

KEYWORD: Financial; Personal Conduct

DIGEST: Although Applicant promised in 2002 to resolve his debts, he only resolved some of them and developed no plan to pay or resolve the majority of the delinquent debts reported on his credit reports. While he disputed or questioned several debts, he did not provide any evidence to support a contention that he does not owe these creditors where the debts are documented in credit reports. Further, he did not show he had challenged the accuracy of these credit reporting agencies on any of these questioned debts. Under the circumstances, Applicant failed to initiate a good-faith effort to resolve this indebtedness. Also, he deliberately falsified his answers on his 2001 security clearance application by failing to disclose all these financial issues. Clearance is denied.

CASENO: 02-28915.h2

DATE: 03/21/2006

DATE: March 21, 2006

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 02-28915

**REMAND DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

**APPEARANCES**

## **FOR GOVERNMENT**

Richard Stevens, Esquire, Department Counsel

## **FOR APPLICANT**

*Pro Se*

## **SYNOPSIS**

Although Applicant promised in 2002 to resolve his debts, he only resolved some of them and developed no plan to pay or resolve the majority of the delinquent debts reported on his credit reports. While he disputed or questioned several debts, he did not provide any evidence to support a contention that he does not owe these creditors where the debts are documented in credit reports. Further, he did not show he had challenged the accuracy of these credit reporting agencies on any of these questioned debts. Under the circumstances, Applicant failed to initiate a good-faith effort to resolve this indebtedness. Also, he deliberately falsified his answers on his 2001 security clearance application by failing to disclose all these financial issues. Clearance is denied.

## **APPEAL AND REMAND ORDER**

On March 3, 2006, the Director of the Defense Office of Hearings and Appeals (DOHA) forwarded the Case Record and the Appeal Board Decision of March 3, 2006, concerning a unfavorable security clearance decision issued November 23, 2005. The Statement of Reasons (SOR) issued to the Applicant on August 17, 2004, alleged specific concerns over finances (Guideline F) and personal conduct (Guideline E). On appeal Applicant challenged both the Guideline F and Guideline E issues. The Board concluded that they could not address any of the issues raised by Applicant as on page 2 of the decision:

. . .there is red ink across certain words in the Judge's findings of fact. The red ink leads the Board to doubt whether it knows with confidence what the Judge found with respect to Applicant's description of his financial situation on his security clearance application. In light of the ambiguity, the Board remands the case for the Judge to issue a *clean* decision which is unambiguous in its findings. (Emphasis added)

Appeal Board Decision (March 3, 2006) at 2. The red ink that caused the ambiguity for the Board was a line deleting two words "of his": thus, the corrected sentence should have read ". . .he failed to disclose any [deleted words] financial delinquency issues in response to questions 38 or 39." While he had admitted this allegation in his answer, he had, in fact, disclosed three delinquencies in response to Question 38, so the decision is amended to reflect that correction.

## **STATEMENT OF THE CASE**

On August 17, 2004, the Defense Office of Hearings and Appeals (DOHA) issued [\(U\)](#) a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The SOR alleges security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Applicant answered the SOR on September 22, 2004. He admitted all the allegations under Guidelines F and E and requested a hearing.

On April 8, 2005, Department Counsel signed a Ready to Proceed notice and on April 22, 2005, the matter was assigned to me. A May 11, 2005, Notice of Hearing set the matter for May 24, 2005. Department Counsel offered six documents that were admitted into evidence; Applicant objected to Exhibit 4 as not recent, but his objection was overruled as the document remained relevant as documenting his credit history. (TR 13) Applicant represented himself and testified; he offered one exhibit (Exhibit A) which was admitted into evidence without objection. He requested additional time to submit evidence; I granted him two weeks until June 8, 2005, to submit any additional documents. (TR 40-42, 53) On June 8, 2005, Applicant submitted additional evidence which was admitted into evidence as Exhibit B as on June 9, 2005, the government forwarded it and indicated no objection. The transcript (TR) was received on June 2, 2005.

## **FINDINGS OF FACT**

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is a 45-year-old network operations manager employed by a defense contractor in State #1 from 1984 to present. Previously, he was granted a Secret clearance in July 1987. (Exhibit 1; TR 22)

Applicant studied at a community college in State #1 from 1977-79. He also attended college in State #2 from 1979 to 1981. He was married in 1999 and divorced in August 2004. His former wife remains in the family home. (Exhibits 1, 2; TR 22; 25-26)

## **Finances and Personal Conduct**

When Applicant completed his Security Clearance Application (SF 86) on October 16, 2001, he failed to disclose any financial delinquency issues in response to Question 39 regarding 90 day financial delinquencies, and gave an incomplete answer in response to Question 38 concerning 180 day delinquencies as he disclosed his financial problems with only three creditors. In his Answer he admitted that he intended to falsify material facts in his answers to Questions 38 and 39 on his SF 86. (Answer, Exhibit 1) (SOR 2.a.) While he did not testify as to whether or not he intended to falsify, Applicant declared in his closing argument that he had no intent "to mislead" by his answers in the SF 86 as he answered to the best of his ability. (TR52)

When questioned by the Defense Security Service (DSS) about his finances in January 2002, he stated that in 1993 or 1994 he was in an accident where he was sued and a judgment was issued against him for \$4,000 as he was uninsured. While initially he paid \$200 a monthly on a payment plan, he still owed \$3,000 in 2002. After his father became ill in 1996 and required a great deal of care, Applicant assumed some of his father's medical bills as his other siblings were unable to help. Applicant subsequently "fell behind" on his own bills. His father died in 1999, and Applicant paid the funeral expenses. Then in 1996 Applicant had his own health problems which led to further financial issues. After he married in 1999, they put all of their efforts into cleaning up his wife's credit so they could buy a house. In 2002 he reported that he and his wife had net monthly income of \$6,546, expenses of \$2,521, and monthly debts of \$3,043. He had a net remainder of \$982 monthly with assets of \$167,100 including real estate, savings, investments and cars. In January 2002, he declared he planned to make arrangements to resolve debts to his creditors. For example, he agreed to set up a payment plan to pay \$236 per month to pay a balance of \$2,482 to a collection agency for a bank account. Now that they are divorced, his former wife remains in the home they purchased after focusing on her credit issues. (Exhibits 2, 6; TR 18-19; 23)

In October 2003 he stated he had paid two judgments in full, but he did not provide documentation. He had recent health problems, including surgery in June 2003. He returned to work full-time in December 2004. Most of his medical bills were covered by his health insurance. (Exhibit 3; TR 19; 23-24) Recently, he contacted a credit counseling bureau and stated he was in the process of completing the forms they required; however, he provided no evidence he completed the process. He was able to get credit to purchase two cars and has credit cards. (TR 20-22) He purchased in 2003 a 2000 Mercury Sable for \$5,500 and in 2004 a Lincoln LS for \$34,000. (TR 31-34)

The SOR alleges delinquent debts which total approximately \$18,000:

Debt 1.a. to Creditor #1 for \$376 was charged off as a bad debt in 1997 and has not been paid. (Exhibits 4, 5, 6; TR 27)

Debt 1.b. to Creditor #2 for \$647 was charged off as a bad debt in 1997; in his DSS statement in January 2002, Applicant declared he had paid this bill which I accept as paid without his documentation. (Exhibits 2, 4, 5, 6; TR 27)

Applicant claimed no knowledge of debt 1.c. to Creditor #3 for \$3,352 or Debt 1.d. for \$2,564 to Creditor 3; however, the first debt was placed for collection in 1997 and the second debt was placed for collection in 1998. Applicant neither disputed nor paid this debt. (Exhibits 2, 4, 5, 6; TR 27-28)

Debt 1.e. to Creditor #4 for \$722 was to a department store and was charged off as a bad debt in March 1998 and has not been paid. (Exhibits 4, 5, 6; TR 28)

Initially in 2002, Applicant said he did not recognize debt 1.f. to Creditor #5 for \$4,945 for a judgment entered in July 1998; however, later he stated it was satisfied through wage garnishments in 2002 which I accept as paid without his documentation. (Exhibits 2, 4, 5, 6; TR 28, 30-31)

Applicant said he thought he had paid this judgment in January 2001, the debt 1.g. to Creditor #6 for \$1,104 for a judgment entered against him in August 1998 for a personal loan. However, he provided no evidence that the debt has been satisfied. (Exhibits 2, 4, 5, 6; TR 29)

Initially, in 2002 Applicant claimed no knowledge of debt 1.h. to Creditor #7 for \$55 which was placed for collection in 2000 for a mobile phone; subsequently, he said he had paid this bill but had no documentation. (Exhibits 2, 4, 5, 6; TR 29)

Debt 1.i. to Creditor #8 for \$3,555.709 was an account placed for collection in 2000 and has not been satisfied. (Exhibits 4, 5, 6; TR 29-30)

Debt 1.j. to Creditor #9 for \$616 was an account placed for collection. He paid \$717 to this creditor in June 2005. (Exhibits 4, 5, 6; TR 30)

Debt 1.k. to Creditor #10 for \$84 was placed for collection in 2004. He paid this \$84 debt in June 2005. (Exhibits 4, 5, 6; TR 27)

At the time of the hearing, he had not set up a payment plan with any of these creditors, nor had he sought credit counseling. He currently makes \$71,000 per year. (TR 36-40)

In June 2005 he stated he would develop a plan to pay several of his creditors, but provided no information on such a plan. He only provided proof of paying debts in 1.j and 1.k. (Exhibit B) In June 2005 his monthly income was \$3,772 and his monthly expenses were \$2,895, including a \$785 payment for his Lincoln and a \$186 payment for his Mercury. (Exhibit B)

## References

Applicant submitted four favorable letters of reference from friends, co-workers, and a chaplain which praise his dedication, loyalty, and responsibility. (Exhibit A)

## **POLICIES**

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."<sup>(2)</sup> Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.<sup>(3)</sup> The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6. "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.<sup>(4)</sup>

An administrative judge should consider: (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 applicant'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 of recurrence.<sup>(5)</sup>

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.<sup>(6)</sup> 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 present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.<sup>(7)</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.<sup>(8)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."<sup>(9)</sup> "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability."<sup>(10)</sup> "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."<sup>(11)</sup>

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

Guideline F - Financial Considerations: A security concern exists for an individual who is financially irresponsible. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Guideline E - Personal Conduct: A security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information.

## **CONCLUSIONS**

### **Financial Considerations**

The government established its case under Guideline F as Applicant's delinquent debts falls within Financial Consideration Disqualifying Conditions E2.6.1.2.1 (*a history of not meeting financial obligations*) and E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*). Applicant had multiple debts which became delinquent and several remain unpaid. Beginning in 1997 he began to "fall behind" on several of his accounts due to his and his father's health problems. However, even after his father's death in 1999, he was unable to address and resolve his debts. Later Applicant had his own health problems, but he returned to work full time in December 2004.

While he claimed no knowledge of some of these debts, he has resolved only a few of the debts even though he was put on notice by his DSS interview in 2002 that these debts raised a security concern. He was again put on notice in 2003 when he was sent Interrogatories, but took no action to resolve his debts. He was again put on notice in 2004 when he was sent the SOR, but again took no action to resolve his debts. Even after his hearing in 2005, he resolved only two of the smaller debts (1.j. and 1.k.) that had continued to raise security concerns. Thus, he has not demonstrated

responsibility in addressing a majority of his debts. Further, he did not show he had challenged the accuracy of these credit reporting agencies on any of these questioned debts.

The Financial Considerations Mitigating Conditions (MC) to consider for Applicant are E2.A6.1.3.3 (*the conditions that resulted in the behavior were largely beyond the person's control (e.g.; loss of employment . . . )*) Certainly, Applicant and his father's health problems over the past decade contributed to his financial stresses. However, he made a substantial income and instead of using that income to resolve his debts or seeking financial counseling, he chose to purchase two automobiles. Currently, his car payments total \$971 monthly.

Although Applicant has resolved some of his smaller debts (1.b., 1.f., 1.h., 1.j, and 1.k.), overall he failed to demonstrate that he falls within MC E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), as half of his debts remain unresolved. Applicant stated in 2002 that he would identify all these creditors and resolve the matter, but failed to do so. While he currently lives within his means, he failed to resolve over \$11,000 in debts that linger from the 1997 to 2000 period. While Applicant documented some health problems, he did not show how those expenses adversely and materially affected his ability to resolve this indebtedness.

While he questioned several debts, he did not provide any evidence to dispute any of the debts either to the creditors or at the hearing. These debts were documented on several credit reports. Under the circumstances, Applicant failed to initiate a sufficient good-faith effort to resolve this indebtedness.

In addition, I carefully considered all of the circumstances in light of the "whole person" concept. In considering the "whole person" concept, I have taken into consideration that Applicant has taken some steps to resolve his indebtedness and has favorable references, but that is offset by his failure to seek counseling to resolve his lingering financial problems. While Applicant has a long history with his employer, Applicant presented insufficient information to explain why he has taken no action over the past three years to resolve the remainder of his debts. Thus, I conclude Applicant has failed to mitigate security concerns over SOR allegations 1.a., 1.c., 1.d., 1.e., 1.g, and 1.i. Consequently, because of these persistent financial concerns, Applicant is not eligible for access to classified information.

### **Personal Conduct**

The government established its concerns under Guideline E as Applicant's answer to Questions 38 and 39 on the 2001 security clearance application pertaining to financial delinquencies was deliberately misleading. His deliberate omissions of his many financial delinquencies raise Personal Conduct Disqualifying Condition E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations. . . determine security clearance eligibility or trustworthiness . . .*). A finding of falsification requires evidence that the Applicant acted with an intent to mislead or deceive the government. The record evidence as a whole must be considered to determine



whether there is direct or circumstantial evidence concerning Applicant's state of mind at the time the statement was made. Applicant admitted in his Answer that he falsified material fact by his omissions. Thus, I conclude Applicant did deliberately, with an intent to deceive, answer questions 38 and 39 inaccurately.

While he argued in his closing that he had not meant to mislead, he also acknowledged that he knew he was in debt which he failed to disclose fully on his SF 86. Applicant failed to offer sufficient mitigating [\(12\)](#)

evidence to establish that he had no intent to mislead by these many omissions. For example, he provided no evidence that he made prompt, good-faith efforts to correct the falsification before being confronted with the facts at the DSS interview. In addition, I carefully considered all of the circumstances in light of the "whole person" concept. While he has many favorable references which praise his dedication, loyalty, and responsibility, they did not address his reputation for honesty. Thus, I conclude Applicant has failed to mitigate security concerns over SOR allegations 2.a.. Consequently, because of these personal conduct concerns, Applicant is not eligible for access to classified information.

### **FORMAL FINDINGS**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are as follows:

#### **Paragraph 1, Guideline F: AGAINST APPLICANT**

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: For Applicant

Subparagraph 1.k.: For Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: 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.

Kathryn Moen Braeman

Administrative Judge

1. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive).
2. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
3. Directive ¶ E2.2.1.
4. *Id.*
5. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
6. *See* Exec. Or. 10865 § 7.
7. Directive ¶ E3.1.14.
8. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

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

10. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

11. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

**12. E2.A5.1.3. Conditions that could mitigate security concerns include:**

E2.A5.1.3.1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability; E2.A5.1.3.2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily; E2.A5.1.3.3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts; E2.A5.1.3.4. Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided; E2.A5.1.3.5. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress; E2.A5.1.3.6. A refusal to cooperate was based on advice from legal counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information; E2.A5.1.3.7. Association with persons involved in criminal activities has ceased.