

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is 26 years old and works for a federal contractor. He has a significant amount of delinquent debt that began accumulating in 1999 and remains unresolved. When he completed his security clearance application, he failed to disclose all of the delinquent debts. He mitigated the security concerns raised by his personal conduct, but did not mitigate those raised by financial considerations. Clearance is denied.

CASENO: 06-16967.h1

DATE: 04/24/2007

DATE: April 24, 2007

In re:)	
)	
-----)	ISCR Case No. 06-16967
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
SHARI DAM**

APPEARANCES

FOR GOVERNMENT
Emilio Jaksetic, Esq., Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

Applicant is 26 years old and works for a federal contractor. He has a significant amount of delinquent debt that began accumulating in 1999 and remains unresolved. When he completed his security clearance application, he failed to disclose all of the delinquent debts. He mitigated the security concerns raised by his personal conduct, but did not mitigate those raised by financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On January 10, 2006, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On August 21, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended. The SOR detailed reasons under Guidelines F (Financial Considerations) and E (Personal Conduct) why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

On September 11, 2006, and October 30, 2006, DOHA received unsigned Answers from Applicant. On or about November 21, 2006, Applicant submitted to DOHA a properly executed Answer and elected to have the case decided on the written record in lieu of a hearing. On December 26, 2006, Department Counsel prepared a File of Relevant Material (FORM), containing 14 Items, and mailed a copy of it to Applicant two days later. Applicant received the FORM on January 24, 2007. He was given 30 days to file additional information, but chose not to do so. On April 2, 2007, the case was assigned to me.

FINDINGS OF FACT

Based on the entire record, including Applicant's admissions in his Answer to the SOR, I make the following findings of fact:

Applicant is 26 years old and single (Item 8 at 6 and 16). He has worked for a federal contractor since May 2004 (*Id.* at 10).

In January 2006, Applicant completed an e-QIP. When he signed it, he certified his answers were "true, complete, and correct" to the best of his knowledge and belief. In response to Question 28.a. Your Financial Delinquencies - 180 Days (*In the last 7 years, have you been over 180 days delinquent on any debts(s)?*), he answered "Yes," and listed two delinquent debts. In response to Question 28.b. - 90 Day (*Are you currently over 90 days delinquent on any debts?*), he answered "Yes," and listed the same delinquent debts. He failed to list several other delinquent debts that fell within the two categories.

In August 2006, the Government filed a SOR, which alleged in Paragraph 1(¶¶ 1.a through 1.o) that Applicant owed 15 delinquent debts, totaling approximately \$18,490. In his Answer, he

admitted that he owed all of the debts, except one listed in ¶ 1.k for \$8,095. He claimed he had worked out a settlement agreement for that debt, which is essentially an admission that he owed the debt. He also indicated that his wages were being garnished to pay off the debts listed in ¶¶ 1.c for \$750 and 1.i for \$1,017. However, he did not provide any documentation to verify his assertions regarding those three debts, or information pertaining to the other twelve debts. Credit reports dated February 8, 2006, July 20, 2006, and December 18, 2006, verified the delinquent debts, and indicated that some of them date back to 1999 (Items 9, 11 and 12).

Paragraph two of the SOR alleged that Applicant falsified his security clearance application because he failed to disclose 13 debts listed in the SOR that were more than 90 and 180 days' delinquent. In his November 2006 Answer, he denied that he falsified his application and stated that he answered "to the best of my knowledge, but if I did state something otherwise, it was not intentional." (Item 7). In his June 2006 answers to Interrogatories, he stated, "I thought I listed all of them. If I didn't, I listed them to the best of my knowledge which I'm sure all of my accounts are over 180 days." (Item 10 at 8). He did not know which ones were more than 90 days, but knew he owed money on all of them. He decided to list the two largest outstanding debts (*Id.* at 9). He also indicated that he was looking for a debt consolidation program to assist him in resolving his financial obligations (*Id.* at 11).

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, sets forth criteria, which must be evaluated when determining security clearance eligibility. Within those adjudicative guidelines are factors to consider in denying or revoking an individual's request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual's request for access to classified information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence in order to reach a fair, impartial and common sense decision.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not only the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. Directive ¶ E2.2.2. The

decision to deny an individual a security clearance is not necessarily a judgment about an applicant's loyalty. Exec. Or. 10865, § 7. Instead, it is a determination that an applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *Departments of the Navy v. Egan*, 484 U.S. 518, 531 (1988). The Directive presumes a rational connection between past proven conduct under any disqualifying conditions and an applicant's present security suitability. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence in refutation, extenuation, or mitigation sufficient to overcome the position of the government. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); 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 clearance." *Id.*

Based upon the allegations contained in the SOR and a consideration of the evidence as a whole, the following adjudicative guidelines are pertinent to an evaluation of the facts of this case:

Guideline F - Financial Considerations: A security concern may exist when 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.

Guideline E – Personal Conduct: A security concern may exist when 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.

CONCLUSIONS

I considered all facts in evidence and legal standards, including the "whole person" concept, and concluded the following with respect to the allegations set forth in the SOR.

Guideline F: Financial Considerations

Based on the evidence, the Government established a disqualification under Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*), apply to this case. Applicant has a history of failing to meet his financial obligations, dating back to 1999, and evidenced by his admissions and credit reports. Many debts remain delinquent and unpaid. DOHA's Appeal Board has concluded that "[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." ISCR Case No. 98–810 at 4 (App. Bd. June 8, 2000).

The Government having established potential disqualifications, the burden shifted to

Applicant to mitigate or rebut the allegations. Six Financial Considerations Mitigating Conditions (FC MC) under the Guideline are potentially applicable:

1. E2.A6.1.3.1. (*The behavior was not recent*).
2. E2.A6.1.3.2. (*It was an isolated incident*).
3. E2.A6.1.3.3. (*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)*).
4. E2.A6.1.3.4. (*The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*).
5. E2.A6.1.3.5. (*The affluence resulted from a legal source*).
6. E2.A6.1.3.6. (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

After reviewing all of those conditions, I conclude none apply. Applicant's debts began in 1999 and continued into the present; hence, FC MC E2.A6.1.3.1. is not applicable. Because he has more than one debt FC MC E2.A6.1.3.2. cannot apply. Applicant did not provide any information indicating that the accumulation of his debts was beyond his control, which is necessary to trigger the application of FC MC E2.A6.1.3.3. Nor did he submit any evidence that he received credit counseling and his finances are under control as required under FC MC E2.A6.1.3.4. Affluence is not an issue in this matter, hence, FC MC E2.A6.1.3.5. is not applicable. Applicant indicated that three debts were being resolved through garnishments, which does not represent of a good-faith effort to repay or resolve his debts, as contemplated under FC MC E2.A6.1.3. 6.

Guideline E: Personal Conduct

The Government alleged that Applicant falsified his SCA by failing to disclose many of his delinquent debts, which constituted a potential disqualification under Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2. (*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*). Applicant denied those allegations.

When a falsification allegation is controverted or denied, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or 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 the omission occurred. *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)).

Applicant stated that he did not intentionally omit information about twelve delinquent debts on the e-QIP. He answered the questions "to the best of [his] knowledge" at the time and listed the two largest debts. He did not disclose the other debts, because he was uncertain of the length of their delinquency at the time. Based on his truthful disclosure of the larger debts and his age, I find his explanations credible and conclude that he did not intentionally falsify his application for a security clearance. Hence, the allegations contained in SOR ¶¶ 2.a and 2.b are decided in his favor.

Whole Person Analysis

In addition to the disqualifying and mitigating conditions under Guideline F, I also considered factors included within the “whole person” concept, such as Applicant’s young age and his recent employment with a federal contractor. I took into account the fact that he does not have a criminal record or other problems that raise security concerns. However, while he expressed an interest in resolving his financial obligations in June 2006, he did not provide any evidence that he has implemented a solid budgetary plan, which would resolve or pay the delinquent debts alleged in the SOR, and establish a track of financial responsibility to mitigate the security concerns raised by his history of unresolved debts and credit problems. Given the absence of such evidence, I am concerned that he has not demonstrated sufficient reliability or good judgment to assure the Government that similar problems will not recur. For the reasons stated, I conclude Applicant is not eligible for access to classified information and all allegations under Paragraph 1 of the SOR are concluded against him. Accordingly, Applicant did not mitigate the security concerns raised by financial considerations, but did mitigate those raised by his personal conduct. Guideline F is decided against him, and Guideline E is decided for him.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1: Guideline F (Financial Considerations)	AGAINST APPLICANT
Subparagraphs 1.a through 1.1.o:	Against Applicant
Paragraph 2: Guideline E (Personal Conduct)	FOR APPLICANT
Subparagraph 2.a and 2.b:	For Applicant

DECISION

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

Shari Dam
Administrative Judge