

KEYWORD: Criminal Conduct; Financial

DIGEST: Applicant has worked for defense contractors for 29 years, and held a security clearance since 1979. He has a history of minor offenses between 1980 and 2004, but demonstrated rehabilitation through his successful completion of probation, the family building classes, job training for a second career, and his long-term record of employment. Applicant also incurred delinquent debt after his divorce in 1994 and a devastating fire in 2005. He resolved the largest listed obligations; his unpaid debts total less than \$3,500.00, so that the potential for pressure, coercion, exploitation, or duress is low. Considering Applicant's maturity, personal circumstances, and rehabilitative progress, the likelihood of a continuation or recurrence of criminal conduct or significant financial problems is low. Clearance is granted.

CASENO: 06-18328.h1

DATE: 05/29/2007

DATE: May 29, 2007

In re:)	
)	
-----)	
SSN: -----)	ISCR Case No. 06-18328
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
MICHAEL J. BRESLIN**

APPEARANCES

FOR GOVERNMENT

Richard Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has worked for defense contractors for 29 years, and held a security clearance since 1979. He has a history of minor offenses between 1980 and 2004, but demonstrated rehabilitation through his successful completion of probation, the family building classes, job training for a second career, and his long-term record of employment. Applicant also incurred delinquent debt after his divorce in 1994 and a devastating fire in 2005. He resolved the largest listed obligations; his unpaid debts total less than \$3,500.00, so that the potential for pressure, coercion, exploitation, or duress is low. Considering Applicant's maturity, personal circumstances, and rehabilitative progress, the likelihood of a continuation or recurrence of criminal conduct or significant financial problems is low. Clearance is granted.

STATEMENT OF THE CASE

On July 14, 2005, Applicant submitted an electronic Questionnaire for Investigations Processing (e-QIP), to apply for renewal of his security clearance. The Defense Office of Hearings and Appeals (DOHA) declined to 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 September 22, 2006, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision: security concerns under Guideline J, Criminal Conduct, and Guideline F, Financial Considerations.

Applicant answered the SOR in writing by letter dated November 15, 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 9, 2007. With the concurrence of Applicant and Department Counsel, I convened the hearing on March 29, 2007. The government introduced Exhibits 1 through 7. Applicant provided Exhibits A through J and testified on his own behalf. At Applicant's request, I left the record open until April 12, 2007, for him to submit additional materials. I later granted an additional delay until April 19, 2007. Applicant submitted documents admitted as Exhibits K and L, without objection. DOHA received the final transcript of the hearing (Tr.) on April 11, 2007.

FINDINGS OF FACT

In his Answer to the SOR dated November 15, 2006, Applicant admitted the allegations in ¶¶ 1.a through 1.f, and ¶ 2.b, and he denied 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 1957. (Ex. 1 at 1.) After high school, he attended a technical school for aeronautics for three years. (Tr. at 17.)

In June 1978, he began working as a laboratory technician for a major defense contractor. (Tr. at 17.) His department installs and maintains flight test equipment for military aircraft built by his corporation. (Tr. at 31.) He first received a security clearance in 1979. (Tr. at 31.)

Applicant and his girlfriend had a child in 1975. (Ex. 1 at 15.) They married in August 1978. (Ex. 1 at 12.) Applicant and his wife had three more children between about 1983 and 1985.

In February 1980, Applicant solicited a woman he believed to be a prostitute. (Tr. at 32-33.) In fact, she was an undercover police officer engaged in a “sting” operation. Applicant pled guilty to the charge of Patronizing Prostitution, and the court sentenced him to probation for six months. (Tr. at 33; SOR, ¶ 1.b.) He successfully completed the probation. (Tr. at 76.) Applicant denies engaging in such behavior before or since the incident. (Tr. at 33-34.)

In 1982, Applicant had a daughter with a woman who was not his wife. (Tr. at 54.) She brought a lawsuit and the state court ordered Applicant to pay her child support through the court. (Ex. I.) Applicant testified he was never delinquent in the payment of his child support obligation. (Tr. at 53; Ex. I.)

In November 1991, Applicant and his wife were involved in an argument over the car keys. (Tr. at 35; Ex. 6.) In a sworn statement dated September 9, 1993, Applicant wrote that he and his wife were arguing, and when the police arrived he was in the front yard holding his wife by the wrist; he was then arrested. (Ex. 6 at 1; SOR, ¶ 1.b.) Applicant asserted the matter was later dropped—he never appeared in court for any criminal charges arising out of the incident. (Ex. 6 at 1.) His wife obtained an Order of Protection in December 1991, preventing Applicant from contacting her or entering her home. (Tr. at 36; SOR, ¶ 1.c.) After the order expired, Applicant returned to the household, where he lived until moving out permanently in late 1993. (Tr. at 77-78.) Applicant’s wife obtained another Order of Protection in November 1993—Applicant denies any other incident prompting the second protection order. (Tr. at 35, 77-78.)

Applicant divorced his wife in 1994. (Tr. at 17.) As part of the divorce proceedings, the state court ordered him to assume certain marital debts, and pay spousal support and child support to his ex-wife. (Tr. at 55; Ex. 7 at 2.) The terms of the divorce left Applicant unable to meet his financial obligations. Between about October 1994 and January 1995, after all deductions and required payments, his net weekly salary was \$84.00. (Ex. 7 at 2.) As a result, he became delinquent on many ordinary financial obligations.

Applicant opened a credit card account with a \$300.00 limit. (Tr. at 58; SOR, ¶ 2.g.) When he fell behind on his payments, the credit card company imposed fees and interest charges that ran the total debt over \$1,700.00. (Tr. at 58-59.)

In about 1997, another defense contractor purchased Applicant’s company. Applicant continued to work for the new company in the same capacity. (Tr. at 17.) As Applicant’s earnings increased, his ability to pay his debts improved. Also, as his children became emancipated, his child support obligation decreased.

In March 2001, after having a couple drinks with dinner at home, Applicant decided to go out for a few more drinks. (Tr. at 36.) While driving home, a police officer stopped him for speeding. (Tr. at 36.) The officer took Applicant to the police station, where a Breathalyzer test indicated his blood-alcohol content was .09%, a level creating a presumption of intoxication under state law. (Tr. at 37-38.) The state charged him with Driving While Intoxicated, and Applicant did not contest the charge. The court sentenced him to 30 days in confinement (suspended), a \$500.00

fine, and probation for two years. As a condition of his probation, Applicant attended an alcohol and drug safety awareness course, three hours a day, two times per week for six weeks. (Tr. at 39.) The court also ordered Probation Before Judgment, so that if Applicant successfully completed his probation, the charge would be dropped. (Tr. at 38.) Applicant complied with the requirements of the probation. He testified that he has not had any alcohol-related incidents since that time. (Tr. at 41.)

In about May of 2002, Applicant ended his relationship with a girlfriend who had lived with him for about five years. (Tr. at 41.) She claimed he had some of her family photographs. (Tr. at 42.) According to Applicant, they had a tug-of-war over some personal property. (Tr. at 81.) She reported to police that Applicant assaulted her. The court put the charge on the Stet docket. Applicant was never found guilty of any offense or sentenced to any punishment arising from the charges, nor was it considered to be a violation of his probation. (Tr. at 43, 80.)

In about 2002, the daughter born to Applicant out of wedlock became emancipated, and his obligation to pay child support ended. (Tr. at 55.) By mistake, the state took some of the funds still being paid to his ex-wife and gave them to the mother of his newly-emancipated child for about six months. (Tr. at 55.) This resulted in an overpayment on behalf of his emancipated child and an arrearage in payments to his ex-wife. (Tr. at 56.) It took two years to correct the error. (Tr. at 56.) Applicant got a judgment from the state court indicating he did not owe an arrearage because of the misdirected payments. (Ex. E.)

Applicant lived with his fiancé and her son for about four and one-half years. (Tr. at 19.) His fiancé's son had emotional and behavioral problems; Social Services is involved with his case, and the local police have been called several times for his assaults on his mother. (*Id.*; Ex. B; Ex. C; Ex. G.)

In March 2004, when the young man was 11 years old, he and his mother got into an argument about his poor school performance, and particularly about his failure to bring books home to do his homework. (Tr. at 44.) She called Applicant at work and told him about the problem; he said he would take care of it when he got home. (*Id.*) Applicant met the young man while he was returning to school for his books and spoke to him about being disrespectful toward his mother. According to Applicant, the young man began walking away from him; Applicant pulled him back and struck him three times with the back of his hand against the back and side of his head. (Tr. at 46.)

The young man later told his grandmother, who called the police. (Tr. at 47-48.) Authorities charged Applicant with: (1) Child Abuse, Custodian, and (2) Assault, 2d degree. The state court dismissed the first charge at trial. (Ex. D.) Applicant pleaded guilty to the assault offense, and the court sentenced him to two years probation. (Tr. at 48.) As a condition of his probation, Applicant attended family building classes. (*Id.*) He successfully completed the probation.

On September 30, 2005, Applicant suffered a fire that destroyed his home. (Tr. at 74.) His grandmother perished in the fire. (*Id.*) Applicant also lost all his personal possessions in the fire. (Tr. at 74.) He had no insurance, and no means to pay for his grandmother's funeral or to replace his possessions. (Tr. at 82, 83.)

Applicant's grandmother lived with him for a few years, and he served as her guardian with authority to cash her Social Security checks. (Tr. at 21, 62.) After she passed away in September 2005, her Social Security checks continued to arrive. (Tr. at 64.) Applicant cashed one check to help with her interment, but never cashed the remaining checks. (Tr. at 21, 64, 66.) In February 2006, the Social Security Administration (SSA) placed the account for collection. (Ex. A; SOR, ¶ 2.i.) He reimbursed the SSA for the cashed check, and in August 2006, he mailed the checks back to the SSA which issued statements acknowledging receipt of the checks. (Ex. A at 2-6; Tr. at 64.) The SSA acknowledged that Applicant repaid all the overpaid benefits. (Ex. K.)

When Applicant submitted his e-QIP, he reported several delinquent financial obligations. He has paid off several accounts that were formerly delinquent. (SOR, ¶ 2.e; Tr. at 56; Ex. F.) He received bills for medical services (SOR, ¶¶ 2.a, 2.b) he could not identify; Applicant believes at least one of the charges was for medical services for his grandmother, for whom he served as guardian. (Tr. at 51.) He has not sought or received financial counseling. (Tr. at 82.) After the hearing, he negotiated settlement agreements with two creditors, however there is no evidence he has begun making payments on these accounts. (Ex. L.)

The current status of the debts listed in the SOR is shown below.

SOR	Account/Amount	Status	Evidence
2.a	Collec. Agt #1 \$638.00 (medical)	Repayment Agreement	Ex. L.
2.b	Medical 250.00	Unpaid	Answer to LOI at 1; Tr. at 48.
2.c	Collec. Agt #1 186.00	Repayment Agreement	Ex. L.
2.d	Child Support 5,412.00	Current	Tr. at 54-56 (mistake by county); Ex. E.
2.e	Collec. Agt #2 164.00 (medical)	Paid	Ex. F; Tr. at 56-57.
2.f	Collec. Agt #2 181.00 (medical)	Repayment Agreement	Ex. L.
2.g	Credit Co. 1,779.97	Unpaid	Tr. at 58-60.
2.h	Medical 196.00	Unpaid	Tr. at 60.
2.i	SSA 1,508.00	Paid	Tr. at 61-66; Ex. K.
2.j	Medical 180.00	Unpaid	Tr. at 66-67.
2.k	Medical 64.00	Unpaid	Tr. at 66-67.

Applicant has worked for defense contractors for about 29 years. (Tr. at 17.) He is single and lives alone. (Tr. at 17.) His five daughters are between ages 21 and 31. (*Id.*) He is still paying

child support for one daughter, now 21 years old, but still in college until May 2007. (Tr. at 52-53, 85.) When that last support obligation ends, he will have an additional \$1,100.00 each month to apply to his debts. (Tr. at 86.) He recently obtained his real estate license, and started a second career as a real estate broker. (Tr. at 86.)

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 the 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 J, Criminal Conduct, and Guideline F, Financial Considerations, 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 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 demonstrates multiple lesser offenses, including soliciting prostitution in 1980, a minor assault in November 1991, driving while intoxicated in March 2001, and a minor assault in March 2004. The available evidence is insufficient to show criminal conduct related to the incident on May 21, 2002; even though Applicant admitted he received a summons for the assault charge, he does not admit—and the evidence does not establish—any criminal conviction or conduct. Nonetheless, the remaining evidence is sufficient to raise these potentially disqualifying conditions.

The adjudicative guidelines also set out some potentially mitigating conditions. 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.” Some of the offenses in this case are very old, including the conviction in 1980, the assault in 1991, and the DWI conviction in 2001. However, consideration is not limited to the dates of the individual offenses; one must also consider the pattern of the misconduct, which covers a period of 24 years. This pattern may suggest a lack of judgment or self-control in stressful situations. Some of the offenses, particularly the solicitation of prostitution and the DWI, appear to be unique offenses that are unlikely to recur. On the other hand, the offenses related to domestic violence may not be “unusual” or “unlikely to recur.” I conclude this potentially mitigating condition applies only in part.

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.” The most recent offense occurred in March 2004—over three years ago. Since then, Applicant successfully completed the probationary period, took family building classes, expressed his remorse, obtained his real estate license for a second career, and continued to work for his long-time employer. I conclude the evidence raises this potentially mitigating factor.

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 being unable to pay his debts since his divorce in 1994. 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.” Some debts were quite old, but the unpaid obligations listed in the SOR were fairly recent. 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 of his divorce, and the resulting burden of marital debt, spousal support, and child support for four children. More recently, the total loss of all his household possessions due to fire exacerbated his financial problems. I find this mitigating condition applies.

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 two of the three largest

debts listed on the SOR; he demonstrated that the debt for unpaid child support was based on a mistake by the county, and that he resolved the claim of the SSA by returning the uncashed checks, and reimbursing them for the one check used to cover funeral expenses. He also paid one outstanding medical bill. (Ex. F.) On the other hand, one credit card account (with exorbitant fees and penalties) remains unresolved, and Applicant has failed to investigate or resolve several small medical bills. I conclude this factor applies in part.

Under ¶ 20(e), even where there is some evidence indicating a delinquent debt, an individual may alleviate security concerns where there is evidence that,

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.

Most of the unpaid debts are medical bills. Applicant testified that his medical care is covered by insurance, except for a small co-pay amount that is paid at the time of treatment, leading him to question the validity of several of the debts. At the time of the hearing, however, Applicant did not provide documentation to substantiate the basis for the dispute, or to show that he has challenged the debt. The available evidence does not raise this factor.

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 criminal offenses. Each offense was fairly minor, however. (AG, ¶ 2(a)(1).) While there have been several incidents over the last 27 years, they were not “frequent” crimes, nor was last offense recent. (AG, ¶ 2(a)(3).) He has demonstrated rehabilitation, through his successful completion of probation, the family building classes, his expression of remorse, obtaining his real estate license for a second career, and his long-term record of employment. (AG, ¶ 2(a)(6).) The nature of the offenses were such that they generate little or no potential for pressure, coercion, exploitation, or duress. (AG, ¶ 2(a)(7).) Furthermore, considering Applicant’s maturity, personal circumstances, and rehabilitative progress, the likelihood of a continuation or recurrence of criminal conduct is quite low.

Applicant’s financial circumstances also invite closer scrutiny. The problems arose due to his divorce and, to a lesser extent, the devastating fire in 2005, therefore the accumulation of these debts does not reflect on his reliability, dependability, or judgment. Two of the largest debts listed in the SOR—the child support arrearage and the social security overpayment—were resolved prior to the commencement of this action. Presently, the unpaid debts total less than \$3,500.00, so that the potential for pressure, coercion, exploitation, or duress is low. Applicant’s personal finances are just at the point of dramatic improvement; that by itself does not prove he will use his new liquidity to satisfy his debts, but it is evidence that he will be able to do so, should he so choose. I also considered Applicant’s 29 years of service to defense contractors, and that he has held a security clearance since 1979. I conclude Applicant has mitigated the security concerns arising from his history of criminal conduct and his financial circumstances.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline J: FOR APPLICANT

Subparagraph 1.a:	For 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

Paragraph 2, Guideline F: FOR APPLICANT

Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	For Applicant
Subparagraph 2.f:	For Applicant
Subparagraph 2.g:	For Applicant
Subparagraph 2.h:	For Applicant
Subparagraph 2.i:	For Applicant
Subparagraph 2.j:	For Applicant
Subparagraph 2.k:	For Applicant

DECISION

In light of all of 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. Clearance is granted.

Michael J. Breslin
Administrative Judge