

KEYWORD: Financial; Personal Conduct; Criminal Conduct

DIGEST: Applicant has numerous delinquent debts, is financially overextended, and has no plan to resolve his debts. He falsified his security clearance application by intentionally failing to disclose two alcohol-related convictions, and he intentionally omitted those two convictions in a signed, sworn statement to a security investigator. Security concerns based on financial considerations, personal conduct, and criminal conduct are not mitigated. Clearance is denied.

CASE NO: 03-15855.h1

DATE: 06/19/2006

DATE: June 19, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-15855

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Francisco Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has numerous delinquent debts, is financially overextended, and has no plan to resolve his debts. He falsified his security clearance application by intentionally failing to disclose two alcohol-related convictions, and he intentionally omitted those two convictions in a signed, sworn statement to a security investigator. Security concerns based on financial considerations, personal conduct, and criminal conduct are not mitigated. Clearance is denied.

STATEMENT OF THE CASE

On December 30, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a security clearance. The SOR alleges security concerns under Guidelines F (Financial Considerations), E (Personal Conduct), and J (Criminal Conduct).

Applicant received the SOR on January 31, 2005, and answered in an unsworn, undated document. The SOR was returned to him to be sworn, and he received it on February 23, 2005, but he did not return it until September 29, 2005. The administrative file reflects numerous inquiries from DOHA about his failure to return his answer the SOR. He did not submit his sworn answer until he was informed his case would be defaulted. ⁽¹⁾ When he finally returned his sworn answer, he failed to respond to SOR ¶ 1.t. He faxed his response to ¶ 1.t to DOHA on October 20, 2005. ⁽²⁾ Applicant admitted all the debts alleged under Guideline F, denied falsifying his SF 86 as alleged under Guidelines E, and J, admitted making a false statement to a security investigator as alleged under Guidelines E and J, and requested a hearing. The case was assigned to an administrative judge on January 6, 2006, and reassigned to me on February 6, 2006, based on workload. On February 13, 2006, DOHA issued a notice of hearing setting the case for March 31, 2006. The case was heard as scheduled. DOHA received the transcript (Tr.) on April 11, 2006.

PROCEDURAL ISSUES

At the hearing, Applicant stated he was unaware of his right to be represented by a lawyer or personal representative at his own expense. He admitted receiving Department Counsel's "discovery letter" dated January 4, 2006, advising him of his right to retain a lawyer or obtain the assistance of a personal representative; but he stated he did not read the letter because he had just been released from the hospital.⁽³⁾ He also stated, however, that he would not have hired a lawyer even if he had known of his right to do so.⁽⁴⁾

As I began to explain the procedures we would follow during the hearing, Applicant declared: "I had no idea that the decision was going to be in this type of format. I think I do need some help." I suggested we finish discussing the procedures, and he agreed.⁽⁵⁾ As I neared the end of my procedural discussion, Applicant stated he was "totally unprepared," did not bring any evidence with him, and "didn't have a clue what type of procedure [he] was walking into."⁽⁶⁾

Applicant admitted he was recovered sufficiently from his hospitalization to return to work in February, but he asserted he did not read any of the correspondence from Department Counsel. The administrative file reflects he received the notice of hearing on February 23, 2006, along with a 4-page document entitled, "Preliminary Guidance for DOHA Industrial Security Clearance Hearings." The document informed Applicant his hearing was an adversarial hearing, that the government would be represented by an attorney, that he had the option of being represented by an attorney, and that he should be prepared to present his evidence at the hearing. When I asked him if he was prepared for the hearing, he admitted he was able to explain how the debts occurred and why they were not paid, prepared to explain his answers on the SF 86, and prepared to answer questions from Department Counsel and me. He stated he found the proceedings frightening because his family and his future depended on the outcome of the hearing. He persisted in stating he would like to have the assistance of a lawyer.⁽⁷⁾

I refused to delay the hearing, because Applicant had not demonstrated any diligence in preparing for the hearing, and I did not believe he was as ignorant of the nature and purpose of the hearing as he claimed. I concluded his attempt to delay the hearing was a continuation of the pattern of procrastination and carelessness he had demonstrated since receiving the SOR. However, I informed Applicant I would keep the record open until April 17, 2006, to enable him to submit evidence about his job performance, his military record, and his efforts to resolve his debts.⁽⁸⁾ At the conclusion of the hearing, I enumerated the specific documentation he needed to provide.⁽⁹⁾ I informed him he could ask for more time to obtain and submit evidence if he needed it.⁽¹⁰⁾ Applicant did not submit any post-hearing evidence, nor did he ask for additional time to obtain and submit evidence.

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I make the following findings:

Applicant is a 43-year-old computer technician for a defense contractor. He has worked for his present employer since February 2001. He has two years of college and an associate's degree.⁽¹¹⁾ He served on active duty in the U.S. Army from May 1982 to January 1998. He received a security clearance in June 1986, while in the Army.

Applicant received \$27,000 in severance pay when he was discharged from the Army in January 1998. He was in a military specialty where he could not be promoted, and he elected to take a "buyout" and be honorably discharged.⁽¹²⁾ He used half of this pay to build a wheelchair ramp on his disabled mother-in-law's house and the remainder for living expenses.⁽¹³⁾

Applicant was unemployed from the time of his discharge from the Army until March 2000. He testified the garnishment for unpaid taxes (SOR ¶ 1.t) arose when he received unemployment compensation for six months after being discharged from the Army, with no taxes withheld. He testified he owed almost \$4,000 in taxes, which was collected in full after his pay was garnished for four months in 2004.⁽¹⁴⁾ He borrowed \$3,000 from his 401(k) retirement account to pay bills while his pay was being garnished.⁽¹⁵⁾ He offered no documentation of these events during or after the hearing. None of his credit reports reflect a tax lien or garnishment.

Applicant executed a SF 86 on August 1, 2002. Applicant answered "yes" to question 24, asking if he had ever been charged with or convicted of any offenses related to alcohol or drugs. He disclosed an arrest for driving while intoxicated in May 1985, but he did not disclose an arrest and conviction for driving under the influence (DUI) in October 1986 and an arrest and conviction for DUI in November 1989.

Applicant answered "no" to question 37, asking if he had any unpaid judgments against him in the last seven years. He answered "yes" to question 38, asking if he had any debts more than 180 days delinquent in the last seven years, and he disclosed one credit card debt for \$300. He answered "no" to question 39, asking if he was currently more than 90 days delinquent on any debt.⁽¹⁶⁾ At the time he executed the SF 86, he had an unpaid judgment against him for \$750, and his credit reports reflected seventeen debts totaling about \$15,218 that had been charged off as bad debts or placed for collection.⁽¹⁷⁾

Applicant was interviewed by a security investigator about his finances, requested an opportunity to return at a later date after conferring with his spouse, and then failed to appear for two scheduled interviews. He finally was interviewed and executed a signed, sworn statement on July 1, 2004. [\(18\)](#)

During the July 2004 interview, Applicant admitted and explained the May 1985 arrest. He also stated: "The above incident, which occurred nearly 20 years ago, is the extent of my adverse involvement with law enforcement agencies and excessive use of alcoholic beverages. I have had no further involvement in similar incidents from the above date to present." [\(19\)](#)

In his answer to the SOR, he admitted falsifying his statement to the investigator, and he admitted the arrests and convictions in October 1986 and November 1989 that were not disclosed. At the hearing, he admitted both of the undisclosed DUI arrests, but he denied he was intoxicated when those arrests occurred, and claimed he was unaware he had been charged with DUI. According to Applicant, he was detained by the police but his blood alcohol level was well below the legal limit. He testified his wife paid his fine and he was released, but he insisted he was unaware of any DUI charges. [\(20\)](#)

In the July 2004 interview, Applicant also admitted 25 delinquent debts totaling \$13,507. He attributed his financial situation to "total lack of judgment and unwise spending habits on the part of myself, my spouse, and a daughter." He promised to pay the smaller debts "within the next couple months" and initiate a repayment plan for the remaining debts during a credit counseling service. [\(21\)](#)

In responses to DOHA interrogatories on August 30, 2004, Applicant disputed four debts (SOR ¶¶ 1.a, 1.f, 1.h, 1.k), promised to pay off four in September 2004 (SOR ¶¶ 1.g., 1.j, 1.l, 1.m) and three more in October 2004 (SOR ¶¶ 1.c, 1.e, 1.n), and stated that four were being resolved through a credit counseling agency (SOR 1.d, 1.i, 1.o, 1.p). [\(22\)](#)

Applicant testified the delinquent utility bill for \$1,141 (SOR ¶ 1.a) was in his name but was for his daughter's apartment. He claimed he was unaware of the bill until he was interviewed by the security investigator, because the bills were sent to his daughter's address. He testified he contacted the utility company in June 2005 and attempted to negotiate a payment arrangement, but the company demanded payment in full. [\(23\)](#) The debt is unpaid.

A debt to a financial institution for \$2,279 was charged off as a bad debt in March 1998 (SOR ¶ 1.b). Applicant testified his wife talked to a "bill consultant" about this debt. Although his answer to the DOHA interrogatories stated he would start monthly payments starting in October 2004, no payments have been made. [\(24\)](#)

A debt to a laundry for two bad checks totaling \$160 was placed for collection in March 2000 (SOR ¶ 1.c). Applicant testified he paid this debt between February and July 2005. He presented no documentation at the hearing but stated he

had it at home. [\(25\)](#) He presented no evidence of payment after the hearing, even though I kept the record open for post-hearing submissions.

SOR ¶ 1.d alleges a \$1,531 debt to a motel. Applicant testified he stayed in the motel in the winter of 1999 while working for a building company. The company promised to pay the motel bill. After the motel contacted Applicant about the unpaid bill, he notified his supervisor. He received no bills or past due notices from the motel. He and his wife decided to pay off the bill in October 2004 but were financially unable. He has not disputed the bill or the credit report, and he testified he was unaware he could dispute a credit report entry. [\(26\)](#)

Applicant testified he paid the delinquent \$183 grocery bill alleged in SOR ¶ 1.e. He stated he had documentary proof of payment at home, but he did not submit any post-hearing documentary evidence. [\(27\)](#)

In his response to DOHA interrogatories, Applicant disputed an \$89 collection account delinquent since November 2000 (SOR ¶ 1.f). [\(28\)](#) At the hearing, he testified he should have paid the debt but he overlooked it. [\(29\)](#)

Applicant admitted two delinquent debts for cable service in the amounts of \$225 and \$675 (SOR ¶¶ 1.g and 1.h). He testified he neglected to turn in four cable boxes after he terminated the service in 2000, and the cable boxes disappeared when he was evicted from his house in 2002. [\(30\)](#) The debts are unpaid. [\(31\)](#)

Applicant testified he is paying \$50 a month on a delinquent department store debt for \$1,744, placed for collection in April 2001 (SOR ¶ 1.i). He stated he would provide documentation after the hearing, but he submitted nothing. [\(32\)](#)

Applicant testified he paid off the \$37 bad check issued to a food store (SOR ¶ 1.j). [\(33\)](#) He provided no documentation during or after the hearing.

A judgment was entered against Applicant in April 2001 for unpaid rent (SOR ¶ 1.k). [\(34\)](#) Applicant admitted this debt in his interview with the security investigator. [\(35\)](#) In his response to DOHA interrogatories he disputed the debt. [\(36\)](#) The credit report dated January 4, 2006, reflected another judgment for unpaid rent in January 2001. [\(37\)](#) The credit report dated March 13, 2006, reflected four judgments for unpaid rent in September 1999, January 2000, November 2000, and April 2001. [\(38\)](#) Applicant testified the judgments were entered when his rent payments were late. He testified the rent had been paid, and that the property managers had agreed to notify the court the judgment had been satisfied. [\(39\)](#) He

provided no documentation at or after the hearing.

Applicant testified the debt to a laundry for \$36 (SOR 1.1) was paid.⁽⁴⁰⁾ He provided no documentation during or after the hearing.

In his response to the DOHA interrogatories, Applicant admitted a debt to a tire store for \$282, placed for collection in May 2002 (SOR 1.m), and he stated he was making payments and the debt would be paid off in September 2004.⁽⁴¹⁾ At the hearing, he disputed this debt, testifying he never bought tires from that store. He admitted he had done nothing to resolve the debt. When challenged on cross-examination, he testified his wife wrote in the answer to the interrogatories and "maybe she was paying on it."⁽⁴²⁾

In his response to interrogatories, Applicant stated a delinquent water bill for \$188 (SOR ¶ 1.n) would be paid by October 2004.⁽⁴³⁾ At the hearing, he testified he had not paid the debt or contacted the water department.⁽⁴⁴⁾

In his response to interrogatories, Applicant stated he had made payment arrangements for a credit card debt of \$1,196 (SOR ¶ 1.o).⁽⁴⁵⁾ At the hearing, he admitted the debt was unpaid.⁽⁴⁶⁾

In his responses to interrogatories, Applicant disputed a debt to a financial institution for \$3,741 (SOR ¶ 1.p).⁽⁴⁷⁾ At the hearing, he testified he did not recognize the debt, but he had done nothing to dispute it because he did not know he could.⁽⁴⁸⁾

Applicant admitted the \$570 debt to a women's intimate apparel store (SOR ¶ 1.q). He testified he was unaware of the debt because he trusted and was totally dependent on his wife to take care of the family finances.⁽⁴⁹⁾

Applicant admitted a delinquent debt of \$1,141 to a department store (SOR ¶ 1.r). As of the date of the hearing, he had not contacted the creditor or made any effort to resolve it.⁽⁵⁰⁾

Applicant depended on his wife to manage the family finances while he was in the Army and during his civilian career until September 2005.⁽⁵¹⁾ His wife wrote in the answers to the DOHA interrogatories and he signed them.⁽⁵²⁾ He now

handles the bills for the family. (53)

In July 2004, Applicant submitted a personal financial statement showing net monthly income of about \$3,500, monthly debts of \$600, no payments on delinquent debts, and a remainder of \$2,162. (54) At the hearing, he testified that he and his wife now have a monthly income of about \$2,100, with their expenses unchanged. Their income has been reduced because Applicant's daily work schedule was reduced from eight hours to six because of his lack of a clearance. His wife's previous job was temporary and she is now working only part time. His wife had knee surgery and is unable to work full time. (55) Applicant has about \$200 in savings and \$20,000 in a 401(k) retirement account. He testified he has a budget but it is not written down. He gives his wife money to pay the household expenses. Anything left over goes into savings, but usually there is nothing left at the end of the month. (56)

Applicant has never obtained financial counseling. Although he referred to a "bill consultant" in his responses to DOHA interrogatories, only his wife had contacted the "bill consultant." Applicant did not know the consultant's name. (57)

Applicant was hospitalized with a severe intestinal disorder from October 2005 until December 2005 and unable to return to work until February 2006. (58) Most of his medical expenses were paid by medical insurance, but he had no income while he was unable to work. (59)

POLICIES

"[N]o 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 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." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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 (App. Bd. Dec. 19, 2002).

The Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must

be a fair, impartial, and 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.

In evaluating an applicant's conduct, 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 or recurrence. Directive ¶¶ E2.2.1.1. through E2.2.1.9.

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in persons with access to classified information. However, 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 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 which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[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." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

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; *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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

Guideline F (Financial Considerations)

Under this guideline, "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Directive ¶ E2.A6.1.1. A person who fails or refuses to pay long-standing debts or is financially irresponsible may also be irresponsible or careless in his or her duty to protect classified information. Two disqualifying conditions (DC) under Guideline F could raise a security concern and may be disqualifying in this case. DC 1 applies where an applicant has a history of not meeting his or her financial obligations. Directive ¶ E2.A6.1.2.1. DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3.

Applicant has refuted some of the alleged debts. I found Applicant's explanation for the unpaid motel bill in SOR ¶1.d plausible and credible. It was one of the few debts about which his testimony was specific and certain. I resolve ¶ 1.d. in his favor.

Applicant testified the debts alleged in SOR ¶¶ 1.c, 1.e, 1.i, 1.j, 1.l, and 1.p were paid, but he produced no documentation. It was not clear at the hearing whether he was testifying from personal knowledge or relying on his wife's representations. The debts alleged in ¶¶ 1.c, 1.e, 1.j, and 1.l still appeared on his latest credit report dated March 13, 2006. I conclude he has not refuted these allegations. However, the debts alleged in ¶¶ 1.i and 1.p no longer appear on his credit report, and I resolve those two debts in his favor.

Applicant testified he had made the overdue rent payments and was assured by the property managers that the unpaid judgments would no longer appear on his record. I am satisfied he paid some of the judgments, but not all of them. The unpaid judgment alleged in ¶ 1.k appears on his latest credit report dated March 13, 2006. In the absence of documentary evidence of payment, I conclude he has not refuted the allegation of an unpaid judgment in SOR ¶ 1.k.

Applicant's explanation for the garnishment for unpaid taxes alleged in SOR ¶ 1.t was specific, certain, plausible, and credible. No garnishments or tax liens appear on any of his credit reports. I resolve ¶ 1.t in his favor.

The evidence of unresolved delinquent debts establishes DC 1 and DC 3. Since the government produced substantial evidence to establish DC 1 and DC 3, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. Applicant has the burden of proving a mitigating condition, and the burden of disproving it is never shifted to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

A security concern based on financial problems can be mitigated by showing the delinquent debts were not recent (MC 1) or an isolated incident (MC 2). Directive ¶ E2.A6.1.3.1., E2.A6.1.3.2. Applicant has multiple delinquent debts that are not resolved. I conclude MC 1 and MC 2 are not established.

Security concerns arising from financial problems can be mitigated by showing they are the result of conditions beyond the person's control (MC 3). Directive ¶ E2.A6.1.3.3. Even if Applicant's financial difficulties initially arose due to circumstances outside his control, it is appropriate to consider whether he acted in a reasonable manner when dealing with his financial difficulties. ISCR Case No. 02-02116 at 4 (App. Bd. Sep. 25, 2003). Applicant has encountered several circumstances beyond his control. He was unemployed for two years after leaving the Army. His daughter neglected to pay her utility bills, leaving Applicant responsible as a co-signer on the account. He trusted his wife to manage the family finances and was unaware of his precarious financial situation. His wife's ability to work is limited because of medical problems. He was unable to work from October 2005 to February 2006.

Although Applicant has been confronted with circumstances beyond his control, he not responded reasonably. He admitted to a security investigator that his debts were due to "total lack of judgment and unwise spending on the part of myself, my spouse, and a daughter." He has never sought financial counseling. He reported a net monthly remainder of more than \$2,000 in July 2004, but he admitted nothing had been done to resolve many of his delinquent debts. He paid no attention to the family finances until September 2005, nine months after he received the SOR. Although he took over the family finances in September 2005, he was unable at the hearing to explain the status of several delinquent obligations. He has never taken action to resolve disputed debts. Even though he was given two weeks after the hearing to submit documentation of his efforts to resolve debts, he submitted nothing. I conclude Applicant has not carried his burden of establishing MC 3.

A mitigating condition (MC 4) applies when an applicant "has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control." Directive ¶ E2.A6.1.3.4. MC 4 is not established because Applicant has not sought financial counseling, and the problem is not under control.

A security concern arising from financial problems can be mitigated by showing a good-faith effort to resolve debts (MC 6). Directive ¶ E2.A6.1.3.6. The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. Applicant has repeatedly promised to resolve his debts but has not. As indicated under MC 3, he has been neither reasonable nor prudent. His failure to produce any documentary evidence, after promising to do so at the hearing, is indicative of his haphazard, disorganized, and neglectful approach to his financial situation. Applicant has not carried his burden of establishing MC 6.

Applicant is financially overextended. He has neglected his financial situation for several years, and he has no clear plan to improve it. After weighing the disqualifying and mitigating conditions and evaluating the evidence in the context of the whole person, I conclude he has not mitigated the security concern based on financial considerations.

Guideline E (Personal Conduct)

Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1. A disqualifying condition (DC 2) under this guideline may be established by "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 employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities." Directive ¶ E2.A5.1.2.2. A disqualifying condition (DC 3) also may be established when an applicant deliberately provides false or misleading information concerning relevant and material matters to an investigator or security official in connection with a personnel security or trustworthiness determination. Directive ¶ E2.A5.11.2.3.

When a falsification allegation is controverted, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

In his answer to the SOR, Applicant admitted the underlying conduct, his guilty pleas, and the disposition of the charges on both occasions, but he denied falsifying his answer to question 24 on his SF 86 (SOR ¶ 2.a). He admitted deliberately failing to disclose the 1986 and 1989 offenses during his interview with the security investigator in July 2004 (SOR ¶ 2.b). At the hearing he attempted to repudiate that admission, testifying that on these two occasions his blood alcohol level was well below the legal limit, he was briefly detained by the police, he was released after his wife paid the fines, and he was unaware he had been charged with any alcohol-related offenses. I found his repudiation implausible and unconvincing. In his answer to the SOR, he admitted not only the underlying conduct, but also his guilty pleas and the consequences of his convictions. On both occasions he paid substantial fines, and on both occasions he was prohibited from driving on a military installation for a year. On the second occasion, he was placed on supervised probation for 12 months. In light of his admitted guilty pleas and the consequences, I find his assertion that he was unaware of any alcohol-related charges on these two occasions unconvincing. Accordingly, I conclude DC 2 and DC 3 are established with respect to his answer to question 24 on the SF 86 and his statement to the security investigator in July 2004.

Applicant also denied falsifying his answers to questions 37, 38, and 39, regarding his financial record. The record as a whole, including the testimony at the hearing, establishes that Applicant was totally uninvolved in family finances at the time he executed his SF 86. While he was grossly negligent, negligence does not equate to intentional falsification. I conclude Application has refuted the allegations in SOR ¶¶ 2.c, 2.d, and 2.e.

Since the government produced substantial evidence to establish DC 2 and DC 3, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. Two mitigating conditions (MC) are relevant to this case. MC 2 applies when the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily. Directive ¶ E2.A5.1.3.2. MC 3 applies when the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts. Directive ¶ E2.A5.1.3.3. Neither mitigating condition is established. The falsification was not isolated, because Applicant falsified his SF 86 and repeated the falsification during his subsequent interview with a security investigator. It was recent, pertaining to his current security clearance application. Applicant made no efforts to correct the falsification until he

received the SOR, when he admitted the two more recent alcohol-related arrests.

After considering the disqualifying and mitigating conditions and evaluating the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concern based on personal conduct.

Guideline J (Criminal Conduct)

A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1. Disqualifying conditions may be based on allegations or an applicant's admission of criminal conduct, whether or not charged (DC 1). Directive ¶ E2.A10.1.2.1. A single serious crime or multiple lesser offenses may also be disqualifying (DC 2). Directive ¶ E2.A10.1.2.2. It is a felony, punishable by a fine or imprisonment for not more than five years, or both, to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the jurisdiction of the executive branch of the Government of the United States. 18 U.S.C. § 1001. Security clearances are within the jurisdiction of the executive branch of the Government of the United States. *See Egan*, 484 U.S. at 527. A deliberately false answer on a security clearance application or in response to questions by a security investigator is a serious crime within the meaning of this guideline. Applicant's false answer to question 24 on his SF 86 and his false statement to a security investigator establish DC 1 and DC 2.

Criminal conduct can be mitigated by showing it was not recent (MC 1), an isolated incident (MC 2), or there is clear evidence of successful rehabilitation (MC 6). Directive ¶¶ E2.A10.1.3.1., E2.A10.1.3.2., E2.A10.1.3.6. For the reasons discussed above, I conclude neither MC 1 nor MC 2 are established, because Applicant's conduct was recent and was not an isolated incident.

The issue under MC 6 is whether there has been a significant period of time without any evidence of misconduct, and whether the evidence shows changed circumstances or conduct. "Only with the passage of time will there be a track record that shows whether a person, through actions and conduct, is willing and able to adhere to a stated intention to refrain from acting in a way that the person has acted in the past." ISCR Case No. 97-0727, 1998 DOHA LEXIS 302 at *7 (App. Bd. Aug. 3, 1998).

I conclude MC 6 is not established. Applicant continued up to and through the hearing to excuse his conduct by claiming ignorance of the facts. He continued through the hearing to deny facts he previously admitted. He has not changed his conduct. To the contrary, he has continued to give contradictory information throughout the processing of his security application. After considering the absence of mitigating circumstances and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concern based on criminal conduct.

FORMAL FINDINGS

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

Paragraph 1. Guideline F (Financial) :AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m: Against Applicant

Subparagraph 1.n: Against Applicant

Subparagraph 1.o: Against Applicant

Subparagraph 1.p: For Applicant

Subparagraph 1.q: Against Applicant

Subparagraph 1.r: Against Applicant

Subparagraph 1.s: Against Applicant

Subparagraph 1.t: For Applicant

Paragraph 2. Guideline E (Personal Conduct) AGAINST APPLICANT

Subparagraph 2.a.(1): Against Applicant

Subparagraph 2.a.(2): Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: For Applicant

Subparagraph 2.e: For Applicant

Paragraph 3. Guideline J (Criminal Conduct): AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

DECISION

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

LeRoy F. Foreman

Administrative Judge

1. Personnel Security Specialist Form and handwritten note dated October 12, 2005; Applicant's receipt for SOR dated February 23, 2005; and handwritten notes dated September 15, 2005, September 19, 2005, September 20, 2005, September 27, 2005, and October 11, 2005.
2. Handwritten note on page 3 of Applicant's Answer to the SOR; faxed copy of page 3 of answer to SOR.
3. Hearing Exhibit I.
4. Tr. 6-8.
5. Tr. 12.
6. Tr. 15.
7. Tr. 21.
8. Tr. 22, 105.
9. Tr. 93-95.
10. Tr. 95.
11. Tr. 10.
12. Government Exhibit 2 at 4.
13. Tr. 77-78.
14. Tr. 79-81
15. Tr. 71-72.
16. GX 1 at 8.
17. GX 4; GX 5.
18. GX 2 at 4.
19. GX 2 at 3.
20. Tr. 36-37, 84-85.
21. *Id.* at 1-2.
22. GX 3.
23. Tr. 39-42.
24. Tr. 43-44.
25. Tr. 44-45.
26. Tr. 46-48.

27. Tr. 50-51.
28. GX 3 at 4.
29. Tr. 52.
30. Tr. 53-54.
31. Tr. 56.
32. Tr. 57.
33. Tr. 58.
34. GX 5 at 9.
35. GX 2.
36. GX 3 at 7.
37. GX 6 at 1.
38. GX 7 at 3.
39. Tr. 60-63.
40. Tr. 63-64.
41. GX 3 at 1.
42. Tr. 65.
43. GX 3 at 3.
44. Tr. 66.
45. GX 3 at 2.
46. Tr. 66.
47. GX 3 at 2.
48. Tr. 69.
49. Tr. 75-76.
50. Tr. 79.
51. Tr. 76, 92.
52. Tr. 43-44.
53. Tr. 73.
54. GX 2 at 6.
55. Tr. 74-75.

56. Tr. 71.

57. Tr. 90.

58. Tr. 18.

59. Tr. 89.