

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 28-year-old employee of a defense contractor. While serving in the military, he received nonjudicial punishment (NJP) for shoplifting two packs of cigarettes, and for making unauthorized withdrawals with his government travel card. Applicant has an extensive amount of delinquent debts, and intentionally provided false information on a security clearance questionnaire. Clearance is denied.

CASENO: 06-18989.h1

DATE: 06/26/2007

DATE: June 26, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-18989
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
EDWARD W. LOUGHRAN**

APPEARANCES

FOR GOVERNMENT

Daniel Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 28-year-old employee of a defense contractor. While serving in the military, he received nonjudicial punishment (NJP) for shoplifting two packs of cigarettes, and for making unauthorized withdrawals with his government travel card. Applicant has an extensive amount of delinquent debts, and intentionally provided false information on a security clearance questionnaire. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On January 30, 2007, DOHA issued a Statement of Reasons¹ (SOR) detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense for SORs issued after September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR in writing on March 19, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on April 30, 2007. A notice of hearing was issued on May 4, 2007, scheduling the hearing for June 5, 2007. The hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on June 14, 2007.

RULINGS ON EVIDENCE AND PROCEDURE

A Motion to Amend the Statement of Reasons was granted to correct the spelling of Applicant's first name.

The Government offered eight exhibits that were marked as Government Exhibits (GE) 1 through 8, and admitted without objections. Applicant testified and offered two exhibits that were marked Applicant Exhibits (AE) A and B, and admitted without objections.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 28-year-old employee of a defense contractor. He is married with one child, and his wife is pregnant with their second child. He is a high school graduate, and attended technical school while serving in the U.S. military from 2000 to 2004.²

On about February 10, 2001, Applicant shoplifted two packs of cigarettes from the military exchange. Applicant was observed stealing the cigarettes on video surveillance, and he was apprehended. Applicant received nonjudicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) in about March 2001, for larceny of the cigarettes. As punishment, he was

¹Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive).

²Tr. at 18; GE 1-2.

ordered to forfeit \$250 pay per month for two months, and reduced from pay grade E-3 to E-2. The reduction was suspended for six months.³

Applicant had a government travel card while in the military. The travel card was only authorized for use on official government travel. Applicant received Article 15 punishment in about December 2002, for making unauthorized withdrawals with his government travel card.⁴

Applicant was discharged from the military in May 2004, for unsatisfactory performance. Applicant testified he was discharged because he was unable to pass a test. He received an Honorable Discharge.⁵

Applicant was unemployed for a period after he was discharged from the military. He also worked a few temporary jobs. He worked for a government contractor for about one year. The company's contract with the U.S. Government expired. Applicant obtained a job with another defense contractor. He has worked for his current employer for almost two years.⁶

Applicant admitted in his response to the SOR, to all the debts listed in the SOR, with the exception of the debt in SOR ¶ 1.i. He provided explanations and further information, which will be addressed below.

The debt in SOR ¶ 1.a in the amount of \$52, is for a cable bill. Applicant testified he is attempting to obtain the account number for this debt, as a box of paperwork was lost by the movers when he moved.⁷

The debt in SOR ¶ 1.b in the amount of \$144, is to a utility company. This debt is still outstanding. Applicant testified he is attempting to address the largest debts first, by making payment arrangements, and then moving to the smaller debts.⁸

On May 18, 2007, Applicant contracted with a credit relief company to assist him in managing his debt. The agreement calls for Applicant to pay the company a service fee of \$2,539, starting with three initial monthly payments of \$258. He will then make 14 monthly service fee payments of \$125. In return, the credit relief company will negotiate with Applicant's creditors for a settlement of his debts. The contract lists Applicant's total unsecured debt at \$16,929, for six creditors. The estimated settlement amount is \$6,771. Applicant's estimated minimum monthly payments would be \$258 per month, which Applicant would deposit in his bank for direct payment to his creditors. The contract provides an estimated debt free time frame of 36 months. Applicant

³Applicant's response to SOR; GE 4.

⁴Applicant's response to SOR; GE 5.

⁵Tr. at 32-33; Applicant's response to SOR; GE 5.

⁶Tr. at 34; GE 2.

⁷Tr. at 19; Applicant's response to SOR; GE 7 at 1; GE 8 at 1.

⁸Tr. at 19-20; Applicant's response to SOR; GE 8 at 1.

does not have a full grasp of the contract as he testified that he pays the company, and then the company would pay the creditors. The contract clearly states that Applicant pays his service fee to the company, but the “**CLIENT WILL MAKE ALL SETTLEMENT PAYMENTS DIRECTLY TO CREDITOR.**” Applicant has not yet utilized any credit counseling available through this company. Applicant estimates his total indebtedness at almost \$30,000.⁹

The debt in SOR ¶ 1.c in the amount of \$1,339, is for a loan that went to collections in about January 2005. Applicant submitted an e-mail of June 5, 2007, stating that he has made 14 straight payments of \$150 per month, without missing or being late on a payment since he entered an agreement to pay \$150 per month until paid. The balance as of June 5, 2007, was \$222.¹⁰

The debt in SOR ¶ 1.d in the amount of \$1,772, is to a cell phone company. The credit bureau report (CBR) of July 29, 2005, lists the date of Applicant’s last activity on this account as January 2004. Applicant testified this debt is included in his contract with the credit relief company under the name of a collection agency.¹¹

The debt in SOR ¶ 1.e in the amount of \$185, is for cable services. SOR ¶ 1.f lists a debt of \$16 owed for a dishonored check. SOR ¶ 1.g lists a debt of \$132 owed to a utility company. These three debts were incurred while Applicant was in the military, and are all still outstanding.¹²

The debt in SOR ¶ 1.h in the amount of \$3,091, became delinquent in about April 2004. This debt is included in the contract with the credit relief company.¹³

Applicant disputes the debt in SOR ¶ 1.i in the amount of \$863, for telephone services. He states he never had an account with this company. He testified he called the company, but they could not find his name in their records. This debt is listed on the 2005 credit bureau report (CBR), but not the two most recent reports.¹⁴

Applicant disputes the debt in SOR ¶ 1.j in the amount of \$290. This is a debt to an apartment for damages to their carpet. Applicant is fighting this debt with the landlord, and has complained to his state.¹⁵

⁹Tr. at 17, 20-23, 43-44; AE B.

¹⁰Tr. at 23-25; Applicant’s response to SOR; AE A.

¹¹Tr. at 25-26; Applicant’s response to SOR; GE 6 at 9; AE B.

¹²Tr. at 26-27; Applicant’s response to SOR.

¹³Tr. at 27; Applicant’s response to SOR; GE 6 at 3; AE B.

¹⁴Tr. at 27-28; Applicant’s response to SOR; GE 6 at 10; GE 7, 8.

¹⁵Tr. at 28.

The debt in SOR ¶ 1.k in the amount of \$136, is for internet services. SOR ¶ 1.l lists a debt of \$87 owed for telephone services. Both were incurred while Applicant was in the military, and both are still outstanding.¹⁶

The debt in SOR ¶ 1.m in the amount of \$1,137, is a debt to a bank from before Applicant left the military. Applicant testified he planned on calling the creditor the day after the hearing.¹⁷

While Applicant was in the military, he owned and was making payments on two vehicles. When he left the service he was unable to maintain the payments on both vehicles, and one of the vehicles was repossessed. He borrowed money from his parents and in-laws, became current on his loan, and recovered the vehicle. Applicant eventually fell behind on payments again and the car was repossessed for the second time in about January 2006. Applicant currently owes about \$6,100 on this debt. This debt is included in the contract with the credit relief company.¹⁸

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), signed on July 12, 2005. He responded “No” to Section 27b, which asked, “In the last 7 years, have you had your wages garnished or had any property repossessed for any reason?” Applicant also answered “No” to Sections 28a and 28b, which asked “In the last 7 years, have you been over 180 days delinquent on any debt(s)?” and “Are you currently over 90 days delinquent on any debt(s)?”

Applicant denied he intentionally falsified the e-QIP. He testified he did not obtain a copy of his credit report before filling out the questionnaire. He stated he moved a couple times after he was discharged from the service and he lost track of his bills. He said he did not list the repossession because he recovered the vehicle, so he did not consider it a repossession.¹⁹ I find this to be a reasonable explanation for why Applicant did not list the repossession, and I find Applicant did not intentionally falsify his response to Section 27b. However, Applicant clearly knew he had a number of delinquent debts when he submitted the e-QIP. After considering all the evidence, and gauging Applicant’s demeanor and credibility, I find Applicant intentionally falsified his responses to Sections 28a and 28b.

POLICIES

“[N]o one has a ‘right’ to a security clearance.”²⁰ 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

¹⁶Tr. at 28-29; GE 6 at 12; GE 7 at 1; GE 8 at 1.

¹⁷Tr. at 29-30; Applicant’s response to SOR; GE 6 at 10; GE 7 at 1; GE 8 at 1.

¹⁸Tr. at 30-32; Applicant’s response to SOR; GE 7 at 2; GE 8 at 2; AE B.

¹⁹Applicant’s response to SOR; Tr. at 17.

²⁰*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

access to such information.”²¹ 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.”²² An applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.²³ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁴ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.²⁵

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in the Directive and AG ¶ 2(a).

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the conclusions section below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline F: Financial Considerations

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.

Based on all the evidence, 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*

²¹*Id.* at 527.

²²Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

²³ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²⁴*Id.*; Directive, ¶ E2.2.2.

²⁵Exec. Or. 10865 § 7.

obligations) apply in this case. Applicant accumulated substantial delinquent debt. Most of his debt remains unpaid.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC 20(a) (*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*), 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*), FC MC 20(c) (*the person received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control*), FC MC 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), and 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*).

Applicant has accrued numerous unpaid debts. He has current financial problems. FC MC 20(a) does not apply. Applicant had a period of unemployment after he left the service in 2004, which is potentially a condition that was largely beyond his control. However, Applicant's financial issues began before he left the service. Additionally, he has worked for his current employer for almost two years, and has done very little to pay his debts. I do not find that Applicant acted responsibly under the circumstances. FC MC 20(b) is not applicable.

Applicant has made payments on only one of the debts. The great majority of the money is still owed. Applicant very recently contracted with a credit relief company to assist him in managing his debt. Applicant has not yet availed himself of any of their counseling services. It appears the only entity guaranteed to benefit financially from this contract is the credit relief company. They will receive \$2,539 from Applicant. Applicant still is required to pay the creditors directly. Applicant's only benefit is if the company negotiates a settlement amount. The contract also does not call for any of Applicant's creditors to be paid until after the credit relief company receives the initial three monthly payments of \$258. Applicant has not done enough to establish a good-faith effort to repay overdue creditors or otherwise resolve debts, and there is no clear indication that the problem is being resolved or is under control. FC MC 20(c) and FC MC 20(d) do not apply. I find FC MC 20(e) applicable to the disputed debts in SOR ¶¶ 1.i and 1.j.

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.

SOR ¶ 2.c alleges that Applicant was discharged from the military by reason of unsatisfactory performance. Applicant states he was discharged because he was unable to pass a test. He received

the highest discharge possible, an Honorable Discharge. I do not find this to have any adverse reflection on Applicant's character or conduct. SOR ¶ 2.c is resolved in Applicant's favor.

SOR ¶ 2.d alleges that Applicant falsified material facts on his e-QIP by not listing the repossession of his car. Even if it is assumed this answer was incorrect, that is not dispositive of the issue of Applicant's falsification, since the mere proof of an omission or an incorrect answer, standing alone, does not establish or prove an applicant's intent or state of mind when the omission or incorrect response occurred.²⁶ I find Applicant's explanation that he did not consider this to be a repossession since he recovered the vehicle, to be reasonable under the circumstances. SOR ¶ 2.d is resolved in Applicant's favor.

Applicant intentionally failed to list his financial delinquencies on his security clearance questionnaire. This raises two Personal Conduct Disqualifying Conditions (PC DC). They are PC DC 16(a) (*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*) and PC DC 16(e) (*personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing . . .*).

Applicant's misconduct in the military constituted violations of the UCMJ. These are criminal acts, which could have been alleged under Guideline J. I find Applicant's actions in the military support a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, and unwillingness to comply with rules and regulations. PC DC 16(c) (*credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information*) and PC DC 16(e) are established.

I have considered all the Personal Conduct Mitigating Conditions (PC MC) and I especially considered PC MC 17(a) (*the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*), PC MC 17(b) (*the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully*), 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 such circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*), PC MC 17(d) (*the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur*), and PC MC 17(e) (*the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation,*

²⁶ISCR Case No. 05-03472 at 6 (App. Bd. Mar. 11, 2007).

or duress). Applicant has not submitted sufficient credible information to establish any of the mitigating conditions.

Whole Person Analysis

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive and AG ¶ 2(a). I have also considered all the evidence, and every finding of fact and conclusion discussed above.

Applicant's military record clearly has some positive aspects, but it was marred by his misconduct, including an incident of shoplifting, which led to his receiving nonjudicial punishment. Despite his two incidents of punishment under the UCMJ, Applicant received an Honorable Discharge. Applicant accumulated substantial delinquent debt, which is mostly still unpaid. Applicant provided intentionally false information about his finances on a security clearance questionnaire. After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on his financial issues and personal conduct.

FORMAL FINDINGS

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

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	For Applicant

Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	Against Applicant
Subparagraph 2.f:	Against Applicant

DECISION

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

Edward W. Loughran
Administrative Judge