

DATE: June 14, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-06506

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

Sabrina Elaine Redd, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Financial considerations concerns arose as a result of Applicant being in arrears on 11 debts, six of which were student loans. Apart from students loans, Applicant incurred the majority of these debts in college due to the availability of easy credit. After college, he fell behind on his student loans as a result of credit card debt incurred in college. Applicant has since paid or resolved past debts, and consolidated and remains current on his student loans. A personal conduct concern arose over a discrepancy of failing to fully list all past debt, which Applicant demonstrated was inadvertent error. Financial and personal conduct concerns have been mitigated. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On August 10, 2004, DOHA issued a Statement of Reasons (SOR) [\(1\)](#) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on August 25, 2004, and elected to have a hearing before an administrative judge.

The case was assigned to another administrative judge on March 9, 2005. On March 10, 2005, DOHA issued a notice of hearing scheduling a hearing on April 5, 2005. However, due to caseload considerations, the case was reassigned to me on April 1, 2005. The hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The government offered five documents, which were admitted without objection as Government Exhibits (GE) 1 through 5. The Applicant offered three exhibits, which were admitted without objection as Applicant Exhibits (AE) A through C. I left the record open after the hearing to afford Applicant the opportunity to submit additional documents. The Applicant submitted five additional documents, which were admitted without objection as AE D through AE H. DOHA received the transcript on April 19, 2005.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 31-year-old unmarried man. In August 2000, Applicant was awarded a bachelor of science degree in computer science. Since September 2000, he has been employed by a defense contractor as a software engineer. Tr. 30. Applicant seeks a security clearance to maintain employment with his company. Tr. 31.

The majority of Applicant's debts were incurred while he was in college. During this time, he accepted unsolicited offers for credit cards, incurred debt, and fell behind on his payments. Tr. 35. He mentioned two events that placed him in financial extremis. First, he co-signed and loaned \$2,000.00 to an ex-girlfriend, who was a single mother, to purchase a new automobile. She has only repaid him a small portion of that loan. Tr. 32-33. Second, he lost \$3,400.00 paid by the credit card company to a mechanic who failed to repair his automobile. He has yet to be reimbursed by the mechanic despite having taken him to court. Tr. 36-37. Applicant fell behind on his student loans in 2003. Tr. 31.

The SOR alleges Applicant is in arrears on 11 debts. The table below presents details about the debts alleged in the SOR, their current status, and cites to relevant parts of the record.

Debt	Nature & Amount in SOR	Current Status	Record
Debt 1/SOR ¶ 1.a.	Apartment management company charged off account \$117.00.	Paid/resolved.	Answer to SOR, Tr. 12-15, GE 3.
Debt 2/SOR ¶ 1.b.	Collection agency (two credit cards) collection accounts \$13,577.99.	Settled for lesser amount/resolved.	Answer to SOR, Tr. 15-18, GE 3, AE F & AE G.
Debt 3/SOR ¶ 1.c.	Collection agency (utility company) company charged off account \$283.00.	Paid/resolved.	Answer to SOR, Tr. 18-20, GE E.
Debt 4/SOR ¶ 1.d.	Credit card company charged off account \$368.00.	Paid/resolved.	Answer to SOR, Tr. 20-21, GE 3.
Debt 5/SOR ¶ 1.e.	Insurance company collection account \$102.00.	Disputed/removed from credit report/resolved.	Answer to SOR, Tr. 21-22, AE H.
Debt 6/SOR ¶ 1.f.	Student loan past due \$8,258.00.	Consolidated student loans/current on payments/resolved.	Answer to SOR, Tr. 22-23, GE 3, AE A - C.
Debt 7/SOR ¶ 1.g.	Student loan past due \$3,798.00.	See Debt 6.	See Debt 6.
Debt 8/SOR ¶ 1.h.	Student loan past due \$5,756.00.	See Debt 6.	See Debt 6.
Debt 9/SOR ¶ 1.i.	Student loan past due \$5,887.00.	See Debt 6.	See Debt 6.
Debt 10/SOR ¶ 1.j.	Student loan past due \$3,717.00.	See Debt 6.	See Debt 6.
Debt	Student loan past due \$5,734.00.	See Debt 6.	See Debt 6.

11/SOR ¶ 1.k.		
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As the above chart reflects, Applicant has paid or otherwise resolved all past debts. He consolidated his six student loans and is current on payments.

The SOR alleged Applicant deliberately provided false information on his security clearance application dated October 10, 2000, in response to Question 38 by indicating he was delinquent on only one debt over 180 days in the last seven years, and Question 39 responding that he was not currently over 90 days delinquent on any debt, SOR ¶ 2.a. Applicant testified he was not a good record keeper. However, Applicant did list the one debt he had knowledge of thereby putting the government on notice that his financial situation was less than perfect. He testified, "As far as the omission that I answered incorrectly, I answered it to the best of my ability at that time in 2000 when I first had this report done. Knowing you have debt and knowing that somebody is after you for that debt is two different things, and I probably should have assumed that one was not the other." Tr. 47.

Applicant submitted a monthly budget reflecting a total monthly income of \$2,500.00, total monthly expenses of \$2,130.00, with a net monthly remainder of \$370.00. Applicant applied for and qualified for a home loan in January 2001, and purchased his first home for \$41,000.00. He estimates its current value to be approximately \$155,000.00. He remains current on his house payments. Tr. 37-38.

There is no evidence of any disciplinary or derogatory information regarding Applicant's employment record during his approximate five years of employment.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, administrative judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

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. 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.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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." Executive Order 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.

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of

judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

Guideline F - Financial Considerations

In the SOR, DOHA alleged Applicant had 11 debts (¶¶ 1.a. through 1.k.). *The Concern*: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The government established its case under Guideline F by Applicant's admissions and evidence submitted. Applicant's inability to satisfy his outstanding financial obligations gives rise to Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1. (*A history of not meeting financial obligations*); and FC DC E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*).

Applicant has paid or resolved all debts alleged. Applicant learned a painful lesson by falling victim to the availability of easy credit while in college. Being an independent student and not particularly sophisticated in financial affairs, he found himself in financial difficulty when he used credit to assist a single mother ex-girlfriend purchase a car and used credit to pay for expensive automobile repairs that were not performed correctly.

Applicant has paid or otherwise resolved the 11 debts identified in the SOR thus mitigating financial consideration concerns. This corrective action triggers Financial Considerations Mitigating Condition (FC MC) E2.A6.1.3.6. (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant's unrecovered loan to his ex-girlfriend to purchase an automobile, and the automobile mechanic who failed to repair his automobile after being paid are unfortunate life experiences, however, they do not qualify for FC E2.A6.1.3.3 (*The conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)*). Although the latter Mitigating Condition is not applicable, the former certainly is. In short, Applicant has aggressively tackled his past financial problems, purchased a home, and is clearly on the road to financial stability.

Guideline E - Personal Conduct

In the SOR, DOHA alleged under Guideline E, personal conduct that Applicant deliberately falsified material facts on his security clearance application by failing to list more than one debt when asked if he had ever been over 180 days delinquent on any debts in the last seven years, and failing to list any debts when asked if he was currently over 90 days delinquent on any debts, (¶ 2.a.).

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Posing potential security concerns are Applicant's failure to fully disclose debts in arrears over 180 days in the last seven years, and failure to list current delinquent debts over 90 days. Applicant credibly testified he was not a good record keeper, as evidenced by the way he managed his finances in college. Like many young adults who left home and found themselves independent, the transition of managing his personal finances were challenging. Two examples cited of Applicant's financial naivete were loaning money to an ex-girlfriend to purchase an automobile, and using credit to pay

for unsuccessful expensive automobile repairs. Unfortunately, Applicant did not have the assets at the time to repay either debt. Applicant was forthcoming and complete on all other aspects pertaining to his past financial problems during the security-clearance process. His failure to provide requested information is attributable to an honest mistake.

Applicant's explanation for his failure to provide complete financial data coupled with him having provided at least partial information, put the government on notice about his financial history and is persuasive enough to avert inferences of knowing and wilful omission. There being no misconduct substantiated, no need to show extenuation and mitigation arises. Little could be gained by Applicant from a wilful misrepresentation given the fact he had already provided negative information about his financial history and was very forthcoming during the investigation process. While Applicant could reasonably have been expected to be more diligent when responding to this inquiry, his judgment lapses are not enough to impute knowing and wilful falsification under Guideline E.

Based on the totality of the circumstances to include his documented actions coupled with his credible testimony, I find for Applicant on SOR ¶¶ 1., 1.a. through 1.k, and ¶ 2., 2.a.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a.-k.: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Robert J. Tuidor

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.