



## **SYNOPSIS**

Applicant has a history of financial irresponsibility beginning before his administrative discharge from the Navy in 2003. He continued to ignore these debts even after he obtained employment with a defense contractor and was in a position to pay them. He finally paid most of the overdue debts and negotiated repayment agreements for the remaining obligations only after the initiation of this action. He falsified his security clearance application by failing to list several debts that were more than 90 days delinquent. Applicant also has a history of criminal conduct: the theft of four automobile tires and rims in 2000. I conclude Applicant has failed to mitigate the security concerns arising from his history of financial difficulties, criminal conduct, and personal conduct. Clearance is denied.

## **STATEMENT OF THE CASE**

Applicant submitted an SF 86, Security Clearance Application, originally signed on October 30, 2003, and re-executed on June 3, 2004, and December 15, 2004. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), (the "Directive"), as amended by the new administrative guidelines (AG) promulgated by the President on December 29, 2005, and implemented for the Department of Defense on September 1, 2006. On November 21, 2006, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision: security concerns under Guideline F, Financial Considerations, Guideline J, Criminal Conduct, and Guideline E, Personal Conduct, of the new adjudicative guidelines.

Applicant answered the SOR in writing by letter dated December 20, 2006. He elected to have a hearing before an administrative judge.

The case was originally assigned to another judge, but was reassigned to me on March 12, 2007. With the concurrence of Applicant and Department Counsel, I convened the hearing on April 3, 2007. The government introduced Exhibits 1 through 5. Applicant provided Exhibit A (a collection of numerous documents), and testified on his own behalf. DOHA received the final transcript of the hearing (Tr.) on April 12, 2007.

## **FINDINGS OF FACT**

In his Answer to the SOR dated December 20, 2006, Applicant denied the allegations in ¶¶ 1.m, 3.a, and 3.b, and admitted the remaining allegations in the SOR. After a complete and thorough review of the evidence in the record, I make the following findings of fact.

Applicant was born in December 1980. (Ex. 1 at 1.) After high school, he enlisted in the U.S. Navy and entered active duty in September 1998. (Ex. 1 at 4.) After basic training, he received advanced instruction in electronics. He received a security clearance in September 1998, and served as an electronics technician aboard ship. (*Id.* at 2.)

In May 2002, he qualified as an Enlisted Surface Warfare Specialist. He received the National Defense Service Medal, the Armed Forces Expeditionary Medal, the Sea Service Medal,

the Sea Service Deployment Ribbon (with device) and the Navy E Ribbon. (Ex. A, Character Letters.) He was eventually promoted to petty officer third class (E-4.)

While in the Navy, Applicant took advantage of the base tax preparation program, whereby unit tax representatives prepared state and federal tax returns for service members and filed them electronically. (Tr. at 31-32.) According to Applicant, his federal returns were filed, but—unknown to him—his state returns for 1999 and 2001 were never filed. (Tr. at 31-32.) In 2002, he received notice from his state that his taxes were overdue. (Tr. at 32.) The state filed a notice of lien for unpaid taxes, but did not sue Applicant in court. (Tr. at 34-37; Ex. 3 at 2.) He has since calculated and filed his return for 1999; he is planning on submitting the return for 2001 soon. (Tr. at 33-34.) In any event, he recently reached an agreement with the state to pay \$2,025.92 for both tax years, at the rate of \$200.00 each month. (Ex. A, Item 1.n.)

In September 2000, Applicant went on leave to visit a friend who was a fellow automobile-enthusiast. (Ex. 2 at 5.) At the friend's suggestion, they stole four rims and tires from a vehicle at an automobile dealership, and later installed them on Applicant's car. (*Id.* at 6.)

The next day, Applicant and his friend stole a dual exhaust system from another vehicle; Applicant kept one of the mufflers from the system for his car. (*Id.*) He later stored his car with the stolen items at his parents home. The criminal investigation led to Applicant; he signed a written confession on October 30, 2000. (*Id.*; Tr. at 38-39.) According to Applicant, neither the state nor the Navy prosecuted him for the offenses. (Tr. at 39.) His parents threw away the stolen property, then later made restitution to the owners. (Tr. at 39-40, 57-58.)

In about 2003, Applicant accepted a Selective Re-enlistment Bonus (SRB) of about \$14,000.00 for re-enlisting in the U.S. Navy. (Tr. at 22-23.) Shortly thereafter, he was administratively separated for misconduct (drug abuse), and given a General (Under Honorable Conditions) Discharge. (Tr. at 53-54.) As a result, the U.S. government claimed reimbursement for the SRB. Over the years, the U.S. took funds from Applicant's tax refunds in partial payment of the debt. (Tr. at 23.)

At the time of his separation from the Navy, Applicant was delinquent on several debts, including his overpaid SRB (SOR, ¶ 1.a), a bill for telephone services (SOR, ¶ 1.b), his military credit card (SOR, ¶¶ 1.d, 1.h), and other debts. He was unemployed for about 45 days, but received the benefit of accumulated leave, and worked on the side installing automotive equipment. (Tr. at 60.) He did not seek financial counseling. (Tr. at 61.)

In June 2003, Applicant began working as an electronics maintenance technician for a defense contractor. (Ex. 1 at 2.) In October 2003, he completed an SF 86, Security Clearance Application in an electronic format. (Tr. at 45.) 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 "No." (Ex. 1 at 7.) Question 38 inquired about debts over 180 days delinquent within the preceding 7 years, and Applicant listed three accounts, including the debts listed in SOR, ¶ 1.f (also ¶ 1.i), ¶ 1.d, and 1.h. (Ex. 1 at 7-8.) On the form, he included account numbers and the addresses of the creditors. (*Id.*) Question 39 was "Are you currently over 90 days delinquent on any debt?" Applicant answered "No." (Ex. 1 at 8.)

Applicant testified he did not list the three debts again in response to Question 39 (over 90 days) because he felt it was a duplication of the preceding query. (Tr. at 44.) He also testified that the debts he listed were the only obligations he could remember. (Tr. at 43-44.) He acknowledged that during that time, some creditors were actively pursuing collection, by sending him e-mail messages. (Tr. at 44.) He also received regular notices from the government that his SRB overpayment was due. (Tr. at 52-53.) He admitted he was “fiscally irresponsible” and was throwing away some of the delinquency notices. Therefore, he claims, he did not have the required information about the debts to provide for the application. (Tr. at 45.)

On October 30, 2003, Applicant signed a printed copy of his Security Clearance Application, certifying that it was true, complete, and correct. (Ex. 1 at 8.) Thereafter, he was required to review the form and re-execute it on June 3, 2004, and December 15, 2004. (*Id.*) Applicant did not add any additional information about any delinquent debts, claiming it did not occur to him. (Tr. at 46.) He asserted his omissions were not intentional, rather they were simply an oversight on his part. (Ex. A, Item 3.b.)

In about 2004, he was involved in a motor vehicle accident. The insurance company would have covered the cost of repair of his vehicle. However, Applicant took the occasion to do more extensive renovations to his car, and fell behind on the car loan payments. (Tr. at 25-26; Ex. A, Item 1.c.) In March 2007, after the initiation of this action, Applicant negotiated a settlement, and resolved the debt. (Ex. A, Item 1.c at 1.)

In April 2004, the military exchange notified Applicant that they had taken part of his federal tax return to satisfy his outstanding debt on his military charge accounts. (Ex. A, Item 1.d at 1, 3.)

After the initiation of this action, Applicant negotiated an agreement with the government to repay the SRB, beginning in April 2007. (Tr. at 23.) He also paid many of the outstanding obligations. His current credit reports reflect his resolution of almost all his previously delinquent debts. (Ex. A, Credit Reports.) The current status of the debts listed in the SOR is shown below.

SOR	Account/Amount	Status	Evidence
1.a	DFAS \$11,787.00	Unpaid- Repayment agreement	Tr. at 22; Ex. A, Item 1.a.
1.b	Telephone svc 292.00	Paid	Tr. at 24; Ex. A, Item 1.b.
1.c	Auto Finance 5,976.00	Settled	Tr. at 24-25; Ex. A, Item 1.c.
1.d	Military credit card 36.00	Paid	Tr. at 26; Ex. A, Item 1.d at 2, 4 (collected through withheld refund).
1.e	Collection Agt 299.00	Paid	Tr. at 26-27; Ex. A, Item 1.e.
1.f	Collection Agt 247.00	Paid	Tr. at 27; Ex. A, Item 1.f.

1.g	Collection Agt	298.00	Paid	Tr. at 28-29; Ex. A, Item 1.g.
1.h	Collection Agt	517.00	Paid	Tr. at 27; Ex. A, Item 1.h.
1.I	Check Service	421.00	Paid	Same as ¶ 1.f, above.
1.j	Collection Agt	252.00	Paid	Same as ¶ 1.g, above.
1.k	Insurance Co.	108.00	Paid	Tr. at 29-30; Ex. A, Item 1.k.
1.l	Collection Agt	50.00	Paid	Tr. at 30; Ex. A, Item 1.l.
1.m	Auto Finance	8,075.00	Settled	Same as ¶ 1.c, above.
1.n	State tax lien	1,061.00	Unpaid-repayment agreement	Tr. at 30-34; Ex. A, Item 1.m.
1.o	Collection Agt	274.00	Paid	Tr. at 37; Ex. A, Item 1.o.

Applicant has worked for a defense contractor since 2003. The company’s vice president described him as skilled, professional, and trustworthy, and recommends him for a position of trust. (Ex. A, Character Letters, at 1.) His project manager indicated Applicant is reliable and trustworthy, and a valuable asset to the company and the government. (*Id.* at 2.) Supervisors and co-workers praise his technical skill, professional demeanor, and reliability at work. (*Id.* at 3, 4.) Applicant’s performance ratings are very positive. (Ex. A, Employee Evaluations.)

### POLICIES

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.” (*Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch. 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.” (Exec. Ord. 10865, § 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

“The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance.” (AG, ¶ 2(a).) An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person. (*Id.*) An administrative judge should consider the following factors: (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 individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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. (*Id.*)

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify an applicant from being eligible for access to classified information. (Directive, ¶ E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (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).) "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." (Directive, ¶ E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, § 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## CONCLUSIONS

The adjudicative guidelines at issue in this case are Guideline F, Financial Considerations, Guideline J, Criminal Conduct, and Guideline E, Personal Conduct, as set forth in the new adjudicative guidelines promulgated by the President on December 29, 2005, and implemented by the Department of Defense on September 1, 2006. Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below. I considered carefully 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**

The security concern relating to the guideline for Financial Considerations is set out in ¶ 18 of the new adjudicative guidelines.

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.

The guideline notes several conditions that could raise security concerns. Under ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. The evidence shows Applicant has a long history of failing to meet his financial obligations. He was unable or unwilling to pay a large number of debts for many years, until after the initiation of this action. The evidence raises these potentially disqualifying conditions.

The guideline also includes several conditions that could mitigate security concerns raised under this guideline. Paragraph 20(a) may apply where “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.” The behavior in question is the non-payment of debts. Applicant resolved most of the delinquent debts only recently; some are still unpaid. Moreover, there were many overdue accounts over many years; therefore the conduct was not infrequent. The available evidence does not raise this mitigating condition.

Under ¶ 20(b), it may be mitigating where “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.” Applicant’s financial problems arose because he was financially irresponsible, and because of his own misconduct, resulting in his early separation from the Navy and the loss of his SRB. I find this mitigating condition does not apply.

Evidence that “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” is potentially mitigating under ¶ 20(c). Applicant has not sought or obtained financial counseling; therefore, this is not a factor for consideration.

Paragraph 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant resolved almost all of the debts listed on the SOR, has negotiated agreements to repay the federal government for the SRB and the state for the tax bill. I conclude this potentially mitigating factor applies.

## **Guideline J, Criminal Conduct**

Paragraph 30 of the new adjudicative guidelines sets out the security concern relating to criminal conduct: “Criminal activity 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.”

The adjudicative guidelines set out certain conditions that could raise security concerns. Paragraph 31(a) provides that “a single serious crime or multiple lesser offenses” may be disqualifying. Similarly, under ¶ 31(c), an “allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted,” may raise security concerns. The evidence reveals that Applicant participated in the theft of tires and rims from a car dealership in September 2000, even though he was never formally charged with the crime. This evidence of a serious crime is sufficient to raise these potentially disqualifying conditions.

The available evidence also indicates Applicant was involved with the theft of an exhaust system the following day, and with a drug offense in 2003. Neither of these incidents were included as allegations in the SOR, therefore I will not consider this evidence as a basis for a potentially disqualifying condition. The additional evidence may be relevant, however, on the issue of whether Applicant has established a potentially mitigating condition.

The adjudicative guidelines also set out some potentially mitigating conditions under Guideline J. Under ¶ 32(a), it may be mitigating where “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 upon the individual’s reliability, trustworthiness, or good judgment.” The theft offense occurred in 2000, when Applicant was 19 years old, and he was prompted by others to steal the automotive parts. About seven years have elapsed since the offense alleged in the SOR, and Applicant is no longer in similar circumstances. However, considering the additional evidence of Applicant’s other crimes, I conclude Applicant has failed to meet his burden of persuasion that his criminal behavior is unlikely to recur and does not cast doubt upon his reliability, trustworthiness, or good judgment. I conclude this potentially mitigating condition does not apply.

Paragraph 32(d) indicates it may be mitigating where “there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.” Applicant presented some evidence of rehabilitation, including his good employment record. Also, his family made restitution for the stolen automobile parts. However, I also considered the evidence of additional criminal behavior for the limited purpose of determining whether Applicant has established a mitigating condition. There is evidence of additional crimes; moreover, his most recent criminal conduct occurred in 2003, which is comparatively recent. I conclude Applicant has failed to establish this potentially mitigating factor.

### **Guideline E, Personal Conduct**

The security concern relating to Guideline E, Personal Conduct, is set out in ¶ 15 of the new adjudicative guidelines.

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.

Paragraph 16(a) provides that it may be disqualifying where the evidence reveals “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . or similar form used to . . . determine security clearance eligibility . . .” Paragraph 3.a of the SOR alleges Applicant falsified his answer to Question 37 regarding unpaid judgments by not reporting the state tax lien. However, the term “judgment” refers to the decision or ruling of a court, while a “lien” is a claim or charge against property. There is no evidence that the lien filed by the state for the unpaid taxes was ever reduced to a judgment. I find the evidence relating to this allegation does not raise a security concern.



The SOR, ¶ 3.b, also alleges that Applicant falsified his response to Question 39 regarding debts over 90 days old by failing to list the 15 debts mentioned in paragraph 1 of the SOR. I note that in response to the earlier question about debts over 180 days old, Applicant listed the debts in ¶ 1.f (also ¶ 1.i), ¶ 1.d, and 1.h of the SOR. He explained that he did not list them again in response to Question 39 because it would have been duplicative. I conclude Applicant had no intent to conceal these debts and that, having been previously listed, any failure to list them a second time was not material.

With regard to the other delinquent debts listed in the SOR, Applicant contended his omission was a simple mistake caused by his inattention to his financial situation. However, I find this representation to be unpersuasive. He admits he was aware of the substantial debt for the unearned SRB and acknowledged receiving repeated notices of the debt. He also admitted receiving other debt notices and simply deleting them or throwing them away. Applicant obviously had the time to investigate his delinquent debts—he took the time to collect account numbers for the three debts he reported. Moreover, he was required to certify the accuracy of the answer to this question three times over a period of more than 13 months—certainly long enough to get the requested information. I conclude Applicant falsified his answer to Question 39. This potentially disqualifying condition applies.

The new adjudicative guidelines set out several potentially mitigating conditions under the guideline for Personal Conduct. I considered each of them and conclude that none apply.

### **The “Whole Person” Concept**

I carefully considered all the facts and circumstances, including the potentially disqualifying and mitigating conditions, in light of the “whole person” concept. As noted above, Applicant has a history of financial irresponsibility beginning before his discharge from the Navy in 2003. He continued to ignore these debts even after he was in a position to pay them. He finally paid most of the overdue debts, and negotiated repayment agreements for the remaining obligations only after the initiation of this action. This history calls into question his judgment, self-control, and willingness to abide by rules. Similarly, his history of criminal conduct—specifically the theft offense listed in the SOR—suggests he has little regard for laws and restrictions, and exercises poor judgment. Considering all the available evidence, he failed to mitigate these concerns. Finally, his recent and repeated falsification of his security clearance application calls into question his ability to follow the rules regarding the protection of classified material. I conclude Applicant has failed to mitigate the security concerns arising from his history of financial difficulties, criminal conduct, and personal conduct.

### **FORMAL FINDINGS**

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline F:      **AGAINST APPLICANT**

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant

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

Paragraph 2, Guideline J: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Paragraph 3, Guideline E: AGAINST APPLICANT

Subparagraph 3.a: For Applicant

Subparagraph 3.b: 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.

Michael J. Breslin  
Administrative Judge