

SYNOPSIS

Applicant has a history of failing to meet his financial obligations dating back to 1999. As of the date of his hearing, he had nine accounts, owing approximately \$21,315 that have been delinquent for many years. His financial problems were, to a limited extent, the result of circumstances beyond his control, and he made some last minute efforts to resolve them. Notwithstanding, Applicant's evidence is insufficient to show he is in control of his finances, he lacks a track record of financial responsibility, and his financial problems may be a concern in the future. More importantly, he deliberately falsified his security clearance application. Clearance is denied.

STATEMENT OF THE CASE

On December 13, 2004, Applicant submitted a security clearance application.¹ On January 11, 2007, 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 submitted the case to an administrative judge for a security determination.² On January 30, 2007, Applicant answered the SOR (Answer) and requested a hearing.³

The case was assigned to me on February 8, 2007. On March 7, 2007, I convened a hearing at which the government presented nine exhibits, marked GE 1-9, to support the SOR. Applicant testified on his own behalf, and presented five exhibits, marked AE 1-5, which were admitted without objection.⁴ DOHA received the transcript (Tr.) on March 15, 2007.

FINDINGS OF FACT

Applicant admitted all SOR allegations in ¶¶1.a - 1.n with explanations. He admitted he provided incorrect information in his response to SF 86 questions as alleged in SOR ¶¶2.a - 2.d. He denied, however, doing so deliberately or with the intent to mislead the government. His admissions to the SOR allegations 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 41-year-old information technology technician.⁵ He completed high school and attended college for approximately one semester. He has no military. He married in September 1988, and divorced in July 1995. He has two children of this marriage, ages 17 (son) and 7 (daughter). Applicant paid child support for both children until 2006, when his son moved in with him. After that, Applicant was no longer required to make child support payments. Applicant lives with his girlfriend.

¹ GE 1 (Office of Personnel Management Security Clearance Application, Standard Form (SF) 86).

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. On August 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised adjudicative guidelines (Guidelines) to all adjudications and other determinations made under the Directive in which the SOR was issued on or after September 1, 2006.

³ Applicant's answer to the SOR was signed on January 26, 2007, and sworn on January 30, 2007.

⁴ I left the record open to allow Applicant time to submit additional information in support of his case. AE 5 was submitted after the hearing. It includes the government's transmittal letter, dated March 28, 2007, indicating no objection to Applicant's documents.

⁵ GE 1, *Supra*, n. 1, unless indicated otherwise, is the source for the facts in this paragraph.

From October 1983 to October 2002, he worked as a bridge operator for a state agency. In 2002, he resigned from his job, seeking a career change. He also separated from his then girlfriend and moved to another state. From October 2002 to May 2003, he worked as an automobile detailer, but his earnings were substantially reduced compared to his previous job. He has worked for his current employer, a defense contractor, since May 2003 and requires access to classified information to retain his job.

The SOR alleges 14 delinquent/charged off accounts, some of which were duplicated or have been resolved. SOR ¶1.a, ¶1.b, and ¶1.e allege the same debt/judgment in collection by two different entities. (AE 5) Around 2004 he was living in a rented apartment which flooded due to faulty plumbing. His property was damaged and he had to move to a different dwelling. He did not pay his rent, or honor the remainder of his apartment rental contract. His landlord filed legal proceedings against him. Applicant lost his case in court, and a judgment against him was filed in June 2004 for approximately \$1,000. (Tr. 40-41)⁶(GE 4)

Applicant knew he owed money to the landlord, but denied knowing there was a judgment filed against him. He claimed he established a telephonic payment agreement with the creditor (apparently within 30 days of his hearing), and that he made his first payment of \$275, with the balance to be paid in April 2007. (Tr. 40-41, AE 1). He presented no evidence, other than his testimony and his hand-written note (AE 1), to substantiate his claims.

Applicant paid the debts alleged under ¶1.g and ¶1.h in or about March 2007. (AE 2, GE 9) Concerning SOR ¶1.c, as of September 2006, Applicant owed \$2,515 to a state for past due personal income taxes for tax years 2001 and 2000. In 2006, Applicant entered into a payment agreement with the state and has been making payments. (AE 5)

He acquired the debts alleged in ¶1.d and ¶1.f around April-May 2006, and they became delinquent shortly thereafter. ¶1.d was a small dollar loan he made to supplement his salary. (Tr. 54-55) ¶1.f was a wireless account he had with his then girlfriend. In his answer to the SOR, he stated he was in the process of drafting letters to contact these creditors and establish payment plans. He presented no evidence, other than his testimony, to substantiate his claims.

The delinquent debts alleged in ¶1.i, ¶1.j, and ¶1.k were for credit card accounts he opened in May 2000, December 2001, and January 2004 (respectively), to pay for day to day living expenses and to purchase gifts for his children. For a short period of time he was able to make minimum payments on his debts. After a while, his earnings were not sufficient to pay both his debts and his day to day living expenses and he stopped making payments. In his answer to the SOR, he stated he was in the process of drafting letters to contact these creditors and establish payment plans. He presented no evidence, other than his testimony, to substantiate his claims.

SOR ¶1.l concerns a 1998 BMW 528i Applicant purchased in 2002 with his sister as a cosigner on the car note. He claimed he used to work two jobs so he could afford making the car payments. When he quit his job and moved in 2002, he did not have the income he needed to make the payments and had to return the vehicle to the dealer (voluntary repossession). He admitted owing the debt, but disputed some of the charges. (Tr. 62) After his hearing, Applicant presented his 2006-

⁶ See Applicant's answer to the SOR.

2007 bank statements (AE 5) where he highlighted payments of \$316 a month to the creditor in ¶1.1. He presented no corroborating evidence to support his claims. (AE 5) I note the bank statements cover approximately a one-year period of time and show 34 entries indicating “OVERDRAFT/UNAVAILABLE FUNDS FEE” and “NSF FEE FOR ITEM.”⁷

Applicant acquired the debt alleged in ¶1.m as a result of medical services he received. He failed to honor his obligation and the hospital obtained a \$1,113 judgment against him. He claimed to have been making payments of \$25 a week toward the judgment. AE 5 shows a record of 21 payments from March 2005 to March 2007. During that period of time, Applicant received credit for making two payments of \$34 and \$108. The remaining 19 payments were identified as “NSF/CAN.” The debt alleged in ¶1.n was satisfied in February 2007. The debt resulted from his failure to pay property taxes on his car. The city applied Applicant’s state income tax refund to cover the \$182 debt.

Applicant testified this is the first time in his life where his financial situation has been out of control. He claimed that even though his financial situation has been poor, he has always tried to pay his debts in good faith and to the best of his ability. He considers himself to be reliable, trustworthy, and with good judgment. He explained his financial problems were the result of several factors, i.e., the cut in pay he suffered when he resigned in 2002 after 19 years working for the same employer (Tr. 91), moving from one state to another looking for a new career, his separation from his then girlfriend, working for minimum wages from October 2002 to May 2003, and the passing of his mother. After finding employment in May 2003, his priorities became finding a place to stay and paying for his day to day necessities. He claimed he did not have enough income to support himself and to pay for his delinquent debts.

He is in the process of establishing a debt management agreement with a financial management company. He believes the company will assist him in negotiating payment plans with all of his creditors. (AE 3) As of the day of the hearing, he had not signed the debt management agreement. (Tr. 43, 66) In 2007, after receipt of the SOR, he sought a second job to supplement his earnings and to cover his future debt management agreement payments. His current income alone is not sufficient to cover the payments. (Tr. 44, 77) Applicant asserted that if he can get his security clearance, he has been promised a job with his current employer that pays twice as much as he is currently making. With that additional income, he believes he can pay all his delinquent obligations in a short period of time. (Tr. 79)

In his response to the SOR, Applicant promised to contact his creditors in writing and establish payment plans to resolve his debts. As of the day of his hearing, Applicant had failed to provide evidence that he had done so. He promised, however, his intent to do so as soon as his hearing was over. (Tr. 112)

⁷ See Wachovia bank statements included in AE 5. I note the statements show 34 entries indicating “OVERDRAFT/UNAVAILABLE FUNDS FEE” and “NSF FEE FOR ITEM ____”. This conduct 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 under Directive Section 6.3.” ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted). Additionally, even though security concerns pertaining to an overdrawn account and returned checks are not alleged in the SOR, the Judge may consider these financial problems because they are relevant and factually related to a disqualifying condition that was alleged in the SOR. ISCR 05-01820 at 3 n.4 (App. Bd. Dec. 14, 2006) (citing ISCR Case No. 01-18860 at 8 (App. Bd. Mar. 17, 2003) and ISCR Case No. 02-00305 at 4 (App. Bd. Feb. 12, 2003)).

In December 2004, Applicant submitted an Office of Personnel Management Security Clearance Application, Standard Form (SF) 86. (GE 1) Applicant answered “No” to question 36, which asked whether in the last seven years he had a lien placed against him for failure to pay taxes or other debts. He failed to disclose a \$6,981 lien placed against him by the U.S. Department of Treasury Internal Revenue Service (IRS) in November 2003. He claimed that because he had established a payment plan with the IRS, he believed the lien had been removed. In his response to question 34, he disclosed the wage garnishments imposed by the IRS and the creditor in SOR ¶1.n.

He also answered “No” to question 37, which asked whether in the last seven years he had any judgments against him that had not been paid. He failed to disclose a \$1,018 judgment entered against him in May 2004 that was unpaid (¶1.a). Applicant further answered “No” to questions 38 and 39, 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) (¶¶1.e, 1.i, 1.j, 1.k, and 1.l).

At his hearing, Applicant admitted he knew about the delinquent debts that he failed to disclose, but explained he did not know the extent of his debts. He claimed to have no knowledge of any judgments against him when he submitted his SF 86. He further claimed he had made payments to the creditors of the debts alleged in ¶¶ 1.i, 1.j, and 1.k, and did not believe the other debts were sufficiently delinquent to justify disclosing them. He presented no evidence of the claimed payment efforts. (Tr. 91-95)

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

BURDEN OF PROOF

⁸ Directive, Section 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 Guideline ¶ 2(a). “. . . 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.

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

CONCLUSIONS

Under Guideline F (Financial Considerations),¹⁴ an Applicant's "[f]ailure 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."

Applicant has a history of failing to meet his financial obligations dating back to the late 1990s. From 1999 to 2007, he accumulated significant debts resulting from spending beyond his means, quitting his long time job, separating from his then girl friend, relocation expenses, and periods of underemployment. After receipt of the SOR in January 2007, he paid two of the twelve delinquent/charged off debts alleged in the SOR (¶1.g and ¶1.h) and entered into a payment agreement to settle the debt alleged in SOR ¶1.i. He has three debts he is forcibly paying/paid as a result of legal proceedings against him – ¶1.c, ¶1.m, and ¶1.n. As of the day of the hearing, he still had nine outstanding delinquent/charged off debts, owing approximately \$21,315. Financial Considerations Disqualifying Condition (FC DC) ¶ 19(a): *inability or unwillingness to satisfy debts*; and FC DC ¶ 19(c): *a history of not meeting financial obligations*; apply in this case.

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.

¹⁴ Guidelines ¶ 18.

Five Financial Considerations Mitigating Conditions (FC MC) under Guidelines ¶ 20(a)-(e) are potentially applicable:

- (a) *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;*
- (b) *the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;*
- (c) *the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;*
- (d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;*
- (e) *the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.*

Considering the record evidence as a whole,¹⁵ I conclude Guidelines ¶ 20(a) does not apply because Applicant had multiple (nine) delinquent SOR debts at the time of his hearing, and he was not making payments on many of the debts.

Applicant established mitigating factors that I have considered, to a limited extent, as circumstances beyond his control contributing to his inability to pay his debts -- i.e., quitting his long time job, separating from his then girl friend, relocation expenses, and periods of underemployment. FC MC ¶ 20(b), applies, but only in part, because Applicant failed to present evidence to show he acted responsibly under the circumstances.

FC MC ¶ 20(c), does not apply. Applicant gets some credit for contacting the financial services firm to help him manage/deal with his creditors. I note his intent to participate in financial counseling and establish a payment plan to resolve his debts. As of the day of the hearing, Applicant had not signed his financial management assistance contract, and his income was not sufficient for him to afford his future financial plan. His last minute efforts to resolve his delinquencies, however, do not mitigate the concerns. What is more important, Applicant's evidence fails to show that his *problem is being resolved or is under control*. I also considered FC MC ¶ 20(d), and concluded it does not apply. Applicant's last minute payment/settlement efforts do not rise to the level of full "good-faith efforts" to repay creditors. FC MC ¶ 20(e), does not apply. Applicant failed to provide adequate documentation showing his actions to resolve his financial problems.

On balance, and after careful deliberation, Applicant's evidence is not sufficient to show he has dealt responsibly with his financial obligations. He presented little evidence to show he dealt responsibly with his financial obligations before receipt of the SOR (i.e., paid debts, settlements, documented negotiations, payment plans, budgets, financial assistance/counseling). Applicant's

¹⁵ See ISCR Case No. 03-02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for FC MC 1, all debts are considered as a whole.

financial history and lack of favorable evidence preclude a finding that he has established a track record of financial responsibility, or that he has taken control of his financial situation. He is financially overextended and failed to show that he has the means to deal with both his delinquent debts and his day to day living expenses. His financial problems are likely to be a concern in the future. I find Applicant's financial problems are recent, not isolated, and ongoing.

Under Guideline E (Personal Conduct), “[c]onduct 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.”¹⁶

Applicant admitted he failed to disclose relevant information in his answers to SF 86 questions 36, 37, 38 and 39. He denied, however, that it was done with the deliberate intent to falsify his answers or to mislead the government. In light of Applicant’s admissions, age, length of employment, the number and value of the debts, liens, and judgments that he failed to disclose, the circumstances under which he acquired those obligations, and his testimony and demeanor, I find Applicant’s omissions with respect to questions 37, 38, and 39 were deliberate and made with the intent to mislead the government. These were his personal debts and he knew they were delinquent because he had made no effort to resolve them. Further, a judge told him in open court that he was responsible for the debt alleged in ¶1.a at the time he granted a judgment against Applicant. Disqualifying Conditions (DC) ¶ 16(a): *deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . .*, applies.

I specifically considered all Guideline E Mitigating Conditions (¶ 17) and concluded that none apply. Although the falsification occurred in 2004, 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. Furthermore, he presented no evidence that he has reduced his vulnerability to exploitation, manipulation, or duress. 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, and his four years of good performance working for a defense contractor. 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 show sufficient efforts to resolve his financial situation. He carried his delinquencies for many years and it was not until after he received the SOR that he made some effort to resolve three of the debts. Moreover, Applicant failed to present sufficient evidence to mitigate the overall judgment, honesty, and trustworthiness security concerns raised by his falsifications, and the likelihood of recurrence remains a concern.

FORMAL FINDINGS

¹⁶ Guidelines, ¶ 15.

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

Paragraph 1, Financial Considerations (Guideline F)	AGAINST APPLICANT
Subparagraphs 1.a, 1.c, 1.d, 1.f, and 1.i - 1.m	Against Applicant
Subparagraphs 1.b, 1.e, 1.g, 1.h, and 1.n	For Applicant
Paragraph 2, Personal Conduct (Guideline E)	AGAINST APPLICANT
Subparagraphs 2.a	For Applicant
Subparagraphs 2.b - 2.d	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