

SYNOPSIS

Applicant is unable to pay the \$29,000 in delinquent debt he owes. His debts are due to major medical expenses for himself and his late wife incurred while they lacked sufficient health care coverage. He has always tried to live well within his means, and is able to meet his current obligations, which include his ongoing medical expenses not covered by his health insurance. This year, his income will increase and his expenses will decrease for the first time since 2003. His past financial problems are outweighed by his current finances, and by the integrity, good judgment, trustworthiness and reliability he has displayed in his current job over the past four years. His omission from a security questionnaire of information about past due debts was unintentional. Clearance is granted.

STATEMENT OF THE CASE

On June 1, 2005, Applicant submitted a Security Clearance Application (SF 86). After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant a security clearance. On May 25, 2007, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise trustworthiness concerns addressed in the Directive under Guideline F (financial considerations) and Guideline E (personal conduct).

Applicant timely responded to the SOR, and requested a hearing. The case was assigned to me on July 11, 2007, and I convened a hearing on August 8, 2007, at which the parties appeared as scheduled. The government offered six exhibits, all of which were admitted without objection (Gx. 1 - 6). Applicant testified, presented one witness and introduced, through a post-hearing submission, one exhibit, which I have admitted over objection by Department Counsel as Applicant's Exhibit (Ax) A.² DOHA received the transcript (Tr.) on August 23, 2007.

FINDINGS OF FACT

The government alleged that Applicant owes \$29,082 in delinquent debt for 25 unpaid accounts. Of the debts listed, 17 are unpaid medical accounts (SOR ¶¶ 1.a - 1.q) totaling \$10,557, which have been referred to collection agencies or are at least 180 days past due. Of the remaining debts, the largest is for the \$17,434 remainder after resale of a car repossession (SOR ¶ 1.y). The remaining \$1,091 consists of unpaid utilities (SOR ¶¶ 1.r and 1.x) and other personal credit accounts referred for collection (SOR ¶¶ 1.s - 1.w). The government also alleged that Applicant deliberately tried to deceive or mislead the government about his financial problems when he answered "no" to question 38³ of his SF 86 (SOR ¶ 2.a).

Applicant admitted the allegations in SOR ¶¶ 1.a - 1.y, but denied the SOR ¶ 2.a allegation. Having personally assessed his demeanor while testifying, and his responses to questions from opposing counsel and the bench at the hearing, I found him to be credible and sincere. His admissions are incorporated herein as facts. After a thorough review of the transcript and exhibits, I make the following additional findings of fact.

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

² Ax. A consists of three letters of recommendation for Applicant. Department Counsel contended the first letter is inadmissible because the author also testified at the hearing, rendering the letter cumulative. Department Counsel objected to the second letter on grounds it presents factual testimony by a witness not available for cross-examination. I have considered and herewith overrule both objections in light of the provisions of Directive E3.1.19, which relaxes the rules of evidence in favor of developing as complete a record of relevant information as possible. More specifically, I am not influenced for or against the parties by the fact one witness has put in writing part of what he testified to at hearing (Tr., 70 - 79), or by the representations in another letter of facts that were not disputed at hearing.

³ **"Your Financial Delinquencies - 180 Days.** In the last 7 years, have you been over 180 days delinquent on any debt(s)?"

Applicant is 59 years old and works for a defense contractor as an administrative assistant to the security manager at his job site. He was hired by his employer in July 2003, after working as an administrative assistant for a one-man insurance consulting firm from May 2002 until July 2003. Applicant received his BA in English in 1973 and spent most of the next 30 years working and directing music ministries for various Baptist churches in either Florida or South Carolina.⁴ For much of his employment before 2003, Applicant had little or no health insurance. His employment in 2002 and 2003 did not pay much but offered minimal health care coverage.⁵

Applicant and his wife were married in July 1968. They had one child, a daughter, who is married and lives in South Carolina.⁶ Applicant's wife died in February 2005. A life-long diabetic, she required medical attention for several years, but her health took a turn for the worse around 2001, while Applicant was working in Florida but without health insurance. She became seriously ill and Applicant decided they should move from Florida to South Carolina to be close to their daughter, who could help care for her mother. The bills for his wife's health care not covered by social security or disability benefits went unpaid.

Applicant's wife went on kidney dialysis in 2004. Also that year, she had to move to a nursing home so she could receive the full-time care Applicant and his daughter were unable to provide. In January 2005, doctors amputated one of her legs. When she died the next month, Applicant was only able to pay for her funeral with help from family and friends. He is still responsible for many of her unpaid medical expenses.

Applicant has also faced medical problems of his own. He has been hospitalized four times since 2005 for ailments relating to his heart, blood pressure, kidneys, and the removal of his gall bladder, which caused him to miss most of the first four months of work in 2006. He takes medication every day for his kidneys and blood pressure. Since being hired by his current employer in 2003, Applicant has had 80/20 health coverage, which means he pays the first 20% of his medical costs. He also makes a \$20 co-payment each time a doctor sees him.⁷

The unpaid medical debts listed in the SOR are for both Applicant and his wife, but it is unclear which debt is for which person. After receiving two DOHA interrogatories about his finances, he contacted a local medical center where he and his wife received most of their medical services since 2003. He was told the unpaid accounts were being referred to collection agencies, and he is in the process of trying to settle or consolidate the accounts through a repayment plan he can afford.⁸

In 2001, when his wife's health began to fail, Applicant had to choose between paying certain monthly obligations and paying for his and his wife's medical care. His car was repossessed, leaving

⁴ Gx. 1; Gx., 3.

⁵ Gx., 3; Tr., 31 - 33.

⁶ Gx. 1; Tr., 31.

⁷ Gx. 3; Tr., 56.

⁸ Tr., 40 - 41; 52 - 54.

him with a debt of about \$17,400 (SOR ¶ 1.y). Applicant has not been able to pay this debt, but the creditor has not obtained a judgment against him or referred the debt for collection.⁹ Other debts, including a gas bill (SOR ¶ 1.r), two utilities bills (SOR ¶¶ 1.t and 1.u), and two cell phone accounts (SOR ¶¶ 1.v and 1.w) went unpaid and were referred for collection. Applicant admitted a delinquent phone bill (SOR ¶ 1.x) is attributable to him, but disputes its validity because he still has service with the same carrier and has not been told of any arrearage.¹⁰ The debt listed at SOR ¶ 1.s is also a collection account, but there is no information available identifying the original creditor or how the debt arose. Nonetheless, Applicant admitted he owes the debt. The debts in SOR ¶¶ 1.r - 1.x total \$1,091.

Applicant's job requires him to process paperwork associated with access to the military facility he supports. Initially, his position did not require a security clearance, but now he must have a secret clearance because he must have access to the Joint Personnel Adjudication System (JPAS) to print out the forms and other information needed to manage access to the facility. When Applicant was hired in 2003, he was asked to complete an electronic version security clearance application (SF 86) on a floppy disk. He did so, but it was not actually executed until June 1, 2005, when a copy was printed and given to Applicant to review and sign.

In response to questions about his finances, Applicant answered "yes" to question 35,¹¹ and listed the car that was repossessed in 2001. That debt, in his mind at the time, was the "the real kicker" he owed.¹² He did not disclose that he was delinquent on any other debts. Two years after completing the form electronically, Applicant did not review the document carefully, as shown by the fact his wife was still listed in response to question 8. Applicant admitted he missed the omission when he signed and submitted the form in 2005, but denied any intent to falsify his answers or to mislead the government about his finances.¹³ I found his testimony about this issue credible.

As of the hearing, Applicant was earning about \$35,000 gross annually, which is roughly the same as when he was hired in 2003. He has been selected for a higher paying job working for a former supervisor on a new project. He will earn about \$39,000 gross annually in that job. Applicant had also obtained a second job working for a local church. The job will pay him another \$13,000 and will provide him a place to live rent free. His rent as of the hearing was \$535. Aside from utilities, food, and other routine monthly expenses, Applicant has no other large financial obligations. He drives a used car his daughter gave him, and he spends any extra money he has each month on his medications and doctors visits. Were it not for the medical costs not covered by his insurance,

⁹ Tr., 24 - 25.

¹⁰ Tr. 58.

¹¹ "Your Financial Record - Repossessions. In the last 7 years, have you had any property repossessed for any reason?"

¹² Tr., 23 - 24.

¹³ Gx. 1; Tr., 22 - 24, 28 - 30, 46 - 52.

Applicant estimated he would have about \$300 remaining each month (more after he begins his new jobs) to devote to paying his old debts.¹⁴

The former supervisor for whom Applicant will again be working testified in support of Applicant. He praised Applicant's work performance and reliability. He also verified that Applicant sought overtime work starting in 2004.¹⁵ A government employee at the activity supported by Applicant's company also praised his integrity, attention to detail, and reliability despite being faced with the personal problems described above. The company program manager for the contract to which Applicant is assigned remarked on his good decision-making ability, and his achievements in teaching and training new members of the staff.¹⁶

POLICIES AND BURDEN OF PROOF

The Directive sets forth adjudicative guidelines¹⁷ to be considered in evaluating an applicant's suitability for access to classified information. Each security clearance decision must reflect consideration of both disqualifying conditions and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case, as well as a fair and impartial common sense consideration of all available relevant and material information.¹⁸ The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to sensitive information. Further, the decision must include "the careful weighing of a number of variables¹⁹ 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."²⁰

¹⁴ Gx. 1; Tr., 36 - 39, 42 - 44.

¹⁵ Tr., 70 - 73.

¹⁶ Ax. A.

¹⁷ Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, the Revised Adjudicative Guidelines supercede the guidelines listed in Enclosure 2 of the Directive. They apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

¹⁸ Directive, 6.3.

¹⁹ Revised Adjudicative Guidelines, ¶ 2 lists the following factors: "(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 individual'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; (9) The likelihood of continuation or recurrence."

²⁰ Revised Adjudicative Guidelines, ¶ 2.

_____ Security clearance decisions are intended solely to resolve whether it is clearly consistent with the interests of national security for an applicant to receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision against the applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, the burden then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to such access,²¹ an applicant bears a heavy burden of persuasion. One 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 in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interest as if it were his or her own. Resolution of any reasonable doubt about an applicant's suitability for a security clearance should be resolved in favor of the government.²²

CONCLUSIONS

Financial Considerations. Under Guideline F, "[f]ailure 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."²³ The government presented sufficient information, consisting of two credit reports (Gx. 4, Gx. 5), Applicant's response to DOHA interrogatories (Gx. 3)²⁴ and Applicant's admissions to the allegations in SOR ¶¶ 1.a - 1.y, to support the SOR allegations that Applicant owed at least \$29,000 in delinquent debts accrued between 2001 and 2006. Available information also showed he has not paid or otherwise resolved any of those debts. The foregoing requires consideration of Guideline F disqualifying conditions 19(a) and 19(c).²⁵

Of the mitigating conditions (MC) listed under Guideline F, these facts fall squarely within MC 20(b).²⁶ The medical problems of Applicant's late wife, his low income while working in religious ministries, and his lack of any or adequate medical insurance when his wife's condition became serious in 2001 all directly contributed to his inability to pay his debts. Department Counsel,

²¹ *Department of the Navy v. Egan*, 484 U.S. 518, at 528, 531(1988).

²² *See Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

²³ Revised Adjudicative Guidelines, ¶ 18.

²⁴ Gx. 2, a second set of interrogatories posing the same questions as the first, was signed and returned by Applicant on March 20, 2007. Applicant did not attach any documentation or answer any of the specific questions posed therein. It is apparent that Applicant had nothing further to add to his first response to those questions. As neither party addressed this exhibit in any meaningful way, I did not find it helpful to either party.

²⁵ "(a) a history of not meeting financial obligations; (c) inability or unwillingness to satisfy debts."

²⁶ "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;"

while acknowledging the past medical problems were beyond his control and were the cause of his past delinquencies, argues MC 20(b) should not apply because Applicant did not satisfy the second prong by “act[ing] responsibly under the circumstances.”²⁷ I disagree. That argument does not take into account the ongoing burden Applicant’s present medical problems place on his ability to pay or otherwise resolve his debts. Nor does the argument account for the fact Applicant sought overtime work in 2004, has received a pay raise, and has obtained a second job that will add to his income and reduce his expenses. While it would have been ideal for Applicant to have been able to make these changes sooner, opportunities do not always arise when most convenient.

The mere presence or absence of delinquent debts does not end the inquiry into whether one’s financial problems present an unacceptable security risk. The issue is whether Applicant’s unpaid debts put him at risk of engaging in illegal acts to generate funds to pay his debts, or whether his financial problems reflect adversely on his judgment, reliability, self-control, or willingness to follow rules and regulations. There is no denying the Applicant carries significant debts that he will have trouble paying, if he ever can. However, he did not incur the debt through mismanagement of his finances, through frivolous spending, or through deceptive financial practices. Nor has he tried to evade his obligations. He has no credit cards, he drives a used car that has been paid for, and is trying to increase his income and reduce his expenses so he can begin to pay off his debts while still being able to pay for his medications. All of the foregoing presents a sufficient information from which to conclude he will not violate the government’s trust for financial reasons. The Guideline F security concerns are resolved in favor of the Applicant.

Personal Conduct. Under Guideline E, “[c]onduct 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.”²⁸ The government alleged Applicant deliberately falsified his answer to SF 86 question 38 when he answered “no” (SOR ¶ 2.a), thereby trying to conceal the true extent of his debts.

The SF 86 clearly shows he so answered; however, to be disqualifying, his answer must have been given with intent to mislead and deceive.²⁹ A simple mistake or, as happened here, carelessness in overlooking an answer initially rendered two years earlier, do not constitute intent to mislead. On this issue, Applicant was credible in his explanation of the way the SF 86 was submitted. Further, he had nothing to gain by disclosing the largest of his debts, a car repossession, and seeking to hide the other medical debts. The allegation that he knowingly made a false statement to the government in June 2005 is not supported by the record. I conclude Guideline E for the Applicant.

Whole Person. I have evaluated the facts presented by all of the available information, and I have applied the appropriate adjudicative factors, pro and con, under Guidelines E and F. I have

²⁷ Tr., 87 - 90.

²⁸ Revised Adjudicative Guidelines, ¶ 15.

²⁹ Revised Adjudicative Guidelines, ¶ 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; “

also reviewed the record in the context of the whole person factors listed in section 2(a) of the Revised Adjudicative Guidelines.³⁰ Applicant is a mature adult who has worked for most of his adult life in religious ministries. He took a more secular career path at age 53 out of necessity when his wife's health reached a crisis. Applicant did not voluntarily participate in or invite the facts and circumstances about which the government is concerned. Nonetheless, rehabilitation and permanent behavioral changes are evident in the financial adjustments he has made and the modest way he lives his life. Further, his employer and associates speak of him in glowing terms, most likely because of the exemplary way he has conducted himself in the face of his financial and personal hardships. A fair and commonsense assessment³¹ of all available information, particularly the facts bearing on the underlying causes of his financial problems and his response thereto, shows that the Applicant's finances do not present an unacceptable risk should he be granted access to classified information.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline F (Financial):	FOR THE APPLICANT
Subparagraph 1.a - 1.y:	For the Applicant
Paragraph 2, Guideline E (Personal Conduct)	FOR THE APPLICANT
Subparagraph 2.a:	For the Applicant

DECISION

In light of all of the information presented, it is clearly consistent with the interests of national security to grant Applicant a security clearance.

Matthew E. Malone
Administrative Judge

³⁰ See note 19, supra.

³¹ See note 18, supra.