEMENT OF THE CASE

On April 13, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive); and the revised adjudicative guidelines (AG) approved by the President on December 29, 2005, and implemented effective September 1, 2006. The SOR alleged security concerns raised under Guidelines F (Financial Considerations), E (Personal Conduct), and J (Criminal Conduct).

Applicant answered the SOR in an undated document, admitted all the allegations in the SOR, 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 May 21, 2007. 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 June 6, 2007, but did not respond. The case was assigned to me on August 15, 2007.

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR are incorporated into my findings of fact. I make the following findings:

Applicant is a 38-year-old technical specialist for a defense contractor. He has worked for his current employer since August 2002. He previously received a clearance in August 1996.

Applicant executed a security clearance application in October 2004. He answered "no" to questions 38 and 39, asking if he had been more than 180 days delinquent on any debt in the last seven years and whether he was currently more than 90 days delinquent on any debt. He did not disclose a \$12,780 credit card debt that was charged off as a bad debt in September 2001 and was unpaid at the time of his application. In his answer to the SOR, he admitted falsifying his application, attributed his false answers to shame and denial, and expressed regret for falsifying his application. He settled the debt on November 1, 2005, with an undisclosed amount of help from his family.

In addition to the delinquent credit card debt alleged in the SOR, Applicant's credit reports also reflected a delinquent \$382 utility bill charged off as a bad debt and subsequently paid off in March 2002, a delinquent \$87 utility bill charged off as a bad debt and subsequently paid in June 2002, and a collection account for \$288 opened in July 2003 and paid off in October 2003 (FORM Item 6 at 6-7; Item 7 at 2; Item 8 at 2). These debts are not alleged in the SOR.

POLICIES

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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.” *Id.* at 527. The President has 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.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the guidelines. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, the disqualifying conditions and mitigating conditions under each specific guideline, and the factors listed in AG ¶¶ 2(a)(1)-(9).

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in persons with access to classified information. However, the decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* 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 security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

CONCLUSIONS

Guideline F (Financial Considerations)

The concern under this guideline is as follows: “Failure or inability to live within one’s means, satisfy debts, 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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.” AG ¶18.

A disqualifying condition under AG ¶ 19(a) is raised where there is an “inability or unwillingness to satisfy debts.” AG ¶ 19(c) is raised when there is “a history of not meeting financial obligations.” Applicant’s financial history raises AG ¶¶19(a) and (c).

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a) and (c), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it is never shifted to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns based on financial problems can be mitigated by showing that “the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.” AG ¶ 20(a). This is a compound mitigating condition, with three disjunctive prongs and one conjunctive prong. It may be established by showing the conduct was “so long ago,” or “so infrequent,” or “occurred under such circumstances that it is unlikely to recur.” If any of the three disjunctive prongs are established, the mitigating condition is not fully established unless the conduct “does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.”

Applicant’s delinquent credit card debt was charged off in September 2001, almost six years ago. He has not presented any evidence concerning the circumstances under which the debt was incurred. It is the only delinquent debt alleged in the SOR; however, his credit reports reflect three other instances of allowing debts to be charged off before satisfying them. Uncharged misconduct may be considered “(a) to assess an applicant’s credibility; (b) to evaluate an applicant’s evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis.” ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted). I have considered the uncharged delinquent debts for the limited purpose of determining whether the mitigating condition in AG 20(a) is established. Applicant’s financial history shows a track record of allowing debts to be charged off before paying them. I conclude the mitigating condition in AG ¶¶ 20(a) is not established.

Security concerns under this guideline also can be mitigated by showing that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” AG ¶ 20(d). The concept of good faith “requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.” ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). Applicant’s failure to resolve the debt for more than four years after it was charged off and more than three years after he began working for his current employer reflects lack of prudence and a diminished sense of obligation. I conclude this mitigating condition is not established. No other mitigating conditions under this guideline are relevant.

Guideline E (Personal Conduct)

The concern under this guideline is as follows: “Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions

about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process." AG ¶ 15. The relevant disqualifying condition in this case is "deliberate omission, concealment, or falsification of relevant 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." AG ¶ 16(a).

When a falsification allegation is controverted, as in this case, the government has the burden of proving it. An omission, standing alone, does not 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 of the omission. *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. Jun. 9, 2004)). Based Applicant's admission of falsification, I conclude the disqualifying condition in AG ¶ 16(a) is raised, shifting the burden to Applicant to rebut, explain, extenuate, or mitigate the facts.

Security concerns raised by false or misleading answers on a security clearance application may be mitigated by showing that "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." AG ¶ 17(a). Applicant made no effort to correct his falsifications until he answered the SOR. Neither AG ¶ 17(a) nor any other mitigating condition is established.

Guideline J (Criminal Conduct)

The concern raised by criminal conduct is that it "creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations." AG ¶ 30. Conditions that could raise a security concern and may be disqualifying include "a single serious crime or multiple lesser offenses." AG ¶ 31(a).

It is a felony, punishable by a fine or imprisonment for not more than five years, or both, to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the jurisdiction of the executive branch of the government of the United States. 18 U.S.C. § 1001. Security clearances are matters within the jurisdiction of the executive branch of the government of the United States. A deliberately false answer on a security clearance application is a serious crime within the meaning of Guideline J. Applicant's false answers on his security clearance application raise the disqualifying condition in AG ¶ 31(a), shifting the burden to him to rebut, explain, extenuate, or mitigate the facts.

Security concerns under this guideline may be mitigated by evidence that "so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." AG ¶ 32(a). Applicant's falsification was recent, occurring on his current security clearance application, and there is no evidence of "unusual circumstances." I conclude that neither this mitigating condition nor any others under this guideline are established.

Whole Person Analysis

In addition to considering the specific disqualifying and mitigating conditions under each guideline, I have also considered: (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 applicant's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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. AG ¶¶ 2(a)(1)-(9). Several of these factors are incorporated in the above discussion of Guidelines F, E, and J, but some merit additional comment.

Applicant is a mature adult. His lack of candor and absence of any persuasive excuse raises grave doubts about his reliability, trustworthiness, and good judgment. After weighing the disqualifying and mitigating conditions under Guidelines F, E, and J, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on financial considerations, personal conduct, and criminal conduct. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him a security clearance.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Paragraph 3. Guideline J:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

DECISION

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

LeRoy F. Foreman
Administrative Judge