

KEYWORD: Financial Considerations; Personal Conduct; Criminal Conduct

DIGEST: Applicant has had a history of financial difficulties. He has taken action to contact the creditors and pay off his debts, and he has reduced his overdue debt significantly. However, Applicant's credibility is suspect since the financial information that Applicant provided to the Government on a Security Clearance Application (SCA), regarding his overdue debts was materially and wilfully incorrect, which is a violation of Federal Law, Title 18, United States Code Section 1001. Mitigation has not been shown. Clearance is denied. _____

CASENO: 06-23112.h1

DATE: 8/30/2007

DATE: August 30, 2007

In Re:)	
)	
)	
-----)	ISCR Case No. 06-23112
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
MARTIN H. MOGUL**

APPEARANCES

FOR GOVERNMENT
Jeff A. Nagel, Esq., Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

Applicant has had a history of financial difficulties. He has taken action to contact the creditors and pay off his debts, and he has reduced his overdue debt significantly. However, Applicant's credibility is suspect since the financial information that Applicant provided to the Government on a Security Clearance Application (SCA) that he completed, regarding his overdue debts, was materially and wilfully incorrect. Mitigation has not been shown. Clearance is denied.

STATEMENT OF THE CASE

On March 12, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

In a signed and sworn statement, dated May 21, 2007, Applicant responded in writing to the SOR allegations (RSOR). He requested a clearance decision based on a hearing record.

The case was assigned to this Administrative Judge on June 22, 2007. A Notice of Hearing was issued to the parties on August 6, 2007, and the hearing was held on August 16, 2007.

At the hearing, Department Counsel offered eight documentary exhibits (Exhibits 1-8) and no witnesses were called. Applicant appeared without counsel, submitted no documentary exhibits, and offered his own testimony. The record was left open until August 23, 2007, to allow Applicant the opportunity to offer additional documentary exhibits regarding his alleged payment of debts, evaluations either from his civilian or military employment, and character letters. Applicant offered one timely document, a character letter, which has been marked as Exhibit A. This exhibit was not objected to by Department Counsel and has been entered into evidence. The transcript (Tr) was received on August 24, 2007.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline F (Financial Considerations), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the Directive. The SOR contains nineteen allegations, 1.a. through 1.s., under Guideline F, four allegations, 2.a. through 2.d., under Guideline E, and one allegation 3.a., under Guideline J. On his RSOR, Applicant admitted all of the debts listed under SOR allegations 1.c., 1.d., 1.f., 1.g., 1.h., 1.i., 1.j., 1.k., 1.l., 1.m., 1.n., 1.o., 1.p., 1.q., 1.r., and 1.s., with some explanations that he had paid some of these debts, and he denied the other allegations of debts under Guideline F. Applicant also admitted allegations 2.a., 2.c., and 2.d., and he denied 2.b. He gave no response to 3.a. The admitted allegations are incorporated herein as Findings of Fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR and the admitted documents, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant is 47 years old. He is unmarried and has two adult daughters. His third daughter died in a 1995 house fire. He served in the United States Navy from 1980 through 1986, and resigned when he broke his shoulder and was unable to perform his duties aboard his ship. He received an Honorable Discharge. Applicant is employed by a defense contractor, and he seeks to retain a DoD security clearance in connection with his employment in the defense sector.

Paragraph 1 (Guideline F - Financial Considerations)

The SOR lists nineteen debts that Applicant owed as of January 8, 2007, 1.a. through 1.s under Adjudicative Guideline F. The debts will be discussed in the order that they were listed in the SOR:

1.a. This overdue debt to Creditor 1 is listed in the SOR in the amount of \$4,372. This debt is alleged to be for a judgement entered against Applicant's on December 1, 1998, which resulted in a garnishment order against him in the amount of \$6,565.27. Applicant testified that he paid this debt sometime in 1995. He also contended that no garnishment was ever placed against him, nor was he aware of any judgement against him. Applicant testified that he had no evidence to establish evidence of payment of this debt, as the 1995 house fire destroyed many of his records.

1.b. This overdue debt to Creditor 2 is in the amount of \$893. Applicant claimed that he did not recognize this debt, nor has he been able to get verification of its origin. He has made no payment on this debt.

1.c. This overdue debt to Creditor 3 is in the amount of \$122. Applicant testified that this debt has been paid. Exhibit 8, a credit report, dated August 15, 2007, shows that this debt was paid.

1.d. This overdue debt to Creditor 4 is listed in the SOR in the amount of \$617. Although Applicant testified that this debt has been paid, he offered no evidence to establish that this debt was resolved. The record was held open to allow Applicant to offer evidence of payment, but no evidence was ever introduced.

1.e. This overdue debt to Creditor 5 is listed in the SOR in the amount of \$625. Applicant claimed that he did not recognize this debt, nor has he been able to get verification of its origin. He has made no payment on this debt.

1.f. This overdue debt to Creditor 6 is listed in the SOR is in the amount of \$84. Applicant testified that this debt has been paid. Exhibit 8 establishes that this debt was paid.

1.g. This overdue debt to Creditor 7 is listed in the SOR in the amount of \$92. Applicant testified that this debt has been paid, but again he offered no evidence to establish that this debt was resolved. The record was held open to allow Applicant to offer evidence of payment, but no evidence was ever introduced.

1.h. This overdue debt to Creditor 8 is listed in the SOR in the amount of \$48. Applicant testified that he believed that this debt has been paid, but offered no evidence to establish that this debt was resolved. The record was held open to allow Applicant to offer evidence of payment, but no evidence was ever introduced.

1.i. This overdue debt to Creditor 9 is listed in the SOR in the amount of \$138. Applicant testified that this debt has been paid, but offered no evidence to establish that this debt was resolved. The record was held open to allow Applicant to offer evidence of payment, but no evidence was ever introduced.

1.j. This overdue debt to Creditor 10 is listed in the SOR in the amount of \$57. Applicant testified that this debt has been paid. Exhibit 8 establishes that this debt was paid.

1.k. This overdue debt to Creditor 11 is listed in the SOR in the amount of \$5,410. Applicant testified that he made one payment of \$100 on this debt in May 2007, and the total now owed is \$5,310.

1.l. This overdue debt to Creditor 12 is listed in the SOR in the amount of \$4,290. Applicant testified that he made one payment of \$100 on this debt in June 2007, and the total now owed is \$4,190.

1.m. This overdue debt to Creditor 13 is listed in the SOR in the amount of \$218. Applicant testified that this debt has been paid. However, Exhibit 8 shows that this debt was unpaid. The record was held open to allow Applicant to offer evidence of payment, but no evidence was ever introduced.

1.n. This overdue debt to Creditor 14 is listed in the SOR in the amount of \$119. Applicant testified that this debt has been paid. Exhibit 8 establishes that this debt was paid.

1.o. This overdue debt to Creditor 15 is listed in the SOR in the amount of \$203. Applicant testified that this debt has not been paid.

1.p. This overdue debt to Creditor 16 is listed in the SOR in the amount of \$45. Applicant testified that this debt has been paid. Exhibit 8 establishes that this debt was paid.

1.q. This overdue debt to Creditor 17 is listed in the SOR in the amount of \$319. Applicant testified that this debt has been paid. Exhibit 8 establishes that this debt was paid.

1.r. This overdue debt to Creditor 18 is listed in the SOR in the amount of \$22. Applicant testified that this debt has been paid, but offered no evidence to establish that this debt was resolved. The record was held open to allow Applicant to offer evidence of payment, but no evidence was ever introduced.

1.s. This overdue debt to Creditor 19 is listed in the SOR in the amount of \$374. Applicant testified that this debt has not been paid.

Applicant testified that he primarily got into financial difficulties as a result of his divorce, when it was his understanding that his ex-wife was responsible for paying certain debts, and he only learned later that she had not resolved these debts, and he was still responsible.

Paragraph 2 (Guideline E - Personal Conduct)

The Government alleges that when Applicant completed a signed, sworn Security Clearance Application (SCA) on April 28, 2005, (Exhibit 1), he did not furnish truthful, complete answers.

2.a. Question #21 asks, “Have you ever been charged with or convicted of any felony offense?” He was instructed to “report information regardless of whether the record in your case was sealed or otherwise stricken from the record.”

Question #22 asks, “Have you ever been charged with or convicted of a firearms or explosive offense?” Applicant answered “No” to these two questions, even though he was arrested on March 29, 1979 and charged with Unlawful Sale of a Firearm, a felony offense. He was found guilty of unlawful Transfer of Firearm with ID, a felony offense, and he was sentenced to six months in the house of Corrections, suspended, and he was placed on one year probation.

Applicant testified that the arrest was because he sold an old rifle, that belonged to his brother, to some men, who were undercover police officers. Later, he was told that the record of this case was sealed and that he was not required to address it any longer. He testified that he did not read the questions carefully, and so he did not realize that even if his record was sealed, he should have listed the 1979 conviction.

2.c. Question #34 asks, “In the last 7 years, have you had your wages garnished for any reason?” Question #37 asks, “In the last 7 years, have you had any judgements against you that have not been paid?” Applicant answered “No” to these questions. As discussed in 1.a., above, Applicant testified credibly that no garnishment was ever placed against him, nor was he aware of any judgement against him.

2.c. Question #38 asks, “In the last 7 years, have you been over 180 days delinquent on any debt(s)?” “No” was checked off for this question. Clearly, at the time he completed the SCA, Applicant was or had been delinquent on all the debts listed on the SOR, and all of these debts should have been included.

2.d. Question #39 asks, “Are you currently over 90 days delinquent on any debt(s)?” “No” was answered on this question and again no debts were listed. At the time he completed the SCA, Applicant was still delinquent on the debts listed on the SOR, and these debts should have been included. Applicant admitted that he was aware of some overdue debts although not all of them. His limited explanation during his testimony was, “I did not think that it was going to be dug into that far.”

While Applicant did have some legitimate reasons for his failure to fully and completely answer Questions #21, 24, 34, and 37, I can find no reasonable explanation for Applicant’s failure to affirmatively answer Questions #38 or 39, and to list, at a minimum, the debts of which he was aware.

(Guideline J - Criminal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he furnished information on a SCA in 2005 to the Government that was not complete and truthful, which is a violation of Federal Law, Title 18, United States Code Section 1001.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (See Directive, Section E2.2.1. of Enclosure 2).

BURDEN OF PROOF

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to Applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of Applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988),

"the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following with regarding Guidelines F, E, and J:

(Guideline F - Financial Considerations)

With respect to Guideline F, the Government has established that Applicant has had a history of financial difficulties. The evidence shows that Applicant has made recent good efforts to pay these debts. While he has not satisfied all of his debts, he has satisfied many of his debts and seems to be on his way to satisfying the rest of them in an organized manner.

Regarding the Disqualifying Conditions (DC) under Guideline F in the Adjudicative Guidelines, I conclude both DC 19. (a) and (c) apply, because of Appellant's "history of not meeting financial obligations" and his apparent previous "unwillingness to satisfy his debts."

In considering the Mitigating Conditions (MC) 20. I find that MC (b) applies "the condition that resulted in the financial problem were largely beyond person's control," as they were the result of his divorce. I also find that MC (d) applies because Appellant has "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." I, therefore, hold Guideline F for Applicant.

(Guideline E - Personal Conduct)

With respect to Guideline E, the evidence establishes that Applicant did not provide accurate information to the Government in response to several questions on the SCA that he completed and executed on April 28, 2005.

Two questions, #38 and 39, are of primary concern because Applicant clearly knew he was currently more than 90 days overdue on at least some of his debts, and he had been over 180 days overdue in the past seven years.

In the Adjudicative Guidelines for Personal Conduct, I conclude that DC 16. (a) applies as the Applicant has provided deliberate omissions and falsification of relevant facts from a personnel security questionnaire. Based on the recency and relevancy of the false statements made to the Government, I do not see that any MC applies.

(Guideline J - Criminal Conduct)

In the Adjudicative Guidelines for Criminal Conduct, I conclude that Applicant's criminal conduct falls within Criminal Conduct DC 31. (a) "a single serious crime," for the untruthful

information that he furnished the Government on the SCA, which is a violation of Federal Law, Title 18, United States Code, a felony. No Mitigating Condition (MC) applies to this case.

FORMAL FINDINGS

Formal Findings are hereby rendered as follows:

Paragraph 1, Financial Considerations, Guideline F: For Applicant

Subparagraph 1.a.: For Applicant
Subparagraph 1.b.: For Applicant
Subparagraph 1.c.: For Applicant
Subparagraph 1.d.: For Applicant
Subparagraph 1.e.: For Applicant
Subparagraph 1.f.: For Applicant
Subparagraph 1.g.: For Applicant
Subparagraph 1.h.: For Applicant
Subparagraph 1.i.: For Applicant
Subparagraph 1.j.: For Applicant
Subparagraph 1.k.: For Applicant
Subparagraph 1.l.: For Applicant
Subparagraph 1.m.: For Applicant
Subparagraph 1.n.: For Applicant
Subparagraph 1.o.: For Applicant
Subparagraph 1.p.: For Applicant
Subparagraph 1.q.: For Applicant
Subparagraph 1.r.: For Applicant
Subparagraph 1.s.: For Applicant

Paragraph 2, Personal Conduct, Guideline E: Against Applicant

Subparagraph 2.a.: Against Applicant
Subparagraph 2.b.: Against Applicant
Subparagraph 2.c.: Against Applicant
Subparagraph 2.d.: Against Applicant

Paragraph 3, Criminal Conduct, Guideline J: Against Applicant

Subparagraph 2.b.: Against Applicant

DECISION

In light of all the circumstances and facts 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.

Martin H. Mogul
Administrative Judge