

KEYWORD: Financial; Personal Conduct; Criminal Conduct

DIGEST: The security concern raised by Applicant's history of financial problems is mitigated because (1) many of the conditions that resulted in the financial problems were matters largely beyond his control, and (2) he has made a good-faith effort to pay or otherwise resolve his financial problems. Applicant is unable, however, to rebut, explain, extenuate, or mitigate the falsification of his security-clearance application wherein he deliberately omitted relevant information about his financial history. Clearance is denied.

CASENO: 04-00096.h1

DATE: 05/31/2006

DATE: May 31, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-00096

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL H. LEONARD**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

Kenneth R. Rhoad, Esq.

**SYNOPSIS**

The security concern raised by Applicant's history of financial problems is mitigated because (1) many of the conditions that resulted in the financial problems were matters largely beyond his control, and (2) he has made a good-faith effort to pay or otherwise resolve his financial problems. Applicant is unable, however, to rebut, explain, extenuate, or mitigate the falsification of his security-clearance application wherein he deliberately omitted relevant information about his financial history. Clearance is denied.

**STATEMENT OF THE CASE**

This case rose when the Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On February 24, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F for financial considerations, Guideline E for personal conduct (falsification), and Guideline J for criminal conduct related to the falsification allegations. Applicant replied to the SOR on May 13, 2005, and requested a hearing. The case was assigned to me July 21, 2005. With the agreement of counsel, a notice of hearing was issued scheduling the hearing for October 27, 2005. Due to illness, Applicant's counsel was unavailable for the hearing. With the agreement of counsel, a notice of hearing was issued scheduling the hearing for December 8, 2005. Applicant appeared with counsel and the hearing took place as scheduled. DOHA received the transcript December 16, 2005.

**FINDINGS OF FACT**

In his Answer, Applicant admitted the financial allegations in subparagraphs 1.a-1.f, denied the financial allegations in subparagraphs 1.g and 1.h, and denied the falsification and criminal conduct allegations in subparagraphs 2.a, 2.b, 2.c, and 3.a. His admissions to the SOR allegations are incorporated herein by reference. In addition, I make the following findings of fact.

Applicant is a 46-year-old man who is seeking to obtain a security clearance for his employment with a defense contractor. He has worked as senior engineering technician since September 2002. His duties consist of managing the production of chemical and biological detection equipment. His annual salary is in the range of \$51,000 to \$56,000. His current supervisor describes Applicant in glowing terms, for example: honest, hardworking, dedicated, reliable, and dependable (Exhibit D). Likewise, Applicant's older brother, both in writing (Exhibit E) and in testimony, provided favorable character evidence. This information put in context Applicant's personal history and how he has come to this point in his life.

### *A. The Financial Matters*

From about 1984 to about 1992, Applicant was self-employed in a service business that required him to travel up to 85% of the time. His live-in girlfriend was responsible for bookkeeping, accounting, office management, etc. Although federal tax returns were usually filed, taxes often went unpaid. This resulted in indebtedness for unpaid taxes plus penalties and interest. Applicant was initially unaware of the unpaid taxes because his girlfriend did not inform him. Both his personal relationship and business ended in Spring 1992, when Applicant suffered a fractured ankle leaving him with personal, business, and tax debt. Further complicating his situation was a lack of health insurance resulting in Applicant incurring medical debt.

In September 1995, the IRS filed a tax lien against Applicant for tax years 1988, 1990, and 1993, for a total debt of \$5,033 (Exhibit 8). In December 1998, the IRS filed a tax lien against Applicant for tax years 1991, 1992, and 1996, for a total debt of nearly \$14,000 (Exhibit 7).

Applicant spent the next ten years (1992 to 2002) trying to recover. During the initial five years (1992 to 1997), Applicant experienced several difficulties: (1) a car accident without insurance resulting in a lawsuit and \$1,056 judgment that he eventually satisfied in February 2000; (2) back surgery keeping him out of work for three to four months; and (3) major hernia surgery keeping him out of work for about three months. In 1997, a corporate buyout left him unemployed until he found work with a local manufacturing firm. The next five years (1997 to 2002) saw Applicant experience periodic underemployment and unemployment. Things were so difficult for Applicant that he lived in a camper at a camp ground for a number of years. During this time, the IRS determined Applicant did not earn enough money to garnish his wages.

Since starting his current position in September 2002, Applicant has enjoyed the most employment and financial stability he has had in many years. He has another live-in girlfriend whom he supports financially and he is current with his monthly rental payments for housing. He has a couple of credit cards that are in good standing. For the first time in many years, he bought a car that was not old and used and he is current with his \$412 monthly installment payments.

Concerning the IRS tax debts (SOR subparagraphs 1.a-1.f), Applicant made an offer in compromise to the IRS for \$5,000, in July 2004. The IRS did not accept his offer. Applicant resolved it by paying the sum of \$17,541 in November 2005 (Exhibit A). Applicant obtained the funds via a family loan from his brothers and mother. The understanding is that Applicant has a moral obligation to repay the loan based on his ability to do so. Applicant's intent is to repay the money to his family members.

In addition to the IRS tax debts, Applicant also had a state lien placed against him in June 2004 for \$512 (SOR subparagraph 1.g). The state released the lien in April 2005 (Exhibit C).

Applicant also owed \$211 for a past due medical account (SOR subparagraph 1.h). The debt was paid in April 2005 (Exhibit B).

### ***B. The Falsification Allegations***

On or about October 10, 2002, Applicant completed a security-clearance application (Exhibit 1). In signing the application, Applicant certified his statements were true, complete, and correct to the best of his knowledge and belief and made in good faith, and that he understood that a false statement could be punished under federal law. The application included several questions (Questions 33-39) asking Applicant about his financial history.

In response to Question 36, Applicant denied that in the last seven years he had a lien placed against him for failing to pay taxes or other debts. The question required him to disclose any lien dating back to October 10, 1995. He did not disclose that the IRS placed a lien against him in 1998.

In response to Question 38, Applicant answered yes and disclosed a \$1,600 credit card debt that he had been over 180 days delinquent in the last seven years. He did not disclose the IRS tax debts in response to this question.

In response to Question 39, Applicant denied that he was currently over 90 days delinquent on any debts. He did not disclose the IRS tax debts in response to this question.

Applicant was interviewed by a special agent of the Defense Security Service (DSS) in December 2002 as part of the background investigation. The interview resulted in a sworn statement wherein Applicant addressed various subjects (Exhibit 3). Although the subject of omitting a judgment and an unlisted residential address were discussed, it does not appear that the statement addressed his answers to Questions 36, 38, and 39 of his security-clearance application.

Applicant was interviewed by the DSS a second time in March 2003, and he provided another sworn statement (Exhibit 4). Although the statement does not specifically address Questions 36, 38, and 39, it did address the unlisted IRS tax debts. In his sworn statement, Applicant explained he did not disclose these debts in his security-clearance application because:

[T]hey have been an open wound prior than seven years back. I realized at the time just as I do know than any investigation would have revealed these delinquencies. I misinterpreted the seven year mark as being the criteria for anything that may have shown up as a first occurrence rather than an issue that continued over into the last seven years (Exhibit 2 at 2).

In August 2004, DOHA requested that Applicant respond to interrogatories about his financial history (Exhibit 2). The interrogatories focused on the IRS tax debt and did not address Questions 38 and 39. Applicant was asked to explain why he did not list his federal tax liens in response to Question 36. He explained he completed and submitted his application before he obtained a credit report. He noted that the tax issues had been going on before the seven-year period. He stated that he did not intend to deliberately conceal the information and attributed the mistake to his memory.

In his Answer to the SOR, Applicant denied that he falsified material facts on his security-clearance application. He explained he answered all questions to the best of his ability and understanding.

Applicant also addressed these allegations during his hearing testimony. Concerning Question 36 and the federal tax liens, he explained he did not list the September 1995 tax lien because he thought it was close or beyond the seven-year period (R. 76-77). His memory was correct as that lien was about one month beyond the seven-year-period. Concerning the second tax lien filed in December 1998, he initially explained that he was unaware of it (R. 77-78). He later admitted that he believed he became aware of the 1998 tax lien when it was filed, because he was told about the liens by his employer in both cases (R. 80). Concerning Questions 38 and 39, Applicant explained that he knew of the tax debts when he completed his security-clearance application, but he did not think he had to report the tax debts because, with the exception of the 1996 tax debt that he was unaware of, the tax debts were beyond the seven-year period (R. 80-81). He now acknowledges his reading of the question was mistaken.

## **POLICIES**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

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 those persons to whom it grants access to classified information. The decision to deny a person a security

clearance is not a determination of an applicant's loyalty.<sup>(2)</sup> Instead, it is a determination that the applicant has not met the strict guidelines the President has established for granting a clearance.

## **BURDEN OF PROOF**

The only purpose of a security-clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(3)</sup> There is no presumption in favor of granting or continuing access to classified information.<sup>(4)</sup> The government has the burden of presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted.<sup>(5)</sup> An applicant is responsible for presenting witnesses and other evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>(6)</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(7)</sup>

As noted by the Supreme Court in *Department of Navy v. Egan*, "it should be obvious that no one has a 'right' to a security clearance," and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(8)</sup> Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

## **CONCLUSIONS**

Under Guideline F, <sup>(9)</sup> a security concern typically exists for two different types of situations--significant unpaid debts or unexplained affluence. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Some people encounter financial problems through no fault of their own. For others, financial problems appear to be part of a general tendency toward irresponsibility that is a security concern.

Here, based on the record evidence as a whole, the government established its case under Guideline F. The two federal tax liens and associated debts for unpaid taxes, the state tax lien and the associated debt for unpaid taxes, and the past due medical account demonstrate a history of not meeting financial obligations as well as inability or unwillingness to pay one's just debts. <sup>(10)</sup> These matters, taken together, raise a security concern under the guideline.

I reviewed the mitigating conditions under the guideline and conclude Applicant has mitigated the security concern. It's clear that Applicant experienced a difficult period in his life that has taken hard work and much time to get back on his feet. In other words, his financial problems are not solely the result of his own making. The failed business, the breakup of his relationship with his girlfriend and business partner, and the periods of unemployment and underemployment for various reasons contributed to his financial problems. <sup>(11)</sup> In addition, Applicant receives credit in mitigation for his efforts to repay or otherwise resolve his debts. <sup>(12)</sup> The federal tax debts are now resolved, albeit with assistance from his family. Also, the state tax debt and the past due medical account are paid. He appears to be on relatively stable financial footing for the first time in many years. Taken together, Applicant has made substantial efforts to address his financial problems and his efforts are sufficient to mitigate the security concern. Accordingly, Guideline F is decided for Applicant.

Personal conduct under Guideline E <sup>(13)</sup> is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance or in other official matters is a security concern. It is deliberate if it is done knowingly and willfully.

An omission of relevant and material information is not deliberate if the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or genuinely thought the information did not need to be reported.

Here, based on the record evidence as a whole, the government established its case under Guideline E. The record evidence establishes that Applicant deliberately provided false answers in response to Questions 36, 38, and 39 of his security-clearance application. His explanations to the contrary are not credible. First, Applicant admitted during his hearing testimony that he received notice of the 1998 tax lien from his employer. Accordingly, he was obliged to disclose it in response to Question 36 as it was within the seven-year period. Second, given the gravity of his ongoing federal tax problems, he could not have reasonably believed that he did not have to report the debts in response to Questions 38 and 39. Indeed, nowhere in the application did Applicant report his federal tax debts. Third, concerning his explanations, there are just too many inconsistencies that do not add up, which further undermines his credibility. Given <sup>(14)</sup>

these circumstances, DC 2 applies against Applicant.

I reviewed the mitigating conditions under Guideline E and conclude none apply. Falsification of a security-clearance application is a serious matter, not easily mitigated or extenuated. Considering the record evidence as a whole, Applicant failed to mitigate the security concern stemming from his falsifications. Accordingly, Guideline E is decided against Applicant.

For the same reasons, the related criminal conduct security concern under Guideline J<sup>(15)</sup> is decided against Applicant. His three false answers on his security-clearance application are violations of federal criminal law, 18 U.S.C. § 1001, otherwise known as making a false statement within the jurisdiction of a federal agency. No mitigating conditions apply. Accordingly, Guideline J is decided against Applicant.

To conclude, Applicant has not met his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I have considered the whole-person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive.

### **FORMAL FINDINGS**

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

SOR ¶ 1-Guideline F: For Applicant

Subparagraphs a-h: For Applicant

SOR ¶ 2-Guideline E: Against Applicant

Subparagraphs a-c: Against Applicant

SOR ¶ 3-Guideline J: 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 or continue a security clearance for Applicant. Clearance is denied.

Michael H. Leonard

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Executive Order 10865, § 7.
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
5. Directive, Enclosure 3, Item E3.1.14.
6. Directive, Enclosure 3, Item E3.1.15.
7. Directive, Enclosure 3, Item E3.1.15.
8. 484 U.S. at 528, 531 (1988).
9. Directive, Enclosure 2, Attachment 6.
10. E2.A6.1.2.1. A history of not meeting financial obligations;" and E2.A6.1.2. 3. Inability or unwillingness to satisfy debts.
11. 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).
12. E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.
13. Directive, Enclosure 2, Attachment 5.
14. 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 employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

15. Directive, Enclosure 2, Attachment 10.