

KEYWORD: Financial

DIGEST: Applicant has a history of financial delinquencies. He admitted the eleven delinquent debts alleged in the SOR and provided no evidence of payment or settlement His promises to resolve his debts in the future were not credible. Applicant failed to mitigate security concerns under Guideline F, Financial Considerations. Clearance is denied.

CASENO: 06-22686.h1

DATE: 09/17/2007

DATE: September 17, 2007

In Re:)	
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SSN: -----)	ISCR Case No. 06-22686
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
JOAN CATON ANTHONY**

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of financial delinquencies. He admitted the eleven delinquent debts alleged in the SOR and provided no evidence of payment or settlement His promises to resolve his debts in the future were not credible. Applicant failed to mitigate security concerns under Guideline

F, Financial Considerations. 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 February 26, 2007, under the applicable Executive Order¹ and Department of Defense (DoD) Directive (Directive),² DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision—security concerns raised under Adjudicative Guideline F (Financial Considerations), promulgated December 29, 2005, and applicable in DoD adjudications of SORs issued as of September 1, 2006, and thereafter. With the SOR, DOHA provided Applicant with a copy of the Directive and the applicable Guidelines. Applicant answered the SOR in writing on March 26, 2007 and April 16, 2007, and requested that his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on May 31, 2007. The FORM contained documents identified as Items 1 through 9. By letter dated June 14, 2007, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on June 28, 2007. He did not submit additional information within the required time period. On September 10, 2007, the case was assigned to me for a decision.

FINDINGS OF FACT

The SOR contains eleven allegations of disqualifying conduct under revised Adjudicative Guideline F, Financial Considerations. (SOR ¶¶ 1.a. through 1.k.) (Item 1.) Applicant admitted all eleven allegations, totaling approximately \$18,000. His admissions are admitted herein as findings of fact.

Applicant is 40 years old and employed as a cameraperson/editor by a government contractor. In July 2005, when he completed a security clearance application (SF-86), he reported he was married in 1999 and separated from his wife in August 2002. (Item 1.) His current marital status is not clear.

Applicant served in the U.S. Navy from 1987 to 1991. He received a bachelor of arts degree in 1997. He has been steadily employed since 1997, and he has worked for his present employer since 2001. He reported two judgments and seven financial delinquencies on his July 2005 SF-86. He acknowledged the debts alleged at SOR ¶¶ 1.i. through 1.k. on his SF-86. He stated on the SF-86 that his debts occurred while he was in college, and he further stated he had saved money to pay his delinquencies and intended to pay them. (Item 1.)

¹Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.

²Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.

Applicant responded to DOHA interrogatories about his financial delinquencies on January 11, 2007. He acknowledged the debts alleged at ¶¶ 1.a. through 1.h. of the SOR and admitted he had not paid or settled those debts. He suggested he be granted a conditional security clearance until his delinquent debts were paid off. He failed to provide evidence that any of the alleged debts had been paid. He stated he would have paid his debts sooner if he had known that he would receive a security clearance after having done so. (Item 7 at 5.)

Applicant's 2005 credit bureau report shows that at least three of his delinquencies were turned over for collection in 1999. (Item 9.) Nothing in the record suggests he sought or participated in credit counseling.

POLICIES

“[No one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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.” *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens “whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information.” Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

The revised AG set forth personal security guidelines, as well as the 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 the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3.

CONCLUSIONS

Guideline F—Financial Considerations

An applicant's failure to live within his or her 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. *See* Guideline F, ¶ 18.

In the SOR, DOHA alleged Applicant was responsible for eleven unsatisfied delinquent debts totaling approximately \$18,000. The allegations raised security concerns under two Guideline F disqualifying conditions, ¶¶ 19(a) and 19(c).³ Applicant admitted responsibility for all eleven debts and asserted in July 2005 and in January 2007 that he had saved money to pay his debts. His answer to the SOR in March and April 2007 indicated he had failed to satisfy any of the eleven debts.

Through Applicant's admissions and the record evidence, the Government established that Applicant had a history of not meeting his financial obligations and was unable or unwilling to satisfy his debts as specified in Guideline F, ¶¶ 19(a) and 19(c).

Several conditions could mitigate the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be resolved if it 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. (Guideline F, ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if the conditions that resulted in the financial problem were largely beyond the person's control, such as loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, and the individual acted responsibly under the circumstances. (Guideline F, ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control (Guideline F, ¶ 20(c)) or the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (Guideline F, ¶ 20(d)).

Applicant's acknowledged financial delinquencies are numerous, long-standing, and continue to the present day. All of his financial delinquencies remain unresolved, suggesting that the circumstances that caused these delinquencies are likely to continue in the future, thereby casting doubt on Applicant's current reliability, trustworthiness, and good judgment. Accordingly, ¶ 20(a) does not apply as a mitigating condition. Applicant attributes his financial delinquencies to debts accrued in college. The record shows he graduated from college in 1997 and has been steadily employed since then. Thus, the facts do not of themselves establish that Applicant's unresolved financial delinquencies occurred while he was a student, were largely beyond his control, or that he acted reasonably under the circumstances. Nothing in the record suggests Applicant contacted his

³ Guideline F, ¶ 19(a) reads: "Inability or unwillingness to satisfy debts." Guideline F, ¶ 19(c) reads: "A history of not meeting financial obligations."

creditors to negotiate payment or settlement plans, even though he said, in July 2005 and January 2007 that he had saved money to pay his creditors and intended to do so. Accordingly, I conclude ¶ 20(b) does not apply to the facts of Applicant's case.

Nothing in the record suggests Applicant has sought or participated in financial counseling and the evidence strongly shows his underlying financial problems are neither resolved nor under control. Accordingly, I conclude that ¶ 20(c) is inapplicable.

Several of Applicant's delinquencies date from 1999. His record statements suggest he perceived the award of a security clearance as a *quid pro quo* for paying his debts, and he appeared unwilling to act on his obligation to pay his creditors and honor his financial commitments. Accordingly, I conclude Applicant's conduct does not warrant the application of ¶ 20(d). *See* ISCR Case No. 01-21030 at 3-4 (App. Bd. May 7, 2004).

Whole Person Analysis

The revised AG and the Directive require that the adjudicative process in a security clearance case not only assess conduct under the adjudicative guidelines, but it must also reflect a careful weighing of a number of variables known as the whole person concept. The factors to be considered in a whole person analysis include 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 pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and, the likelihood for continuation or recurrence.

Applicant is a mature adult who has a history of financial over-extension. His history of not meeting his financial obligations and his inability to pay his debts over a period of several years raises a security concern because it suggests a lack of good faith. Twice he promised to pay his delinquent debts, and twice he failed to do so. Since he has not sought consumer credit counseling or assistance in learning how to manage his finances, Applicant has failed to demonstrate his delinquencies will not continue to be security concerns in the future.

In all adjudications, the protection of our national security is the paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct. Having done so, I conclude Applicant should not be entrusted with a security clearance. In reaching my decision, I have considered the evidence as a whole, including the appropriate factors and guidelines in Department of Defense Directive, 5220.6., as amended. I conclude that Applicant failed to mitigate security concerns under Guideline F (Financial Considerations).

FORMAL FINDINGS

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

Paragraph 1.: Guideline F: AGAINST APPLICANT

Subparagraphs 1.a. through 1.k.: 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.

Joan Caton Anthony
Administrative Judge