

KEYWORD: Financial, Personal Conduct; Criminal Conduct

DIGEST: Applicant had seven delinquent debts totaling more than \$12,000. One debt for \$878 was legitimately disputed. One debt for \$420 was paid. His federal tax refund of \$2,380 was applied as partial payment on four delinquent student loans, leaving a balance of \$7,877. He intentionally failed to disclose his delinquent debts on his security clearance application. Security concerns based on financial considerations, personal conduct, and criminal conduct are not mitigated. Clearance is denied.

CASENO: 06-18660.h1

DATE: 05/31/2007

DATE: May 31, 2007

In re:	)	
	)	
-----	)	ISCR Case No. 06-18660
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**DECISION OF ADMINISTRATIVE JUDGE  
LEROY F. FOREMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Robert E. Coacher, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant had seven delinquent debts totaling more than \$12,000. One debt for \$878 was legitimately disputed. One debt for \$420 was paid. His federal tax refund of \$2,380 was applied as partial payment on four delinquent student loans, leaving a balance of \$7,877. He intentionally failed to disclose his delinquent debts on his security clearance application. Security concerns based on financial considerations, personal conduct, and criminal conduct are not mitigated. Clearance is denied.

## STATEMENT OF THE CASE

On December 5, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a security clearance. This action was taken Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive), and the revised adjudicative guidelines approved by the President on December 29, 2005, and implemented effective September 1, 2006 (Guidelines). The SOR alleged security concerns raised under Guidelines F (Financial Considerations), E (Personal Conduct), and J (Criminal Conduct).

Applicant answered the SOR in writing on February 9, 2007 and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on March 9, 2007. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on March 19, 2007 and responded on April 3, 2007. The case was assigned to me on April 18, 2007.

The FORM reflected that Applicant received a copy of the Directive, but it did not reflect that he received the Guidelines superseding Enclosure 2 of the Directive. Accordingly, I ordered that Applicant be provided a copy of the Guidelines and given 30 days from date of receipt to file a supplemental response. A copy of the Guidelines was sent to Applicant on April 23, 2007, and received on April 26, 2007. He did not file a supplemental response.

## FINDINGS OF FACT

Applicant is a 24-year-old associate designer for a defense contractor, working at a naval shipyard. After graduating from high school in June 2001, he attended a vocational school from September 2001 to June 2002. He has worked for his current employer since September 2004. He was married in March 2002, but is legally separated and living with his parents. He has never held a security clearance.

On February 6, 2006, Applicant applied for a security clearance, using an Electronic Questionnaire for Investigations Processing (e-QIP). He answered "yes" to question 27b, asking if he had wages garnished or property repossessed within the last seven years. However, he answered "no" to question 28a, asking if he had been more than 180 days delinquent on any debt during the last seven years. He also answered "no" to question 28b, asking if he was currently more than 90 days delinquent on any debts. His credit report reflected three debts more than 180 days delinquent (SOR ¶¶ 1.a-1.c) and seven debts more than 90 days delinquent (SOR ¶¶ 1.a-1.g). The SOR alleges he intentionally falsified his answers to questions 28a and 28b.

Applicant admitted all the debts in his answer to the SOR. He admitted the debt for computer equipment in SOR ¶ 1.a, but his answers to DOHA interrogatories in October 2006 show that the debt has been disputed since December 2003. The documentation provided by Applicant in response

to DOHA interrogatories reflects that he was unhappy with a computer he had purchased, returned it in accordance with directions from the vendor, but continued to receive demands for payment.

In his response to the FORM, Applicant provided documentary evidence that the debt alleged in SOR ¶ 1.b was paid in full. He also provided evidence that his federal tax refund of \$2,380 was applied to his delinquent loans on February 9, 2007, leaving a balance due of about \$7,877. He promised to pay the debt alleged in SOR ¶ 1.c by April 1, 2007, but he has presented no evidence of payment.

Applicant's personal financial statement dated October 17, 2006, reflected net monthly income of \$1,426.70, expenses of \$1,410, no debt payments, and a remainder of \$16.70. Child support payments are deducted from his pay and are reflected in the computation of his net monthly income.

Applicant denied falsifying his e-QIP, asserting he was unaware of the delinquent debts because he had not reviewed his credit report. His credit report dated August 15, 2006, reflected that the debts alleged in SOR ¶¶ 1.a and 1.b were charged off as a bad debts in May 2003, and the debt alleged in SOR ¶ 1.c was charged off in January 2005, almost a year before he executed his e-QIP. The student loan alleged in SOR ¶ 1.d was referred for collection in March 2006, the month after he executed his e-QIP. The student loans alleged in SOR ¶¶ 1.e, 1.f, and 1.g were all referred for collection in May 2006. All five student loans were at least 120 days past due when they were referred for collection.

## POLICIES

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, 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.” *Id.* at 527. The President has 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. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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). Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Guidelines ¶¶ 2(a)(1)-(9).

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in persons with access to classified information. However, the decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. “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). The Guidelines presume 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)

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3; *see* 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). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; *see* Guidelines ¶ 2(b).

## CONCLUSIONS

### **Guideline F (Financial Considerations)**

The concern under this guideline is as follows: “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.” Guidelines ¶18.

Two disqualifying conditions under this guideline could raise a security concern and may be disqualifying in this case. Guidelines ¶ 19(a) applies where there is an “inability or unwillingness to satisfy debts.” Guidelines ¶ 19(c) applies when there is “a history of not meeting financial obligations.” These two disqualifying conditions are raised by the evidence.

Since the government produced substantial evidence to raise the disqualifying conditions in Guidelines ¶¶ 19(a) and (c), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it is never shifted to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns based on financial problems can be mitigated by showing that “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.” Guidelines ¶ 20(a). Applicant’s delinquent debts are recent, frequent, and likely to recur because his obligations substantially exceed his income. This mitigating condition is not established.

Security concerns under this guideline also can be mitigated by showing that “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.” Guidelines ¶ 20(b). Both prongs, i.e., conditions beyond the person’s control and responsible conduct, must be established. Applicant presented no evidence of the circumstances giving rise to his financial situation. This mitigating condition is not established.

Security concerns under this guideline also can be mitigated by showing 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.” Guidelines ¶ 20(c). This mitigating condition is not established because there is no evidence of counseling and the problem is not yet under control.

Security concerns under this guideline also can be mitigated by showing that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Guidelines ¶ 20(d). Applicant paid the debt in SOR ¶ 1.b. He promised to pay the debt in SOR ¶ 1.c by April 1, 2007, but has presented no proof of payment. The partial payment of the student loans was an involuntary collection action, not a good faith effort by Applicant. This mitigating condition is established only for the debt alleged in SOR ¶ 1.b.

Security concerns under this guideline also can be mitigated by showing “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.” Guidelines ¶ 20(e). Applicant disputed the debt alleged in SOR ¶ 1.a. He presented documentary evidence showing that he returned the computer in accordance with the vendor’s instructions but the vendor continued to bill him. This mitigating condition is established for the debt alleged in SOR ¶ 1.a.

### **Guideline E (Personal Conduct)**

The concern under this guideline is as follows: “Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations 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 security clearance process or any other failure to cooperate with the security clearance process.” Guidelines ¶ 15. The relevant disqualifying condition in this case is “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.” Guidelines ¶ 16(a).

When a falsification allegation is controverted, as in this case, the government has the burden of proving it. An omission, standing alone, does not 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 of the omission. *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 claimed he was unaware of the seven debts omitted from his e-QIP. His affirmative answer to question 27b on the e-QIP, pertaining to garnishments or foreclosures, appears to refer to the collection of child support from his pay. He knew about the debt alleged in SOR ¶ 1.a, because he had been negotiating with the vendor to resolve it since December 2003. He knew he had student loans, but he claimed he was unaware that they were delinquent, even though he had made no payments for at least 120 days. His claimed ignorance is neither plausible nor credible. I conclude the disqualifying condition in Guidelines ¶ 16(a) is raised, shifting the burden to Applicant to rebut, explain, extenuate, or mitigate the facts.

Security concerns raised by false or misleading answers on a security clearance application may be mitigated by showing that “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.” Guidelines ¶ 17(a). Applicant’s efforts to correct his omissions were neither prompt nor in good faith. He executed the e-QIP in February 2006 but did not admit or explain the debts until confronted with DOHA interrogatories in October 2006. This mitigating condition is not established, and no other enumerating mitigating conditions are applicable.

### **Guideline J (Criminal Conduct)**

The concern raised by criminal conduct is that it “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.” Guidelines ¶ 30. Conditions that could raise a security concern and may be disqualifying include “a single serious crime or multiple lesser offenses.” Guidelines ¶ 31(a).

It is a felony, punishable by a fine or imprisonment for not more than five years, or both, to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the jurisdiction of the executive branch of the government of the United States. 18 U.S.C. § 1001. Security clearances are matters within the jurisdiction of the executive branch of the government of the United States. A deliberately false answer on a security clearance application is a serious crime within the meaning of Guideline J. Applicant’s false answers on his e-QIP raise the disqualifying condition in Guidelines ¶ 31(a), shifting the burden to Applicant to rebut, explain, extenuate, or mitigate the facts.

Security concerns under this guideline may be mitigated by evidence that “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 on the individual’s reliability, trustworthiness, or good judgment.” Guidelines ¶ 32(a). This mitigating condition is not established, because Applicant’s falsification was recent, did not happen under unusual circumstances, and casts doubt on his reliability and trustworthiness.

Security concerns under this guideline also may be mitigated if “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.” Guidelines ¶ 32(d). This mitigating condition is not established, because Applicant’s falsification was recent, he has shown no remorse, and there is no evidence anything in his life has changed.

## **The Whole Person**

In addition to considering the specific disqualifying and mitigating conditions under each guideline, I have also considered: (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 applicant's age and maturity at the time of the conduct; (5) the 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. Guidelines ¶¶ 2(a)(1)-(9).

Applicant's falsification was serious misconduct. Because he is financially overextended, he is vulnerable to pressure, coercion, exploitation, or duress. His financial neglect and falsifications raise questions about his level of maturity. Unless he changes his behavior, his financial problems are likely to recur.

After weighing the disqualifying and mitigating conditions under Guidelines F, E, and J, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on financial considerations, personal conduct, and criminal conduct. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him a security clearance.

## **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant



Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Paragraph 3. Guideline J:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

**DECISION**

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

LeRoy F. Foreman  
Administrative Judge