

KEYWORD: Financial; Personal Conduct; Criminal Conduct

DIGEST: Applicant is 30 years old and has worked as an administrative assistant for a federal contractor since April 2005. While attending college from 1995 to 1999 he accumulated numerous credit card debts. He only recently set up repayment plans on two of the debts. He intentionally failed to list his credit card debts and his prior drug use on three security documents, violations of federal law. Applicant failed to mitigate the security concerns raised under Guideline F (Financial Considerations), Guideline E (Personal Conduct) and Guideline J (Criminal Conduct). Clearance is denied.

CASENO: 06-19971.h1

DATE: 03/29/2007

DATE: March 29, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-19971
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
CAROL G. RICCIARDELLO**

APPEARANCES

FOR GOVERNMENT

Daniel Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 30 years old and has worked as an administrative assistant for a federal contractor since April 2005. While attending college from 1995 to 1999 he accumulated numerous credit card debts. He only recently set up repayment plans on two of the debts. He intentionally failed to list his credit card debts and his prior drug use on three security documents, violations of federal law. Applicant failed to mitigate the security concerns raised under Guideline F (Financial Considerations), Guideline E (Personal Conduct) and Guideline J (Criminal Conduct). 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. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on November 13, 2006, detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR in writing on December 6, 2006, and admitted all of the allegations. He elected to have a hearing before an administrative judge. The case was assigned to another judge on February 7, 2006, and due to a medical emergency was reassigned to me on March 5, 2007. With the consent of the parties, I convened a hearing on March 7, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government offered three exhibits that were marked as GE 1-3 and admitted without objection. Applicant testified on his behalf and offered six exhibits that were marked as AE A-F and were admitted without objection. DOHA received the hearing transcript (Tr.) on March 14, 2007.

FINDINGS OF FACT

Applicant is 30 years old and has worked as an administrative assistant for a federal contractor since April 2005. He married on September 9, 2006, and has no children.

Applicant attended college full-time beginning in 1995. At a later point he took classes part-time until approximately 1999. He did not obtain a degree. While attending college, he was offered and received numerous credit cards. He used them without fully understanding the terms, obligations and responsibility required to repay the debts he incurred. He was not working at the time and was unable to pay the credit card bills. He stated he should have addressed the delinquent credit card payments sooner, but did not.

Applicant has been employed since 2001. The jobs he had were not good paying jobs and he stated he did not focus on his credit card debt with any sense of urgency.¹ Applicant made a payment of \$236.66 on January 8, 2007, for the credit card debt in SOR ¶ 1.b.² He also set up an automatic repayment plan to have that same amount deducted monthly from his bank account until the debt is paid in full.³ On January 23, 2007 and February 23, 2007, Applicant made two \$100 payments toward the judgment in SOR ¶ 1.e.⁴ He intends to continue making monthly payments toward this debt and has set up an automatic deduction from his bank account to pay it.⁵ Applicant intends on repaying these two debts and then start making payments toward the other debts.

Applicant's wife pays the mortgage on their condominium (condo) and he pays the monthly condo fee of \$352. After paying his monthly expenses he estimated he had approximately \$600 remaining. Applicant and his wife bought a timeshare in November 2006 for approximately \$20,000.⁶ He pays \$127 a month as his share for that expense. They also bought pots and pans in the summer of 2006 for \$2,000.⁷ He estimates they make a \$100 monthly payment. Applicant stated he made impulse purchases. He and his wife have a joint credit card that they owe approximately \$1,536.⁸ Applicant contributes to their joint saving and they have approximately \$3,500 in their account.⁹ He does not use that money to repay his debts. His wife is not assisting him in repaying his delinquent debts. He did not have an explanation for why it took so long for him to address his delinquent debts. Applicant has not had any financial counseling, but does maintain a spreadsheet budget to keep track of his money.¹⁰

Applicant executed a Questionnaire For Public Trust Positions (SF 85P) on September 7, 2004. He answered "no" to a question asking if he had any debts over 180 days delinquent. That answer was false because Applicant was aware of his overdue credit card debts. On the same date, he executed a Supplemental Questionnaire for Selected Positions. He answered "no" to a question on that form that asked if he had used illegal drugs in the past 7 years or since he was 16, whichever was a shorter period. That answer was false because Applicant had used marijuana from 2000 to 2003. On November 2, 2005, Applicant certified on an Electronic Questionnaire for Investigations Processing (e-Qip) document, in response to an inquiry about his past drug use, that he had not used any illegal drugs in the past 7 years or since he was 16 whichever was shorter. That answer was false

¹Tr. 40.

²AE B.

³AE A.

⁴AE D.

⁵AE C and D.

⁶Tr. 68-70.

⁷Tr. 71-73.

⁸Tr. 67.

⁹Tr. 70.

¹⁰Tr. 59-60.

because Applicant used marijuana from 2000 to 2003. On that same document, Applicant certified he did not have any delinquent debts over 180 days and he did not have any delinquent debts that were currently overdue or over 90 days overdue. Both responses were false.

Applicant admitted he intentionally and deliberately falsified the answers to the questions in the referenced documents.¹¹ He stated he falsified the documents because he was afraid he would not get the job if he told the truth. He stated his former jobs were not going anywhere and he just wanted to get this job so he could work at a better paying job.¹² He stated “I guess I tried to give myself a leg up.”¹³ He did not view this as a “national security” issue, but more as a personal issue.¹⁴ Applicant’s deliberate and intentional falsifications are felony violations under Title 18 U.S.C § 1001.

POLICIES

“[N]o one has a ‘right’ to a security clearance.”¹⁵ As Commander in Chief, the President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.”¹⁶ 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.”¹⁷ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”¹⁸ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁰ The decision to deny an individual a security clearance is not necessarily a

¹¹Tr. 54.

¹²Tr.56.

¹³Tr. 56.

¹⁴Tr. 55.

¹⁵*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹⁶*Id.* at 527.

¹⁷Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

¹⁸ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹⁹*Id.*

²⁰*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

determination as to the loyalty of an applicant.²¹ 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.²²

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive to be considered in evaluating a person's eligibility to hold a security clearance. 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 factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the revised adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Based upon consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline E-Personal Conduct is a concern because conduct involving questionable judgment, lack of candor, dishonest, 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.

Guideline F-Financial Considerations are a concern because 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.

Guideline J-Criminal Conduct is a security concern because 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.

²¹Executive Order 10865 § 7.

²²See Exec. Or. 10865 § 7.

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

CONCLUSIONS

I have carefully considered the facts in evidence and legal standards.

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 obligations*), apply in this case. Applicant acquired delinquent credit card debts while he was in college and has failed to repay them. He admits he owes the debts and has not made payments on the debts until recently when he started payment plans on two of the accounts.

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*), and FC MC 20 (d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Applicant had no explanation for why it has taken him years to begin to address his delinquent debts. He made two payments on two debts shortly before his hearing and set up payment plans on those debts. All of the debts are recent because they have not been satisfied. He has numerous debts so his behavior leading to the debts was frequent. I find the debts are recent and frequent. Therefore FC MC 20 (a) cannot be applied. Applicant did not present any evidence that his financial situation was due to conditions beyond his control. To the contrary, he stated he was a young college student who used his credit cards without regard to his obligations to repay them. He let them remain dormant for years, despite being employed. He did not have an explanation for why he did not start repaying them sooner. I cannot apply FC MC 20 (b) because the conditions that resulted in his financial problems were within his control and he chose to ignore them for a long period. Applicant only recently started to repay two debts. Although this is a good sign, he also continued to make frivolous expenditures without regard for his delinquent debts. He and his wife spent \$20,000 on a timeshare and purchased pots and pans for \$2,000, both luxury items. Instead of using the money to buy down his debt he spent money with little regard for his legal financial obligations. Despite his nominal effort in making a couple of payments on his debts, I cannot find he has exercised a good-faith effort to repay his creditors. He also has not received financial counseling to assist him in resolving his debts. Therefore, I find FC MC (c) and (d) do not apply.

Based on all the evidence, Personal Conduct Disqualifying Condition (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.*) applies. Applicant intentionally failed to list

his drug use and his delinquent debts on three official documents. His explanations for providing false information was because he wanted to increase his chances of receiving the job. Information is material if it would affect a final agency decision or, if incorrect, would impede a thorough and complete investigation of an applicant's background.²³ An applicant's financial history and drug background are matters that could affect a final agency decision on whether to grant the applicant a clearance, and an applicant's failure to disclose the information would impede a thorough investigation of his background. At the time he completed the official documents, Applicant was aware of his delinquent debts and drug background, yet he deliberately failed to list this information on the documents. Hence, the above disqualifying condition applies.

I have considered all of the Personal Conduct Mitigating Conditions (PC MC) and 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*) and PC MC 17 (e) (*the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation or duress*). I find neither applies. There is no evidence to support any effort by Applicant to correct the falsifications before being confronted with the facts or that he has taken any steps to reduce his vulnerability. Applicant's answers on his applications regarding his debts were deliberate falsifications with the intent to mislead. Applicant made false statements on September 7, 2004. He did not come forward to correct the false statements. To the contrary, when he had another opportunity to make an official statement on November 2, 2005, he again repeated the false statement, thereby perpetuating the original falsification. Applicant was afraid he would not get the job, so he lied about his background. Applicant has not provided any information of positive steps he has taken to reduce his vulnerability to exploitation, manipulation or duress. He seemed to believe that because the lie had to do with his personal conduct that it would therefore not affect his ability to protect national security. His beliefs are misguided and his judgment is questionable. I find PC MC 17 (a) and (e) do not apply.

Based on all the evidence, Criminal Conduct Disqualifying Condition (CC DC) 31(a) (*a single serious crime or multiple lesser offenses*) and 31 (b) (*allegations or admissions of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted*), apply. Applicant intentionally and deliberately lied on his SF85P, Supplemental Questionnaire for Selected Positions dated September 7, 2005, and his eQip document dated November 2, 2005, felony violations under Title 18 U.S.C. § 1001.

I have considered all the mitigating conditions and especially considered Criminal Conduct Mitigating Condition (CC MC) 32 (a) (*so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*), and CC MC 32 (d) (*there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement*). Applicant's falsification of official documents occurred on two separate dates over a year apart. He had an opportunity to reflect on his falsifications and come forward to correct them, but he did not, rather he repeated them. His actions cast doubt on his reliability, trustworthiness and good judgment. He does not seem to grasp

²³ISCR Case No. 01-06870, 2002 WL 32114535 (App. Bd. Sep. 13, 2002).

the gravity of his falsifications and reflected an attitude that because the lies had to do with his background information that this should not be a concern about his ability to protect classified information. I find there is insufficient evidence of successful rehabilitation. Therefore, I find CC MC 32 (a) and (d) do not apply.

Whole Person Analysis

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered the whole person in evaluating the case. I considered Applicant's credibility, demeanor and responsiveness when testifying. I considered that Applicant has recently started repayment plans on two of his debts and set up automatic deductions to repay two of his debts. I considered Applicant's age when he first incurred the credit card debts and his maturity level as a college student in understanding the ramifications of owning and using credit cards. I also considered the length of time it took Applicant to begin repaying his debts. I considered the reasons Applicant stated for providing false statements on the official documents he was required to complete and that he repeated his falsifications on a subsequent document. After considering all of the evidence, I find Applicant failed to mitigate the security concerns raised by Guideline F (Financial Considerations), Guideline E (Personal Conduct) and Guideline J (Criminal Conduct). Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guidelines F, E and J are decided against Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant

Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	Against Applicant
Subparagraph 2.e:	Against Applicant

Paragraph 3. Guideline J:	AGAINST APPLICANT
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Subparagraph 3.a:	Against Applicant
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DECISION

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

Carol G. Ricciardello
Administrative Judge