

DATE: December 4, 2007

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In re:)	
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-----)	ISCR Case No. 06-18049
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
ROBERT J. TUIDER**

APPEARANCES

FOR GOVERNMENT

Gina Marine, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant has a history of unresolved financial problems. It is too soon to tell if he will resolve the financial problems in a satisfactory manner. Applicant also falsified three answers on his April 2004 security clearance application by failing to list financial delinquencies and an October 1998 alcohol-related arrest. Clearance is denied.

STATEMENT OF THE CASE

On April 29, 2004, Applicant submitted a security clearance application (SF 86).¹ On November 6, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified, and revised.²

The SOR alleged security concerns under Guideline F (Financial Considerations). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked.

In an answer notarized on November 22, 2006, Applicant responded to the SOR allegations, and elected to have his case decided at a hearing. On May 10, 2007, the government moved to amend the SOR adding two additional allegations under SOR Guideline F and seven allegations under Guideline E. Without objection from the Applicant, I granted the Government's motion. Tr. 10.

On May 14, 2007, the case was assigned to me. On May 21, 2007, DOHA issued a notice of hearing scheduling the case to be heard on June 12, 2007. The hearing was held as scheduled. DOHA received the transcript (Tr.) on June 21, 2007.

Government Exhibits (GE) 1 through 6 were admitted without objections. Applicant Exhibits (AE) A through M were admitted without objections. I held the record open to afford Applicant the opportunity to submit additional material. Applicant timely submitted additional documents that were collectively marked as AE N and admitted without objections. Applicant submitted additional material after the deadline submission that were collectively marked as AE O and admitted over the Government's objection.

FINDINGS OF FACT

In his response to the original SOR, Applicant admitted all of the allegations under Guideline F. His admissions are incorporated herein as findings of fact. At his hearing, Applicant admitted to SOR ¶¶ 1.p., 1.q., 2, 2.d., 2.e., 2.f., 2g., and denied 2.a., 2.b., and 2.c. Tr. 12-16. After a complete and thorough review of the evidence of record, I make the following findings of fact.

¹GE 1. For convenience, the security clearance application in this decision will be called SF 86. There are three separate allegations of falsification stemming from the April 29, 2004 SF 86.

²On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006. The revised Adjudicative Guidelines are applicable to Applicant's case.

Applicant is 26 years old.³ He graduated from high school in May 1999. He enlisted in the Marine Corps Reserves in August 1998 and completed his eight year obligated service in September 2006 with an honorable discharge. He was activated and deployed to Iraq from January 2003 to July 2006. Tr. 64, 88. His military occupational specialty was small computer systems specialist. Tr. 89. He is unmarried with no dependents. Since October 2003, he has worked for his defense contractor employer and his current position is systems administrator. Tr. 62-3. He seeks to upgrade his secret clearance to top secret. Tr. 91.

Financial Considerations

The SOR, as amended, listed 17 debts totaling \$19,044.00. These debts are ongoing and have accumulated from multiple sources over six years beginning in 2001. Viewing the facts in the light most favorable to the Applicant, he was able to mitigate all of the debts except SOR ¶ 1.a. (collection account in the amount of \$248.00), 1.k. (collection account in the amount of \$7,361.00), 1.p. (collection account in the amount of \$3,210.00, and 1.q. (collection account in the amount of \$1,885.00). These accounts remain unmitigated as a result of Applicant failing to submit adequate documentation showing he had either paid, resolved, or made progress in paying off the accounts. He was given notice these unpaid accounts were a security concern when interviewed in January 2006 in conjunction with his security clearance application. Before issuing the November 2006 SOR, DOHA forwarded him interrogatories querying him about these accounts. His September 2006 response in essence stated he had “not yet been able to resolve [these] debt[s].” GE 2. He was also given an opportunity to submit post-hearing documentation.

The majority of these debts are medical bills, which were incurred when Applicant was either uninsured or underinsured. When asked by Department Counsel about how he incurred these debts, he stated, “. . . I believe it was also a combination of I guess being young, not having insurance, and then kind of moving around somewhat. I would say I definitely showed some irresponsibility back in the day.” Tr. 58.

Personal Conduct

Question 38 of Applicant’s April 29, 2004, SF 86 asks, “**38. Your Financial Delinquencies – 180 Days** In the last 7 years, have you been over 180 days delinquent on any debt(s)?” Applicant answered, “No.” SOR ¶ 2.a.

The government established by substantial evidence that Applicant failed to disclose the delinquent debts listed in SOR ¶¶ 1.a. through 1.q.

Question 39 of Applicant’s April 29, 2004, SF 86 asks, “**39. Your Financial Delinquencies – 90 Days** Are you currently over 90 days delinquent on any debt(s)?” Applicant answered, “No.” SOR ¶ 2.b.

³GE 1, *supra* n 1.

The government established by substantial evidence that Applicant failed to disclose the delinquent debts listed in SOR ¶¶ 1.a. through 1.q.

Question 24 of Applicant's April 29, 2004, SF 86 asks, "24. **Your Police Record – Alcohol/Drug Offenses** Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs? For this item, report information regardless of whether the record in your case has been 'sealed' or otherwise stricken from the court record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607. Applicant answered, "No." SOR ¶ 2.c.

The government established by substantial evidence that Applicant was convicted on October 8, 1998, and found guilty of underage possession of alcohol and fined \$105.00. Applicant did go to court for this charge. Tr. 74.

Applicant stated he completed his SF 86 at work and it took a "couple of days" to complete and that it took him that long because he was "busy at work." Tr. 81-83. When queried by Department Counsel about the accuracy of his answers, Applicant stated, "Right, well, I can't report something if I legitimately don't remember it as well." Tr. 84. Regarding Question 24, he did not believe there was anything applicable to respond to that question. Tr. 85. Regarding Questions 38 and 39, he stated, "I just basically looked at everything I had current, saw that nothing was behind or delinquent, and answered no." He stated it did not occur to him to list the medical bills. Tr. 85-86.

Applicant had two alcohol-related arrests after he submitted his SF 86 in April 2004. The first was for drunk in public in May 2004 for which he was assessed a fine of \$25.00 and court costs of \$64.00. He did not have to go to court for this charge, but rather submitted his fine by mail. Tr. 74-75. The second was for driving under the influence of alcohol (DUI) in November 2004. He was found guilty of DUI, sentenced to 90 days in jail, suspended for 80 days, assessed a fine of \$500.00 and court costs of \$201.00, spent five days in days in jail, and had his driver's license suspended for one year. He was also ordered to attend alcohol counseling, attend alcoholic anonymous meetings, and complete an alcohol safety action program. While attending alcohol counseling, he was diagnosed as an alcohol abuser. SOR ¶¶ 2.e. through 2.g. Applicant complied with all terms of his court ordered treatment program and was released from the court's jurisdiction on January 12, 2006. Tr. 78, AE O.

Two of Applicant's supervisors testified on his behalf. Their testimony described his performance as outstanding adding he was trustworthy. Both supervisors recommended Applicant for a clearance. Tr. 99-109. Applicant also submitted a recent favorable performance review, a resume, and various Microsoft certificates. AE N.

POLICIES

In an evaluation of an applicant's security or trustworthiness suitability, an administrative judge must consider the "Adjudicative Guidelines for Determining Eligibility For Access to Classified Information" (Guideline[s]), which sets forth adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into

Disqualifying Conditions (DC) and Mitigating Conditions (MC), which are used to determine an applicant's eligibility for access to classified or sensitive information.

These Guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these guidelines in conjunction with the factors listed in the adjudicative process. Guideline ¶ 2. An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. Guideline ¶ 2(c).

Specifically, an administrative judge should consider the nine adjudicative process factors listed at Guideline ¶ 2(a): "(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) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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."

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that "[a]ny doubt concerning personnel being considered for access to classified [or sensitive] information will be resolved in favor of national security." Guideline ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the Government has the initial burden of establishing controverted facts by "substantial evidence,"⁴ demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).⁵

⁴ "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." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁵The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

A person seeking access to classified or sensitive information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to such information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified or sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of such information.

The scope of an administrative judge's decision is limited. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. Executive Order 10865, § 7.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

Guideline F (Financial Considerations)

Guideline ¶ 18 articulates the Government's concern regarding financial problems. "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."

Two Financial Considerations Disqualifying Conditions could raise a security concern and may be disqualifying in this case: "inability or unwillingness to satisfy debts," and "a history of not meeting financial obligations." Guideline ¶¶ 19(a) and (c).

A snapshot of Applicant's financial difficulties is summarized under **Financial Considerations**. He has a history of financial irresponsibility going back to at least 2001. For reasons not entirely clear, he chose to avoid paying the 17 debts alleged in a timely manner. The only aspect of Applicant's explanation for failing to address his debts that hits the mark is his stating he was "irresponsible." Although he did make some inroads in achieving financial stability, he did not start the process until after he received his SOR and did not provide appropriate necessary documentation when provided the opportunity.

One Financial Considerations Mitigating Condition is potentially applicable: "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."

Guideline ¶ 20(d).⁶ Other than ¶ 20(d), Applicant did not submit evidence to warrant application of other mitigating factors under this Guideline. In sum, he has not demonstrated sufficient effort to resolve financial concerns to merit full application of any mitigating conditions to all debts under the adjudicative guidelines.

Guideline E (Personal Conduct)

Under Guideline ¶ 15, “[c]onduct involving . . . lack of candor [or] dishonesty . . . 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 . . . clearance process” One personal conduct disqualifying conditions is particularly relevant and may be disqualifying in this case. Guideline ¶ 16(a) provides, “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.”

Posing potential security concerns are Applicant’s documented omissions in response to questions 38, 39, and 24 of his April 2004 SF 86 of financial delinquencies and his October 1998 alcohol-related arrest. Applicant asserts his failure to correctly answer this question was an honest mistake. His explanation does not ring true given the length of time these debts have been unpaid and the number of debts involved, i.e. 17. Furthermore, his inability to recall his October 1998 arrest, after having been to court, is not reasonable. I do not accept Applicant’s explanations regarding his failure to provide full, frank, and complete answers as credible. However, his 2004 alcohol-related offenses and treatment are a separate matter.

Two Personal Conduct Disqualifying Conditions could raise a security concern and may be disqualifying in this case: “deliberate omission, concealment, or falsification or 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 “credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole,

⁶The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the “good faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.” Guideline ¶¶ 16(a) and (c).

One Personal Conduct Mitigating Condition under Guideline ¶ 17(c) is potentially applicable, “the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment.”

With regard to the falsifications, no mitigating conditions under this Guideline are applicable. However, with regard to the 2004 alcohol-related incidents and subsequent successful completion of alcohol counseling, Applicant has shown sufficient rehabilitation by his successfully complying with all terms of his court ordered treatment program and release from the court’s jurisdiction in January 2006. Applicant has not been involved in any further alcohol-related incidents. Accordingly, application of this mitigating condition is applicable to ¶¶ 2.d. through 2.g.

“Whole Person” Analysis

In addition to the enumerated disqualifying and mitigating conditions,⁷ I have considered the general adjudicative Guideline related to the whole person concept under Guideline ¶ 2(a). As noted above, Applicant’s failure to make greater progress resolving his delinquent debts is a serious, ongoing, long-term problem and is sufficiently serious to raise a trustworthiness concern. His actions with respect to financial considerations were knowledgeable and voluntary.

Applicant’s record speaks for itself and establishes a lengthy documented history of not meeting his financial obligations and three separate falsifications of his SF 86. It casts doubt on his reliability and trustworthiness.

Applicant presented some extenuating and mitigating evidence pertaining to his financial considerations. The current process has made him aware of the necessity to ensure his finances are not delinquent. “Applicant is now alert to the security concerns presented by [his] circumstances and the responsibilities incumbent on [him] as a result.” ISCR Case No. 04-07360 at 3 (App. Bd. Sep. 26, 2006). The absence of evidence of any prior violation of his employer’s rules or requirements, and his evident sincerity about making future financial progress all weigh in his favor.

In sum, however, the likelihood of recurrence remains because insufficient evidence was presented demonstrating sustained improvement in his overall financial situation. His recent efforts discussed above, however, to resolve my doubts about his reliability, trustworthiness, and good judgment. His falsification of his SF 86 seriously undermines the security clearance adjudication process.

⁷See generally ISCR 04-07360 at 2 (App. Bd. Sept. 26, 2006) (stating partial credit was available under the good faith mitigating condition for debts being resolved through garnishment).

After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude Applicant has not mitigated the security concerns pertaining to financial considerations. The evidence leaves me with doubts as to his security clearance eligibility and suitability.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my “careful consideration of the whole person factors”⁸ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated or overcome the government’s case. For the reasons stated, I conclude he is not eligible for access to a security clearance.

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:

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:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant

Paragraph 2, Guideline E: AGAISNT APPLICANT

Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	Against Applicant
Subparagraph 2.e:	For Applicant
Subparagraph 2.f:	For Applicant
Subparagraph 2.g:	For Applicant

⁸See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

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.

Robert J. Tuidor
Administrative Judge