

KEYWORD: Criminal Conduct; Financial

DIGEST: Applicant was arrested on multiple occasions between 1980 and 2003 for assorted offenses and convicted in connection with five of his arrests, including a 2003 felony conviction for altering a prescription form. Applicant's actions represent a pattern of criminal conduct for which too little time has elapsed to mitigate security concerns. Additional security concerns are raised by Applicant's history of delinquent debts, which he accumulated prior to his current marriage in 2005. Applicant has not addressed his debts to date and has no plans to do so while his job status remains uncertain. Based on his debt accumulations and lack of tangible progress in addressing them, he fails to mitigate financial concerns. Clearance is denied.

CASENO: 06-18762.h1

DATE: 04/30/2007

DATE: April 30, 2007

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In re:)	
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SSN: -----)	ISCR Case No. 06-18762
)	
Applicant for Security Clearance)	
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**DECISION OF ADMINISTRATIVE JUDGE
ROGER C. WESLEY**

APPEARANCES

FOR GOVERNMENT
Rita O'Brien,
Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

Applicant was arrested on multiple occasions between 1980 and 2003 for assorted offenses and convicted in connection with five of his arrests, including a 2003 felony conviction for altering a prescription form. Applicant's actions represent a pattern of criminal conduct for which too little time has elapsed to mitigate security concerns. Additional security concerns are raised by Applicant's history of delinquent debts, which he accumulated prior to his current marriage in 2005. Applicant has not addressed his debts to date and has no plans to do so while his job status remains uncertain. Based on his debt accumulations and lack of tangible progress in addressing them, he fails to mitigate financial concerns. Clearance is denied.

STATEMENT OF THE CASE

On September 28, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which 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 Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on December 20, 2006, and requested a hearing. The case was assigned to me on February 5, 2007, and was scheduled for hearing on March 27, 2007. The hearing was rescheduled for April 3, 2007. A hearing was April 3, 2007, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of five exhibits; Applicant relied on one witness (himself) and seven exhibits. The transcript (R.T.) was received on April 11, 2007.

PROCEDURAL ISSUES

Before the close of the hearing, Applicant requested leave to keep the record open to permit him the opportunity to supplement the record with payment information regarding one of his creditors. For good cause shown, Applicant was granted seven days to supplement the record. The Government, in turn was allowed three days to respond. Applicant did not supplement the record.

SUMMARY OF PLEADINGS

Under Guideline J, Applicant is alleged to have been arrested on multiple occasions between July 1980 and February 2003 for assorted charges, and convicted in connection with three of the charged offenses. Under Guideline F, Applicant is alleged to have accumulated eight delinquent debts in excess of \$11,000.00.

For his response to the SOR, Applicant admitted most of the alleged debts, with explanations. He denied only his being arrested in April 2001 for discharging a firearm in city limits.

STATEMENT OF FACTS

_____Applicant is a 44 year-old computer operator for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant was first married in 1981. He divorced his first wife (W1) in January 1986, and married his second wife (W2) in June 1989 (*see ex. 1*). His second marriage lasted four years. Following their divorce in January 1993, he married for the third time in May 1994 to W3. Applicant and W3 dissolved their marriage in February 2002. He has no children from any of his first three marriage (R.T., at 49), but has a daughter (age 20) from another woman (born in 1986); he pays no current child support for this daughter (R.T., at 49). Applicant married his current wife (W4) in November 2005. She has two children from another marriage, who reside with her and Applicant. Applicant is the sole source of income for his family (R.T., at 44); albeit WR receives child support from one of the children's father in the amount of \$300.00 a month (R.T., at 49-50).

Applicant's arrest record

Between 1980 and 1990, Applicant was twice arrested: once in July 1980 (while 17 years of age) for receiving stolen things and again in April 1990 for driving under the influence (DuI). Charges were dropped on the receiving stolen things charges (involving a watch which he pawned for his girlfriend at the time).

Over the course of the ensuing 10 years, Applicant was able to avoid any problems with law enforcement authorities. However, in April 1990, he was arrested and charged with DuI. He pleaded guilty and was placed on one year of probation.

In October 1997, Applicant was arrested for DuI and possession of a controlled substance (less than 2 to 8 grams). He pleaded guilty to a reduced charge of DuI and the possession charge was dropped (R.T., at 40-41, 65-66). He was then sentenced to two years probation and fined \$1,000.00. When he was arrested again for DuI in February 1999, his probation was revoked, and he was required to serve his full 90 days in jail (R.T., at 69-79). Applicant actually served just 45 days of his 90-day sentence. Initially, Applicant attributed his probation revocation to a drug test he failed at work (R.T., at 80), before acknowledging that it was his February 1999 DuI offense that resulted in his probation revocation.

In May 1998, Applicant was arrested and charged with aggravated assault with a deadly weapon. Claiming the incident did not happen as W3 reported the incident, he contested the charges. When W3 determined not to press the charges, they were dismissed (R.T., at 39-40). Applicant admits, though, to brandishing a loaded gun in the presence of his wife during a heated argument with her (R.T., at 66-68).

Applicant was charged with discharging a firearm in the city in April 2001. Applicant assures he was unloading a 9 mm handgun in his home when the pistol accidentally discharged (R.T., at 42-43). He was subsequently found guilty and fined \$150.00. Applicant no longer owns the pistol, or any other handguns (R.T., at 81). On the day following his firearm arrest, Applicant was arrested again: this time for alleged telephone harassment following a heated argument he had with his brother. After Applicant spent the first 72 hours following his arrest in jail, his brother dropped the charges, and the charges were dismissed (R.T., at 42). No inferences of wrongdoing can be drawn against Appellant based just on his reported exchange with his brother and his brother's filing a report with the police.

In February 2003, Applicant pleaded guilty to obtaining prescription drugs by fraud (by altering a prescription for 15 codeine pills to 75 pills). The court accepted Applicant's guilty plea and entered a conviction for the offense (a felony). At his sentencing hearing in September 2003, the court sentenced him to three years probation. He received a first offender pardon covering this conviction in September 2006 upon his documented showing he completed his probation conditions (ex. E). His pardon does not include the right to receive, possess or transport a firearm, or constitute a waiver of any unpaid fines and fees, due and owing. However, there do not appear to be any unpaid fines or fees.

Both in court and at this hearing, Appellant accepted responsibility for his 2003 conviction for altering a prescription form. Both in his 2004 security clearance application (SF-86) and answer he attributed the actual alteration to a friend, while he accepted responsibility for it in court (*see ex. 1*). He did not mention his conviction or probation, however, in his answers to questions 21 and 24. Both in his answer and hearing testimony, he acknowledged both. He also identified the friend who altered his prescription form in his hearing testimony (on the assumption confidentiality) as W4 (R.T., at 89-91). W4 did not testify at either proceeding and has never publicly acknowledged responsibility for the offense.

While Applicant appears sincere in his assigning the actual altering of the prescription form to W4, he provides no oral or written corroboration from W4. Conceivably, this information might provide cause for reopening the case concerning his February 2003 offense. Collateral estoppel principles do not enable an ancillary body like this one, though, to undo Applicant's guilty conviction. At most, his testimony might warrant some extenuation consideration. Both raised concerns about his initial credibility on his account of his 2003 conviction and probation (associated with his failure to acknowledge his probation status in his 2004 SF-86) and the absence of oral or written corroboration from W4 preclude acceptance of his attribution claims based solely on his statements.

Applicant's finances

Applicant accumulated a number of consumer-related debts before consummating his marriage to W4 in November 2005. He attributed his financial problems to periodic periods of unemployment over a number of years spanning 1997 and 2003 (R.T., at 56). Altogether, Applicant accumulated eight debts, exceeding \$11,000.00, which he permitted to become delinquent. He claims to have satisfied one of these debts (his debt to creditor 1.d), but provides no documentation. He disputes his creditor 1.g debt, too: He claims this debt represents a deficiency on his vehicle that was repossessed in 2001. This repossession deficiency is listed in his 2005 credit report (ex. 5).

While he claims the repossessed vehicle was almost paid for and should have brought more than the amount owing at public sale of the vehicle (R.T., at 60-61, 92-93), he provides no evidence of any follow-up clarification demands from the creditor after obtaining his creditor report. Nor does he provide any documented information about his identity theft claims (*see ex. F*).

In his 2004 SF-86, Applicant committed to contact his creditors and try to make arrangements to correct his outstanding debts (*see ex. 1*). To date, though, he has neither paid nor contacted any of the other seven creditors (R.T., at 54, 63-64) and doesn't know when he will be able to do so (given the uncertainty of his current job status). He has received no financial counseling and has no identified plan to repay any of his remaining creditors at this time.

Applicant is highly regarded by his supervisors and colleagues and documents excellent performance evaluations (*see exs. A and D*). He has received several certificates of training and appreciation (exs. B and C), as well as some very positive customer responses for the services he has delivered in behalf of his employer (*see ex. G*).

POLICIES

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Criminal Conduct

The Concern: 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.

Financial Considerations

The Concern: 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. Compulsive gambling is a concern as it may lead

to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

Burden of Proof

By virtue of the precepts framed by the revised Adjudicative Guidelines, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant is a meritorious computer operator who has been involved in a number of criminally-related incidents between 1980 and 2003, five of which resulted in convictions for assorted offenses (DuI, discharging a firearm and most recently, altering a drug prescription form, a felony). Security concerns are also raised over Applicant's history of delinquent debts: specifically, eight debts that exceed \$11,000.00 in the aggregate. Unable to address his debt delinquencies heretofore, Applicant does not know when he will be able to pay on his debts.

Criminal conduct issues

Following his 1980 arrest for receiving stolen things, Applicant avoided any confrontations with law enforcement for almost a decade. This all changed in October 1997 when he was arrested and convicted of DuI. He experienced five additional arrests between October 1997 and February 2003. Four of these arrests resulted in convictions (*i.e.*, his 1997 and 1999 DuI arrests, his 2001 discharging a firearm arrest, and his 2003 obtaining medication by false pretenses arrest. While the charges relating to his May 1998 aggravated assault arrest were dismissed, Applicant admits to brandishing the weapon in front of the W3. As a result, some criminal conduct on Applicant's part

is evidenced. No inferences of criminal conduct are associated with his 2001 firearm arrest, which also resulted in dismissed charges.

Applicant's reported criminal offenses (six supported by convictions) warrant the application of two disqualifying conditions of the Adjudicative Guidelines for criminal conduct: DC a (*A single serious crime or multiple lesser offenses*), DC c (*Allegation or admission of criminal conduct, regardless of whether the person was formally charged*) and DC e (*Violation of parole or probation, or failure to complete a court-mandated rehabilitation program*). Applicant's 1990 DuI arrest and 1980 receiving stolen things arrest are separated by almost two years, as Applicant correctly claims. His most recent arrests reflect a considerable pattern of illicit activity, however, beginning with his 1997 DuI arrest/conviction and culminating 16 years later with his arrest/conviction for receiving medication by false prescription.

Collateral estoppel principles preclude any reconsideration of Applicant's 2003 conviction in light of his hearing claims attributing the altering of the prescription drug form at issue to his wife. Our Appeal Board has consistently held that an applicant is estopped from contending that he or she did not engage in the criminal acts for which he or she was convicted. *See, e.g.*, ISCR Case No. 99-0116 (May 1, 2000), at p. 2; ISCR Case No. 96-0587 (March 24, 1997), at p. 2; ISCR Case No. 95-0817 (February 21, 1997, at p. 3. Collateral estoppel applies to a criminal conviction whether the conviction is based on a verdict after trial or is based on a guilty plea (as here). *See* ISCR Case No. 94-1213 (June 7, 1996), at p.3. Due process observed in the courts and in DOHA hearings simply does not permit an applicant the right to relitigate matters that have been adjudicated in a prior due process proceeding. *See, e.g., Montana v. United States*, 440 U.S. 147, 153-54 (1979). While Applicant might find sufficient cause to warrant reopening of his case with evidence of another's culpability, our jurisdiction does not permit passing judgment on the proceedings and decisions in criminal cases conducted by Federal and state courts.

To be fair, Applicant's belated attribution of the prescription alteration underlying his 2003 conviction could merit some extenuation. However, Applicant declined to develop the facts in any further detail out of respect for his wife. This is very understandable. Absent any more details of her involvement and corroboration from W4 herself in the face of some raised challenges to his own credibility associated with his failure to mention his probation status in his completed security clearance application, no meaningful extenuating value may be assigned to Applicant's attribution of responsibility to W4.

Among the eight criminal offenses Applicant was cited for over a 23-year period, he was convicted on six occasions. Two of the cases were dismissed based on complaining witnesses declining to prosecute; of these two cases, only one is free of any Applicant culpability. The pattern of criminal conduct reflected in his string of arrests spanning 23 years is significant and is still relatively recent. The first offender pardon he received in 2006 recites his completion of his probation terms and is probative of his efforts to comply with the conditions set by the court. Besides meeting his probation conditions, he has also exhibited commendable efforts in caring for his family and fulfilling his professional responsibilities. These efforts reflect positively on his character.

Still, Applicant's actions and efforts to date are insufficient to warrant the application of any of the mitigation conditions at this time. For Applicant's cited conduct was neither aged nor isolated. And his restorative efforts, while commendable and encouraging, are still not sufficient at this time

to warrant conclusions of clear evidence of successful rehabilitation. Taking into account all of the facts and circumstances developed in the record, unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a and 1.c through 1.h of the SOR. Sub-paragraph 1.b warrants favorable conclusions.

Financial issues

Security concerns are raised under the financial considerations guideline of the revised Adjudicative Guidelines where the individual appellant is so financially overextended as to indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which can raise questions about an the individual's reliability, trustworthiness and ability to protect classified information, and place the person at risk of having to engage in illegal acts to generate funds. Appellant's accumulation of delinquent debts and his failure to document payments on any of his listed debts warrant the application of two of the disqualifying conditions (DC) of the Guidelines for financial considerations: DC a (*Inability or unwillingness to satisfy debts*) and DC c (*A history of not meeting financial obligations*).

Applicant's debts are attributable in part to periods of unemployment. Since commencing his current employment in 2004, however, he has made little tangible headway in addressing his identified delinquent debts. His debt accumulations are cumulative, factually undisputed, and still unresolved. His current wife's health problems, while difficult for him to cope with, were not causally linked to the debt delinquencies that accrued before their marriage. Finally, Applicant has not taken advantage of any counseling and consolidation program to assist him in resolving his debts. So, while his debts are partially extenuated by his employment circumstances and entitle to some benefit from MC b (*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*), his subsequent failures to responsibly address his debts and seek counseling precluded him from taking advantage of any of the other mitigating conditions of the financial considerations guideline.

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in financial cases (as here) and bring into play security concerns covered by both the financial consideration and personal conduct guidelines.

Taking into account all of the facts and circumstances surrounding Applicant's debt accumulations and minimal documented steps he has taken to resolve them, Applicant fails to mitigate security concerns related to his longstanding debt delinquencies and judgment lapses associated therein. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 2.a through 2.h of the SOR.

In reaching my decision, I have considered the evidence as a whole, including each of the E 2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

GUIDELINE J: (CRIMINAL CONDUCT):	AGAINST APPLICANT
Sub-para. 1.a:	AGAINST APPLICANT
Sub-para. 1.b:	FOR APPLICANT
Sub-para. 1.c:	AGAINST APPLICANT
Sub-para. 1.d:	AGAINST APPLICANT
Sub-para. 1.e:	AGAINST APPLICANT
Sub-para. 1.f:	AGAINST APPLICANT
Sub-para. 1.g:	AGAINST APPLICANT
Sub-para. 1.h:	AGAINST APPLICANT

GUIDELINE F: (FINANCIAL CONSIDERATIONS):	AGAINST APPLICANT
Sub-para. 2.a:	AGAINST APPLICANT
Sub-para. 2.b:	AGAINST APPLICANT
Sub-para. 2.c:	AGAINST APPLICANT
Sub-para. 2.d:	AGAINST APPLICANT
Sub-para. 2.e:	AGAINST APPLICANT
Sub-para. 2.f:	AGAINST APPLICANT
Sub-para. 2.g:	AGAINST APPLICANT
Sub-para. 2.h:	AGAINST APPLICANT

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 Applicant’s security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

