

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has a history of failing to meet his financial obligations dating back to the late 1990s. As of the date of the hearing, he had 11 accounts, owing approximately \$29,400, which had been delinquent for many years. His evidence is insufficient to show that he is in control of his finances, is not overextended, and has a track record of financial responsibility. More importantly, he failed to disclose his debts and a lien in his security clearance application. Clearance is denied.

CASENO: 06-18886.h1

DATE: 08/16/2007

DATE: August 16, 2007

In re:

ISCR Case No. 06-18886

Applicant for Security Clearance

**DECISION OF ADMINISTRATIVE JUDGE
JUAN J. RIVERA**

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of failing to meet his financial obligations dating back to the late 1990s. As of the date of the hearing, he had 11 accounts, owing approximately \$29,400, which had been delinquent for many years. His evidence is insufficient to show that he is in control of his finances, is not overextended, and has a track record of financial responsibility. More importantly, he failed to disclose his debts and a lien in his security clearance application. Clearance is denied

STATEMENT OF THE CASE

On May 31, 2005, Applicant submitted a security clearance application (SF 86). On April 18, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR), alleging facts and security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The SOR informed Applicant that based on information available to the Government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant him access to classified information and submitted the case to an administrative judge for a security clearance determination.¹ On May 7, 2007, Applicant answered the SOR (Answer), and requested a hearing.

The case was assigned to me on May 24, 2007. On May 29, 2007, a Notice of Hearing was issued convening a hearing on June 21, 2007. The hearing was convened as scheduled. The government presented eight exhibits, marked GE 1-8, to support the SOR. Applicant testified on his own behalf and presented 10 exhibits, marked AE 1-10.² DOHA received the transcript (Tr.) on July 3, 2007.

FINDINGS OF FACT

Applicant admitted SOR ¶¶ 1.b, 1.e, 1.f, 1.j, 1.k, and 1.m with explanations. He denied ¶¶ 1.a, 1.c, 1.d, 1.g-1.i, 1.l, and 2.a-2.c. His admissions are incorporated herein as findings of fact. After a thorough review of the evidence, particularly considering Applicant's demeanor and testimony, I make the following additional findings of fact:

Applicant is a 31-year-old information technology senior auditor working for a defense contractor. In 1997, he received a bachelor's degree in management of information systems. He completed his masters in business administration

¹ See Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960, as amended, and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992) (Directive), as amended, modified, and revised.

² AE 10 was submitted post-hearing. I kept the record open to allow Applicant time to submit additional documentation. Department Counsel's memorandum, stating no objections to me considering Applicant's post-hearing submission was marked Appellate Exhibit 1.

(marketing) in October 2006 (Tr. 5, GE 1). He married his spouse in 2005, and they have a baby born in March 2007 (Tr. 54).

From 1993 to 1997, Applicant attended college and worked part-time for a government agency where he held a security clearance. Since 1998, he has been continuously employed by four different employers, including three government contractors (GE 1). In 2002, while working for a government contractor (not his current employer), he submitted a security clearance application and underwent a background interview with a government investigator. During that interview, Applicant was confronted about his financial problems and made aware of the government's financial considerations concerns (GE 5). In December 2004, he was hired by his current employer, a government contractor. He requires access to classified information to retain his job.

On May 31, 2005, Applicant submitted a security clearance application (GE 1). In response to question 36 (asking whether in the last seven years he had a lien placed against him), he answered "No," and failed to disclose a \$3,239 state tax lien filed against him in 2002 (SOR ¶ 1.a).

Applicant explained he believed the state had lifted the lien. He called the state's collections department in 2002, and told them he had changed employers. He claimed he was informed the lien would be lifted and that the debt would be collected by garnishing his federal income tax returns. AE 11 shows Applicant paid the \$3,239 he owed; there is no information to corroborate when the payment was made. Applicant still owes \$129 to the state resulting from penalties he did not know about until May 2007 (Tr. 34-35).

He answered "No" to questions 38 and 39 (asking whether in the last seven years he had been 180 days delinquent on any debts, and whether he was currently 90 days delinquent on any debts (respectively)). He failed to disclose, however, the debts alleged in SOR ¶¶ 1.b through 1.e, and 1.h through 1.l. Applicant explained he did not disclose the delinquent debts because he believed there were mistakes in the accounts and he did not want to admit something he was not certain about (Tr. 63).

Applicant averred that he never intended to falsify or mislead the government. In his response to question 43 of the security clearance application, he stated that in 2002 during a prior background investigation, he provided a government investigator with the details of his financial history, and offered to make his 2002 statement available (GE 5).

Applicant's current background investigation addressed his financial situation and included the review of credit bureau reports (CBRs) from April 2002, September 2005, September 2006, and March 2007.³ Consistent with his 2002 statement, Applicant testified his financial problems started around 1998 when he was a

³ GE 3 and GE 6-8 (respectively).

struggling college student with no financial help, accumulating student loans, and many day-to-day living expenses.

In 1997, Applicant purchased a used car. In 1998, he was involved in an accident and totaled the car. After the insurance settlement, he still had a \$10,872 deficiency on his car loan, no means of transportation, and many other financial obligations. Following his attorney's advice, he filed for bankruptcy protection. Applicant's Chapter 7 bankruptcy documents show that in 1998 he was discharged of \$28,917 in liabilities. He had assets totaling \$3,445 (GE 2).

In 1998, within months of his bankruptcy discharge, Applicant purchased a 1996 car, and acquired a \$31,000 car note. In January 2001, Applicant was involved in another car accident and totaled the car. The vehicle was not insured, and Applicant acquired the debt alleged in SOR ¶ 1.i. In June 2004, the creditor obtained a \$16,475 judgment against Applicant, along with 9% interest accruing from May 2001, and \$1,500 in attorney's fees (AE 8). In 2004, Applicant offered the creditor to pay .05 cents on the dollar to settle the debt. He received no response. Other than making this offer, Applicant has made no effort to pay or resolve this debt since 2001.

The SOR alleges 12 delinquent/charged off accounts owing approximately \$32,578. Except for the debts alleged in SOR ¶ 1.a, owing \$3,239, and SOR ¶ 1.i, owing \$26,476, the remainder 10 delinquencies could be considered small debts (for less than \$1,000 each), and they total \$2,863. Many of these debts have been delinquent since 2000-2003. Concerning SOR ¶ 1.a, Applicant established he paid all the debt, except for \$129 (AE 11). There is no evidence as to when the account was paid.

The debts alleged in ¶¶ 1.b, 1.f, and 1.j, were paid on July 5, 2007 (AE 11). Applicant acknowledged that the following debts are still outstanding, ¶¶ 1.c,⁴ 1.e, 1.i, 1.k, and 1.l.⁵ He has not paid the debts alleged in SOR ¶¶ 1.d, 1.g, 1.h. He explained that he does not recognize the creditors, and wants to verify the debts before he begins budgeting to pay for them.

Applicant claimed mitigating circumstances that prevented him from paying his debts, i.e., the two car accidents, and deaths and illnesses in his family that required him to provide financial assistance to his relatives. He presented no evidence, other than his testimony, to corroborate his claims of circumstances beyond his control, to show how his family medical problems affected his financial situation, and the extent of the financial support he provided.

⁴ AE 5 shows Applicant paid \$126 in June 2007. He was informed, however, that he still owes \$170. He is disputing the amount of the debt because the car was totaled during the period of time the property taxes were accrued.

⁵ Applicant acknowledged the debt, but disputes the total owed (Tr. 59).

In 2006, Applicant retained the services of the Lexington Law Firm to assist him to verify/dispute some of the debts reflected in his CBRs. The Lexington Law Firm however, did not provide him with financial counseling. They merely assisted him to verify and contest some of CBR entries. Other than retaining the Lexington Law Firm for a period of time during 2006, Applicant presented no evidence of any counseling or other measures he has taken to avoid future financial difficulties.

Applicant's wife is employed. He and his wife clear approximately \$7,000 a month. After paying their living expenses and current debts, they have a \$1,500 remainder. Applicant claimed his wife contributes to the household finances, helps him to pay his debts, and prepares the family financial budget. He provided no evidence to corroborate any of these claims. Applicant claimed he has been placing a lot of effort to resolve his financial situation and that he is making strides. He provided little or no evidence to show or corroborate the progress he has made to resolve his financial problems since 2002.

Applicant and his wife bought a home sometime after 2005; their mortgage payment is \$2,500 a month (Tr. 77). They bought the home in her name because of his credit rating. Applicant owns a 1997 Infinity QX4 SUV. His wife's car is a 2005 Acura MDX. Applicant carries four credit cards with low credit. He stated he is using the credit cards to reestablish his credit. Applicant owes a substantial amount of debt in student loans. Payments on his student loans are deferred until March 2008 (Tr. 94).

POLICIES

The Directive sets forth adjudicative guidelines which must be considered in evaluating an Applicant's eligibility for access to classified information. Foremost are the Disqualifying and Mitigating conditions under each adjudicative guideline applicable to the facts and circumstances of the case. However, the guidelines are not viewed as inflexible ironclad rules of law. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive,⁶ and the

⁶ Directive, Section 6.3. "Each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2 . . ."

whole person concept.⁷ Having considered the record evidence as a whole, I conclude Guideline F (Financial Considerations) and Guideline E (Personal Conduct) are the applicable relevant adjudicative guidelines.

BURDEN OF PROOF

The purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.⁸ The government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the government must establish a prima facie case by substantial evidence.⁹ The responsibility then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, the applicant carries the ultimate burden of persuasion.¹⁰

A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest to ensure each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.¹¹

CONCLUSIONS

⁷ Directive ¶ 2(a). ". . . The adjudication process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. . . ." The whole person concept includes the consideration of the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the extent to which participation is voluntary; the presence or absence of rehabilitation and other permanent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and the likelihood of continuation or recurrence. . . ."

⁸ See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁹ ISCR Case No. 98-0761 at 2 (App. Bd. Dec. 27, 1999) (Substantial evidence is more than a scintilla, but less than a preponderance of the evidence); ISCR Case No. 02-12199 at 3 (App. Bd. Apr. 3, 2006) (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); Directive ¶ E3.1.32.1.

¹⁰ *Egan*, *supra* n. 8, at 528, 531.

¹¹ See *Id*; Directive Enclosure 2, ¶ 2(b).

Under Guideline F (Financial Considerations), the government's concern is that an Applicant's 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. AG ¶ 18.

Applicant has a history of failing to meet his financial obligations dating back to the late 1990s. In 1998, he filed for bankruptcy protection and was discharged of \$28,917 in debt. Since 1998, he accumulated at least 12 delinquent/charged off debts and/or judgments totaling approximately \$32,578. Except for ¶¶ 1.a and 1.i, all of the delinquent accounts could be considered small debts (for less than \$1,000); however, many have been delinquent for many years.

In 2002, Applicant was confronted about his financial problems by a government investigator and indicated he would make efforts to resolve his debts. He presented little evidence to show he took any action to resolve his debts prior to his receipt of the SOR. SOR ¶ 1.a was collected by the state garnishing his federal income tax return, and he still owes \$129. As of the hearing date, he was still carrying the same 11 outstanding delinquent/charged off debts alleged in the SOR. Financial Considerations Disqualifying Condition (FC DC) ¶ 19(a): *inability or unwillingness to satisfy debts*; and FC DC ¶ 19(c): *a history of not meeting financial obligations*; apply in this case.

Considering the record evidence as a whole,¹² I conclude that none of the mitigating conditions apply. In 2006, Applicant retained the services of the Lexington Law Firm efforts to verify/dispute some of his debts. He paid four debts after receipt of the SOR; one three days before his hearing, the other three on July 5, 2007. Notwithstanding, his recent efforts to resolve his debts fall short of showing good faith efforts to resolve his delinquencies, or that Applicant has a track record of financial responsibility.

I specifically considered Financial Considerations Mitigating Condition (FC MC) ¶ 20(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, and conclude it applies, but only to a limited extent.*

Applicant's uncorroborated testimony fails to establish mitigating factors that may be considered as circumstances beyond his control contributing to his inability to pay his debts. He was involved in two car accidents, and immediate family members passed away and/or suffered illnesses which required Applicant to provide them with financial assistance. These claims demonstrate circumstances beyond his

¹² See ISCR Case No. 03-02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for FC MC 1, all debts are considered as a whole.

control however, Applicant's evidence is not sufficient to show he has dealt responsibly with his financial obligations. His financial problems appear to be the result of his spending beyond his means and poor financial management/judgment. He presented little evidence to show he dealt responsibly with his financial obligations before, or after receipt of the SOR (i.e., paid debts, settlements, documented negotiations, payment plans, budgets, financial assistance/counseling).

Applicant's financial history and lack of favorable evidence preclude a finding that he has established a track record of financial responsibility, or that he has taken control of his financial situation. Therefore, his financial problems are likely to be a concern in the future. Moreover, his financial problems are recent, not isolated, and ongoing.

Under Guideline E (Personal Conduct), 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. AG ¶ 15.

The government's evidence established Applicant failed to disclose relevant information in his answers to questions 36, 38, and 39 of his security clearance application. Considering the record as a whole, I am convinced Applicant deliberately failed to disclose the information. Numerous factors weighed in my analysis to reach that conclusion, including: Applicant's age, his level of education, his employment history, his demeanor and testimony, the number and amount of his debts, his long term disregard of the debts, his experience with the security clearance application process, and the lack of credibility of his excuses. He knew the importance of accurate completion of his security clearance application, and nevertheless failed to provide information that was material to making an informed security decision. Disqualifying Conditions (DC) ¶ 16(a): *deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . .*, and DC ¶ 16(e): *personal conduct or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress . . .*, apply.

I specifically considered all Guideline E Mitigating Conditions (MC) and conclude that none apply. Applicant's falsification is recent, and his favorable information is not sufficient to apply any of the MCs. Additionally, for the same reasons outlined under the discussions of Guideline F, incorporated herein, I conclude Applicant's behavior shows questionable judgment, lack of reliability, and untrustworthiness.

Applicant's recent falsification brings to the forefront the financial considerations concerns raised by his behavior. I am required to consider Applicant's

overall questionable behavior when evaluating the seriousness of the conduct alleged in the SOR to determine factors such as the extent to which his behavior is recent; the likelihood of recurrence; Applicant's explanations concerning the circumstances of the incidents alleged; and his rehabilitation.¹³

I have carefully weighed all evidence, and I applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guidelines. I applied the whole person concept. I specifically considered Applicant's age, education, maturity, his years working for defense contractors, and his demeanor and testimony. Considering the totality of Applicant's circumstances, he demonstrated a lack of judgment and trustworthiness in the handling of his financial affairs. Furthermore, his falsifications raise serious security concerns regarding his honesty and willingness to comply with rules and regulations. He has failed to mitigate the security concerns raised by his overall behavior.

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
Subparagraphs 1.b, 1.f, 1.g, & 1.j:		For Applicant
Subparagraphs 1.a, 1.c-1.e, 1.h, 1.i, 1.k-1.m:		Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT	
Subparagraphs 1.a – 1.c:	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 eligibility for a security clearance for Applicant. Clearance is denied.

Juan J. Rivera
Administrative Judge

¹³ ISCR Case No. 04-09959 at 3 (App. Bd. May 19, 2006).