

KEYWORD: Financial; Personal Conduct

DIGEST: This 30-year-old employee has a history of 12 delinquent debts that began in 2000 and continue to the present. The debts cited in the SOR total more than \$27,000 and more debts were admitted at the hearing. Applicant falsified his Public Trust Position Application by citing only one delinquent debt and intentionally omitting those cited in the SOR. Some reimbursement has been made through garnishment, and Applicant has retained an attorney to file for bankruptcy protection. Numerous fellow employees and others are consistent in averring that Applicant is a man who can be trusted to protect classified information. Applicant is on the path to financial rehabilitation. Adequate mitigation has been established. Eligibility for Trustworthiness Determination is granted. Clearance is granted.

CASENO: 06-14232.h1

DATE: 03/15/2007

DATE: March 15, 2007

In Re:)	
)	
-----)	
SSN: -----)	ADP Case No. 06-14232
)	
Applicant for Security Clearance)	

**AMENDED DECISION OF ADMINISTRATIVE JUDGE
BARRY M. SAX**

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 30-year-old employee has a history of 12 delinquent debts that began in 2000 and continue to the present. The debts cited in the SOR total more than \$27,000 and more debts were admitted at the hearing. Applicant falsified his Public Trust Position Application by citing only one delinquent debt and intentionally omitting those cited in the SOR. Some reimbursement has been made through garnishment, and Applicant has retained an attorney to file for bankruptcy protection. Numerous fellow employees and others are consistent in averring that Applicant is a man who can be trusted to protect classified information. Applicant is on the path to financial rehabilitation. Adequate mitigation has been established. Eligibility for Trustworthiness Determination is granted. Clearance is granted.

STATEMENT OF THE CASE

On August 31, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a trustworthiness determination allowing Applicant to work in Automated Data Processing positions such as ADP I, II, or III. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether such a finding should be granted, denied or revoked.

On November 29, 2006, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The case was assigned to me on December 18, 2006. A Notice of Hearing was issued on January 8, 2007, setting the hearing for February 13, 2007. At the hearing, Department Counsel introduced seven (7) exhibits (Government's Exhibits (GX) 1-7. Applicant introduced six (6) exhibits (Applicant's Exhibits (AX) A - F). He has also submitted post hearing documents that have been marked and admitted as AX G-AX T. The hearing transcript was received at DOHA on February 22, 2007.

It has been brought to my attention that I had agreed at the February 3, 2007 hearing to keep the record open until Close of Business on March 6, 2007, to allow Applicant to obtain and submit additional documents. I inadvertently moved too quickly and issued a Decision on February 28, 2007. Applicant did submit additional documents after the Decision was issued, but before the time allowed had expired. Applicant is entitled to have those documents evaluated and considered by me in making my decision. Accordingly, I have considered the new material and have issued this Amended Decision.

FINDINGS OF FACT

Applicant is a 30-year-old employee of a defense contractor. The SOR contains 12 allegations under Guideline F (Financial). Applicant admits allegations except for 1.b., and 1.c., with explanations. Applicant denies allegation 2.a., under Guideline E (Personal Conduct). All admissions are accepted and incorporated herein as Findings of Fact.

After considering the totality of the evidence, I make the following additional FINDINGS OF FACT as to the status of each SOR allegation.

Guideline F (Financial)

Applicant has a history of 12 delinquent debts owed to the following creditors in the approximate amounts cited:

- 1.a. Creditor A (placed for collection in May 2000)-----\$1,000.00
- 1.b. Creditor B (placed for collection in June 2001)----- \$5,913.00
- 1.c. Creditor C (placed for collection in March 2002)----- \$2,710.00
- 1.d. Creditor D (charged off in November 2002) -----
- \$18,384.00 1.e. Creditor E (placed for collection in August 2003) -----
- \$220.00
- 1.f. Creditor F (placed for collection in November 2003) ----- \$2,240.00
- 1.g. Creditor G (placed for collection) -----
- \$1,437.00 1.h. Creditor H (placed for collection in November 2004)-----
- \$150.00
- 1.i. Creditor I (placed for collection in May 2005) ----- \$38700
- 1.j. Creditor J (placed for collection in July 2005)----- \$534.00
- 1.k. Creditor K (placed for collection in January 2006) ----- \$210.00
- 1.l. Creditor L (placed or collection in March 2006) ----- \$310.00

The 12 delinquent debts total about \$27,917.00. As of March 6, 2007, Applicant decided to file for bankruptcy and has signed a contract with a law firm to begin the bankruptcy process (AX G).

Applicant has submitted a number of letters of recommendation (AX H-AX O). The specific language of each letter can be combined into a number of common themes describing Applicant as: hardworking, loyal, trustworthy, dependable, excellent work ethic (AX H, AX J, AX K, AX L), character of the highest caliber as to his honesty, sincere and truthful, reliable (AX I), highly respected (AX L), positive attitude (AX M), responsible in paying his share of th rent (AX N)

Guideline E (Personal Conduct)

2.a. - Applicant falsified material facts on his Public Trust Position Application (SF 85P) of March 21, 2005, in which he answered Question **20 - Your Financial Record - 180 Day Delinquencies** Are you now over 180 days delinquent on any loan or financial obligation; to which he listed only an auto loan with Company X, but deliberately omitted any mention of the debts cited above in 1.a., 1.b., 1.c., 1.e., 1.f., and 1.g. As I understand Applicant's answer to the sole allegation under Guideline E, he admits the incorrect answer, but denies it was deliberate.

POLICIES

In evaluating the relevance of an individual's conduct, the adjudicator should consider the following nine generic 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's

security.”

CONCLUSIONS

Applicant is 30 years old. All 12 allegations under Guideline F are supported by the record. The earliest delinquent debt (1.a.) was referred for collection in May 2000 and the last one (1.l), was referred for collection in March 2006. All of the debts remain owing, but some payments have been made by garnishment (GX 4, GX5, and GX 6 and the other Government documents (GX 1, GX 2, and GX 3).

At the hearing, Applicant testified that his salary is presently being garnished for a student loan [debt] (Tr at 19). Leave and Earning Statements show garnishment of \$840.78 as of February 23, 2007 (AX Q, AX P, AX R). His exhibits mostly consist of documents captioned “View Paycheck” (AX A, AX B, AX C, AX D, AX E, and AX F). These cover the period from September 15, 2006 to November 24, 2006.

Applicant explained that the documents show “the financial pinch I was put in when the garnishment had taken place,” because his net income dropped from about \$1,200.00 to a little under \$600.00 a paycheck, “which hampered a lot of my ability” (Tr at 21). He “was trying to file for bankruptcy some time during those months and [he] couldn’t do it because they needed a very large payment to get it started. And being a single father, [he] was not able to do it” (*Id*). In addition one creditor was “removing funds from my pay and its getting paid by a judgment . . .”

At the hearing on February 13, 2007, Applicant explained that as to allegations:

1.a., 1.b., 1.e., and 1.l, he was not sure what the debts were for and/or had been unsuccessful in contacting them (Tr at 27, 29).

1.c., 1 and 1.h., he believes the debt was “supposed to be taken care of by his ex-wife” and he will have to take the initiative to resolve the debts (Tr at 27, 28, 29).

1.d., the debt pertains to a “repossessed car” that he returned when he was unable to keep up with the payments. He has not been able to contact anyone to resolve the debt (Tr at 28, 29)

1.f. and 1.g, the debts are for student loans - these are the debts that are being recovered by garnishment of funds from his salary (Tr at 29).

1.i., 1.j., and 1,k, he has been unsuccessful in reaching an agreement with the creditor (*Id*).

The record is compelling that Applicant has had significant delinquent debts going back to at least 2000 and continuing to the present. In his exhibits (AX A - AX E), the record shows deductions of "Medical - \$555.59" that are not cited in the SOR. These are for recoupment of "disability payments" (Tr at 35) to which Applicant was apparently not entitled.

Applicant testified that he had recently contacted a "creditor counselor" and made an appointment for February 23, 2007, ten days after the hearing (Tr at 30). This contact has resulted in an agreement whereby a law firm will begin the bankruptcy process (AX G, AX S, and AX T). Whatever risk there was in the past, when he owed more than \$27,000, that risk is minimized by the ongoing resolution of his debt situation by payments and bankruptcy.

The Concern expressed in Financial Consideration cases is that: an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

Disqualifying Conditions that could raise a security concern and may be disqualifying include: (1). A history of not meeting financial obligations; and (3). Inability or unwillingness to satisfy debts.

Mitigating Conditions: (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); and (6). The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Guideline E (Personal Conduct)

2.a. - I have carefully considered Applicant's explanations for the false answer (Tr at 30, 31). He admits the answer was false, but he denies it was intentional. He answered "Yes," and cited one debt, but omitted the others. His reasoning remains unclear as to why he answered this way, but he continues to deny it was deliberate. Under the totality of the circumstances, and viewing Applicant under the whole person concept, his answer remains strange, but credible and a solitary act of questionable conduct.

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Disqualifying Conditions: 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.

Mitigating Conditions: (2)The falsification was an isolated incident, although it remains recent.

Applicant could certainly have exercised better judgment in the past under both guidelines. He is late coming to financial rehabilitation, but he has begun the journey with a better understanding of his financial responsibilities than he had prior to the hearing. Viewing Applicant under the whole person concept, the totality of the evidence, I conclude there is minimal likelihood of continuation or recurrence (Directive, E.2.2.1., page 16 of Enclosure 2).

Applicant's post hearing evidence, including the praise of so many coworkers, makes a case that he has matured and can be relied upon to follow the rules. On this basis, I conclude he adequately mitigated the concerns expressed under Guideline E.

Overall, I conclude that Applicant has demonstrated that he currently possesses the judgment, reliability, and trustworthiness required of someone seeking access to the nation's secrets.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

<i>Guideline F (Financial Considerations)</i>	For the Applicant
Subparagraph 1.a.	For the Applicant
Subparagraph 1.b.	For the Applicant
Subparagraph 1.c.	For the Applicant
Subparagraph 1.d.	For the Applicant
Subparagraph 1.e.	For the Applicant
Subparagraph 1.f.	For the Applicant
Subparagraph 1.g.	For the Applicant
Subparagraph 1.h.	For the Applicant
Subparagraph 1.i.	For the Applicant
Subparagraph 1.j.	For the Applicant
Subparagraph 1.k.	For the Applicant
Subparagraph 1.l.	For the Applicant
 <i>Guideline E (Personal Conduct)</i>	 For the Applicant
Subparagraph 2.a.	For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

BARRY M. SAX
ADMINISTRATIVE JUDGE

