

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 42-year-old employee of a defense contractor. He has an extensive amount of delinquent debts, including unpaid judgments, and unpaid state and federal taxes. Applicant failed to file his federal tax returns for tax years 1995 through 2001, and intentionally provided false information on a security clearance application. Clearance is denied.

CASENO: 06-12480.h1

DATE: 05/21/2007

DATE: May 21, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-12480
)	
Applicant for Security Clearance)	
)	

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

APPEARANCES

FOR GOVERNMENT

J. Theodore Hammer, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 42-year-old employee of a defense contractor. He has an extensive amount of delinquent debts, including unpaid judgments, and unpaid state and federal taxes. Applicant failed

to file his federal tax returns for tax years 1995 through 2001, and intentionally provided false information on a security clearance application. 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 September 11, 2006, DOHA issued a Statement of Reasons¹ (SOR) detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense for SORs issued after September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR in writing on October 12, 2006, 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 February 27, 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 March 6, 2007. His response was due April 6, 2007. As of April 30, 2007, he had not responded. The case was assigned to me on May 2, 2007.

FINDINGS OF FACT

Applicant is a 42-year-old employee of a defense contractor. He is divorced and has a 20-year-old son and a 20-year-old daughter. He has an associate’s degree.²

Applicant served in the U.S. Navy from 1982 to May 1991. On July 27, 1990, the Department of the Navy Central Adjudication Facility (DON CAF) issued a letter of intent (LOI) to revoke Applicant’s security clearance based upon his excessive indebtedness, recurring financial difficulties or unexplained affluence, and acts of omission or commission that indicate poor judgment, unreliability or trustworthiness. In addition to delinquent debts, the LOI cited Applicant’s 1988 special court-martial conviction for larceny of \$412 from his roommate, and a 1989 arrest and conviction for larceny. DON CAF suspended Applicant’s access to classified information pending their final determination. There is no evidence in the FORM as to the final outcome of this action, possibly because Applicant was discharged before the final determination.³

¹Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).

²Item 1 at 1, 7, 16, 17; Item 2 at 1-3.

³Item 1 at 20; Item 2 at 3; Item 7. Applicant’s security clearance application states he served in the Navy until May 1991, and provides his rank as a first class petty officer (E-6). The DON CAF documents reflect that Applicant was a third class petty officer (E-4) in July 1990. The adverse information in the above paragraph is not considered for

Applicant has an extensive amount of delinquent debts, including unpaid judgments, and unpaid state and federal taxes. Applicant failed to file his federal tax returns for tax years 1995 through 2001. On April 22, 2004, the Internal Revenue Service filed a federal tax lien against Applicant in the amount of \$76,044. Applicant stated he pays \$533 per month to satisfy this debt, but provided no supporting documentation. The credit bureau report (CBR) of February 22, 2007, still lists the tax lien of \$76,044.⁴

Applicant admitted to the debt in SOR ¶ 1.b, in the amount of \$453. He stated it was a shared debt prior to his divorce, his spouse created the debt and did not pay, and that he was unaware the debt still existed. Applicant stated he would satisfy the debt. The CBR of February 22, 2007, still lists the debt.⁵

Applicant admitted to the debt in SOR ¶ 1.c, in the amount of \$855. He stated it was a “[d]ivorce dilemma,” that the debt is currently being satisfied at the rate of \$42 per month, and that the debt will be satisfied in four months. The CBR of February 15, 2005, lists the debt with a balance of \$1,705. The CBR of August 24, 2006, lists this debt with a balance of \$855. The debt does not appear on the CBR of February 22, 2007.⁶ I find this debt has been paid.

Applicant admitted to the debts in SOR ¶¶ 1.d, 1.e, 1.g, and 1.i, in the total amount of approximately \$13,750. He stated each debt was a “[d]ivorce dilemma,” and that he would make arrangements to satisfy the debts. No further evidence was presented.⁷

The debt in SOR ¶ 1.f, is for past due child support in the amount of \$612. Applicant denied this debt and stated his child support balance is zero. He provided a number to call, but no supporting documentation. The CBR of February 22, 2007, still lists this debt with a balance of \$612. The CBR also lists a separate child support account as “closed or paid account/zero balance.” It is unclear if they refer to child support accounts for the same child or for different children.⁸

Applicant denied the debt in SOR ¶ 1.h, in the amount of \$436. He stated he was unaware of this debt, and that he was attempting to contact the creditor, but was unsuccessful. The debt is

disqualifying purposes, but is considered in determining whether Applicant falsified his security questionnaire as alleged in SOR ¶ 2.f, by failing to list the suspension of his security clearance. It may also be considered when analyzing the “whole person,” and the potential application of mitigating conditions.

⁴Item 4; Item 5 at 1; Item 10 at 1.

⁵Item 4; Item 10 at 1.

⁶Item 4; Item 8 at 4; Items 9-10.

⁷Item 4.

⁸Item 4; Item 10 at 2.

listed on the CBR of February 15, 2005. The CBRs of August 24, 2006 and February 22, 2007, do not list this debt.⁹

Applicant admitted to the debt in SOR ¶ 1.j, in the amount of \$1,414. He stated that he would pay the debt. No further evidence was presented.¹⁰

A state tax lien was filed against Applicant in February 1996, in the amount of \$5,857, as reflected in SOR ¶ 1.k. Applicant has not lived in that state in a number of years. He stated he would research the debt and resolve accordingly. No further information or documentation was submitted.¹¹

The debts in SOR ¶¶ 1.l, 1.m, and 1.n, are three judgments entered against Applicant in 1994 and 1995, in the total amount of approximately \$416. Applicant denied knowing about these debts. He stated he would contact the creditors and satisfy the balances. No further information or documentation was submitted.¹²

Applicant utilized an electronic personnel security questionnaire worksheet to submit an electronic security clearance application (SF-86). The SF-86 in the case file is unsigned, but indicated Applicant signed the form on December 16, 2004. A release of information attached to the SF-86 was signed by Applicant on December 16, 2004. Applicant refers to the SF-86 in his response to the SOR.¹³ I find that Applicant did submit the information on the SF-86, as contained in Item 2.

Applicant answered “NO” to all the pertinent financial questions on the SF-86. Question 35 of the SF-86 asked, “In the last 7 years, have you had any property repossessed for any reason?” In his response to the SOR, Applicant stated that the creditor told him that voluntarily turning in his vehicle due to a divorce would not count against him as a repossession.¹⁴ I find no intentional falsification of this question.

Question 36 of the SF-86 asked, “In the last 7 years, have you had a lien placed against your property for failing to pay taxes or other debts?” Applicant stated he did not have the federal tax lien in December 2004, when the SF-86 was submitted. The tax lien was filed in April 2004, before the SF-86 was submitted, but there is no evidence that Applicant was notified or served a copy of the tax lien.¹⁵ I find no intentional falsification of this question.

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 stated he was unaware of the judgments reflected in SOR ¶¶ 1.l,

⁹Item 4; Item 8 at 4; Items 9-10.

¹⁰Item 4.

¹¹Item 4; Item 5 at 3.

¹²Item 4; Item 6.

¹³Items 1, 2, 4.

¹⁴Item 2 at 5; Item 4.

¹⁵Item 2 at 5; Item 4; Item 5 at 1.

1.m, and 1.n. He also stated that he was told to go back seven years. The judgments were ordered in 1994 and 1995, more than seven years before Applicant submitted his SF-86 in December 2004.¹⁶ I find no intentional falsification of this question.

Question 38 of the SF-86 asked, “In the last 7 years, have you been over 180 days delinquent on any debt(s)?” Question 39 asked, “Are you currently over 90 days delinquent on any debt(s)?” Applicant admitted he had valid delinquent debts at the time.¹⁷ I find Applicant intentionally falsified these two questions.

Applicant answered “NO” to Question 32 of the SF-86, which asked, “To your knowledge have you ever had a clearance or access authorization denied, suspended, or revoked, or have you ever been debarred from government employment? (Note: An administrative downgrade or termination of a security clearance is not a revocation.)” In his response to the SOR, Applicant stated he was well aware of his security clearance suspension while in the Navy, but that directions were given to go back seven years. Applicant’s security clearance suspension occurred in 1990, more than seven years before the SF-86. Unlike some of the questions, this question asked, “have you ever,” vice “[I]n the last 7 years.” The question is straight forward, and there is no indication that Applicant had difficulty understanding any other question. Applicant’s “seven year” argument is rebutted by his response to the previous question, which asked, “Has the United States Government ever investigated your background and/or granted you a security clearance?” Applicant answered “YES,” and listed a secret clearance from 1983.¹⁸ Applicant should not have responded affirmatively to this question if he thought he was only required to go back seven years. I find Applicant intentionally falsified Question 32 of the SF-86.

POLICIES

“[N]o one has a ‘right’ to a security clearance.”¹⁹ 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.”²⁰ 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.”²¹ 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

¹⁶Item 2 at 5; Item 4; Item 6.

¹⁷Item 2 at 5; Item 4.

¹⁸Item 2 at 5; Item 4.

¹⁹*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²⁰*Id.* at 527.

²¹Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

should err, if they must, on the side of denials.²² Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²³ 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.²⁴

The revised Adjudicative Guidelines set 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 the Directive and AG ¶ 2(a).

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, 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

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.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) 19(a) (*inability or unwillingness to satisfy debts*), FC DC 19(c) (*a history of not meeting financial obligations*), and FC DC 19(g) (*failure to file annual federal, state, or local income tax returns as required or the fraudulent filing of the same*) apply in this case. Applicant accumulated substantial delinquent debt going back more than ten years. He did not file his federal tax returns for six years. He did not pay all his federal and state taxes, resulting in liens of \$76,044 and \$5,857.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC 20(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*), FC MC 20(b) (*the conditions*

²²ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²³*Id.*; Directive, ¶ E2.2.2.

²⁴Exec. Or. 10865 § 7.

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), FC MC 20(c) (the person received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control), FC MC 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts), and FC MC 20(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).

Applicant has made payments on a few of the debts. The great majority of the money is still owed. Applicant blamed several of the debts on his divorce and ex-wife, but does not explain why that would constitute a condition that was largely beyond his control. There is also no evidence that he acted responsibly under the circumstances. Applicant has not shown a good-faith effort to repay overdue creditors or otherwise resolve debts, and there is no clear indication that the problem is being resolved or is under control. I do not find any of the mitigating conditions applicable.

Guideline E: Personal Conduct

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.

Applicant's intentional falsification of his security clearance application raises two Personal Conduct Disqualifying Conditions (PC DC). They are PC DC 16(a) (*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*) and PC DC 16(e) (*personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing . . .*).

I have considered all the Personal Conduct Mitigating Conditions (PC MC) and I especially considered PC MC 17(a) (*the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*), PC MC 17(b) (*the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully*), PC MC 17(c) (*the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*), PC MC 17(d) (*the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or*

other inappropriate behavior, and such behavior is unlikely to recur), and PC MC 17(e) *the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress*). Applicant has not submitted sufficient credible information to establish any of the mitigating conditions.

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 and AG ¶ 2(a). I have also considered every finding of fact and conclusion discussed above.

Applicant has a long history of shirking his financial responsibilities. He failed to file his federal income tax returns for six years, and did not pay his federal and state taxes, and many other debts. He intentionally provided false information on his security clearance application. I also considered Applicant's military service.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on his financial issues and personal conduct.

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
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant

Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	Against Applicant
Subparagraph 2.e:	Against Applicant
Subparagraph 2.f:	Against 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