

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has a history of past due debts dating to the sworn statement he provided in May 2001. His divorce3 in 2003 provides some extenuation for these debts. But, the extenuation is substantially reduced by his deliberate omission of these debts and two more recent judgments from his security form in May 2005. Except for his unsuccessful attempt to obtain a loan in January 2007, Applicant's other testimonial claims about disputing some debts and establishing a repayment schedule got others lack credibility and/or corroboration. Clearance is denied..

CASENO: 06-18411.h1

DATE: 09/27/2007

DATE: September 27, 2007

In Re:)	
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-----)	ISCR Case No. 06-18411
SSN: -----)	
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
PAUL J. MASON**

APPEARANCES

FOR GOVERNMENT

John B. Glendon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of past due debts dating to the sworn statement he provided in May 2001. His divorce in 2003 provides some extenuation for these debts. But, the extenuation is substantially reduced by his deliberate omission of these debts and two more recent judgments from his security form in May 2005. Except for the unsuccessful attempt to obtain a loan in January 2007, Applicant's other testimonial claims about disputing some debts and establishing a repayment schedule for others lack credibility and/or corroboration. Clearance is denied.

STATEMENT OF CASE

On April 9, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6, dated January 2, 1992, as revised by Adjudicative Guidelines (AG) made effective on September 1, 2006, issued a Statement of Reasons (SOR) to the Applicant. The SOR indicated that based on financial considerations (Guideline F) and personal conduct (Guideline E), 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 Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. On April 27, 2007, Applicant provided his response to the SOR and requested a hearing before an Administrative Judge.

The case was assigned to me on July 5, 2007. On July 10, 2007, this case was set for hearing on August 14, 2007. The Government submitted eight exhibits. Applicant testified. The transcript (Tr.) was received on August 29, 2007.

RULINGS ON PROCEDURE

At the hearing, Department Counsel moved to amend the SOR by adding the following allegation: "1.f. You failed to file state and federal tax returns for 2005 and 2006" (Tr. 108). Department Counsel's motion is granted. The law requires all taxpayers file state and federal tax returns or extensions even if they are unable to pay taxes, and even though they have sufficient withholding taxes removed from their wages throughout the year. Applicant did not file returns for the years in issue. His failure to furnish the record with extensions he said he filed establishes a reasonable inference he filed no extensions for 2005 and 2006.

FINDINGS OF FACT

The SOR has five allegations under the financial guideline. Applicant admitted the first two subparagraphs and denied the last three. He denied all three subparagraphs cited under the personal conduct guideline.

Applicant is 46 years old. He was married in 1985, separated in 1990, and divorced in 2003.

He joined the United States Air Force (USAF) in 1979, and received an Honorable Discharge in 1999.

Financial Considerations. Applicant's financial problems began around the time he got married. (Tr. 126) He also realized he was living beyond his means when he left the service in 1999. In addition, the legal fees and other costs associated with his divorce following departure from the service aggravated his long-standing financial problems.

After examining his sworn statement (GE 8), Applicant recognized the 1.e. creditor (\$713.00), and admitted the debt. (Tr. 45) With regard to the 1.d. creditor (\$142.00), Applicant claimed he owed nothing on his telephone when it was stolen, and he indicated he sent a letter to the creditor advising that he was not responsible for any charges.

Applicant claims he owes nothing to the landlord in 1.c. He claims that three months before his lease terminated, he dutifully notified the landlord he would be terminating his lease. Moreover, the landlord supposedly handed him documentation stating he owed nothing. This documentation was not produced at the hearing.

Applicant admits two judgments were entered against him as alleged in 1.a. and 1.b. He was involved in an automobile accident (1.a.), and a judgment (\$8,655.00) was entered against him in September 2003. Applicant claims his insurance company was required to pay the judgment, but instead went out of business.

A judgment (1.b.) was entered against Applicant in July 2003 for \$12,191.00. Applicant did not provide a clear explanation of how and why the insurance debt became a judgment. Applicant testified he made four payments of \$150.00 a month on the judgment, but then petitioned the insurance company in 2006 to acquiesce to a reduction of payments. (Tr. 67) Applicant is no longer making payments on the judgment.

Applicant did not file state and federal tax returns for the 2005 and 2006, but claimed he had filed his returns in previous years. Applicant could provide no reason for not filing the returns.

During examination of Applicant by Department Counsel, Applicant stated he sent letters to the listed creditors. In 1.f., he claimed he filed extensions for both tax years. In 1.e., 1.d., and 1.c., he recalled sending letters explaining why he did not owe the debts. Applicant also claimed he sent a letter to the 1.a. creditor requesting that a payment plan be established. Regarding his past due debt to the insurance company identified in 1.b, Applicant indicated he had documentation substantiating the four payments he made, and also documentation supporting his request to reduce the payments. The record remained open for the submission of potentially confirming documents identified by Applicant during his testimony. No documentation was provided.

In an effort to repay the overdue debts and judgments, Applicant applied for a \$25,000.00 loan in January 2007. The application was denied. Applicant sent the loan application to DOHA (GE 6) in response to GE 5 (interrogatories, undated) to show his efforts to resolve his delinquent debts. (Tr. 98-101)

GE 8 reflects debt problems in May 2001 even with a monthly remainder of approximately

\$774.00, according to Applicant's personal financial statement (PFS). Presently, Applicant has no discretionary money remaining after his bills are paid each month. (Tr. 104)

Personal Conduct. On May 17, 2005, Applicant signed a security clearance application (SCA). His signature constituted a certification that all information he supplied in the SCA was true to the best of his knowledge. Applicant answered "no" to questions 37 (judgments in last 7 years that have not been paid), 38 (over 180 days delinquent on any debt in the last 7 years), and 39 (are you currently 90 days delinquent on any debt). I find Applicant deliberately falsified his SCA by not supplying the requested information. His explanations of misreading the SCA and/or not proofreading the form are not credible. Applicant filled out three similar forms in the past (Tr. 85), so he knew the kinds of questions asked on the form. He also knew the purpose of the form and realized the government would be evaluating the forms closely in assessing security suitability. (Tr. 86) The only major mistakes Applicant made on the form were in response to the financial questions, information the government should know before deciding whether security clearance access should be awarded.

POLICIES

The AG contains disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

Burden of Proof

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *See Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

Financial Considerations (Guideline F)

The failure to payment debts in a timely manner places an individual at risk of committing acts of poor judgment to generate funds.

Personal Conduct (Guideline E)

The security concern is that conduct involving questionable judgment or dishonesty could indicate the individual may not properly safeguard classified information.

CONCLUSIONS

Financial Considerations (FC). Applicant recalled that his financial problems began around the time he was married in 1985. Though he provided very little detail of the nature of his financial trouble in period of 1985 to 1999, Applicant reiterated the existence of financial problems in 1999 when he had to hire an attorney to defend his divorce litigation. In July and September 2003, two judgments were filed for almost \$21,000.00. Applicant still owes those judgments. The four remaining debts have not been resolved either. FC disqualifying condition (DC) 19.a. (*inability or unwillingness to satisfy debts*) applies due to Applicant's inability to pay the enumerated debts and judgments. Because of the age of the debts and judgments, FC DC 19.c. (*a history of not meeting financial obligations*) is also applicable. Finally, Applicant's failure to file tax returns for 2005 and 2006 supports the application of FC DC 19.g. (*failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same*)

The facts have been carefully evaluated to determine whether one or more of the mitigating conditions (MC) apply. FC MC 20.a. (*the behavior occurred 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*) does not apply due to the overdue status of the debts and the ongoing failure of Applicant to resolve the debts.

FC MC 20.b. (*the conditions that resulted in the problem were largely beyond the person's control*). Applicant's divorce in 2003 entitles him to limited mitigation and extenuation. Greater weight cannot be assigned to the divorce as it occurred in 2003, almost four years ago, and without any documented action to resolve the debts since then. The only documented action relating to the debts and judgments is Applicant's SCA where he intentionally concealed the debts in his May 2005 SCA.

The lack of counseling precludes the application of FC MC 20.c. (*the person has received counseling for the problem and/or there are clear indications the problem is being resolved or is under control*) FC MC 20.e. (*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*) does not apply to the judgments or the collection debts. I have weighed and balanced Applicant's positions with respect to the listed obligations. Even though he has provided several reasons for not paying the debts, I am unable to agree that he has a bona fide dispute with any of the creditors. All subparagraphs under the FC guideline are found against Applicant.

Personal Conduct (PC). Applicant's deliberate omission of material information from his security form in May 2005 falls within the ambit of PC DC 16.a. (*deliberate omission or falsification of relevant facts from any personnel security questionnaire used to determine security clearance eligibility or trustworthiness*) Applicant intentionally concealed information about his judgments and debts from his SCA. Negligence or haste can sometimes cause a person to unintentionally leave out relevant information from a security form. However, Applicant had filled these forms out before. He

knew the government evaluated the responses on the form to determine security clearance eligibility. Significantly, the only material omissions on Applicant's SCA are omissions to questions dealing with overdue debts and judgments. Finally, Applicant continues to deny he falsified the form.

The mitigating conditions have been considered, however, none apply based on Applicant's current position he did not falsify the form. PC MC 17.a. (*the individual made prompt, good-faith efforts to correct the omission or falsification before being confronted with the facts*) does not apply. PC MC 17.c. (*the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under the such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*) does not qualify under the circumstances due to Applicant's continuing belief he did not intentionally omit information. The only mitigating condition remaining is PC MC 17.e. (*the individual has take positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress*) Continuing to claim the information was unintentionally omitted does not constitute positive action by Applicant to eliminate his vulnerability to duress and manipulation. Applicant's deliberate omissions have not been mitigated. Subparagraphs 2.a., 2.b., and 2.c. are found against Applicant.

The adjudicative process is an examination of a sufficient portion of a person's life to make a determination about the person's security clearance eligibility. Applicant realizes he began to have financial problems as early as 1985. When he was discharged from the military, his financial problems got worse when he had to hire an attorney to litigate his divorce. The SOR reflects Applicant's financial dilemma has not changed. There has been no documented effort to address his debt. With no financial counseling and no real plan to handle his judgments and overdue debts, Applicant's debt entanglements are likely to remain for some time. After a careful evaluation of these facts in the context of the whole person model, Applicant has failed to meet his ultimate burden of persuasion under the FC and AC guidelines.

FORMAL FINDINGS

Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (Financial Considerations, Guideline F):	AGAINST THE APPLICANT.
Subparagraph a.	Against the Applicant.
Subparagraph b.	Against the Applicant.
Subparagraph c.	Against the Applicant.
Subparagraph d.	Against the Applicant.
Subparagraph e.	Against the Applicant.
Subparagraph f.	Against the Applicant.
Paragraph 2 (Personal Conduct, Guideline E):	AGAINST THE APPLICANT.
Subparagraph 2.a.	Against the Applicant.
Subparagraph 2.b.	Against the Applicant.
Subparagraph 2.c.	Against the Applicant.

DECISION

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

Paul J. Mason
Administrative Judge