

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has overcome the concerns about his finances. He has paid six of the eight debts listed in the Statement of Reasons (SOR). Factors beyond his control are preventing him from repaying the two remaining debts. Applicant was unaware any of his debts were delinquent when he completed his security questionnaire. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from Applicant's two remaining debts. Clearance is granted.

CASENO: 04-06385.h1

DATE: 01/30/2006

DATE: January 30, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06385

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has overcome the concerns about his finances. He has paid six of the eight debts listed in the Statement of Reasons (SOR). Factors beyond his control are preventing him from repaying the two remaining debts. Applicant was unaware any of his debts were delinquent when he completed his security questionnaire. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from Applicant's two remaining debts. Clearance is granted.

STATEMENT OF THE CASE

On June 13, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR set forth reasons why an affirmative finding could not be made that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant due to Guideline F (Financial Considerations) and Guideline E (Personal Conduct) security concerns.

On July 14, 2005, Applicant answered the SOR and requested a decision without a hearing. On August 30, 2005, a File of Relevant Material (FORM) was submitted. On October 17, 2005, Applicant responded to the FORM. Department Counsel having no objections, the documents submitted with Applicant's response were admitted into evidence. On November 28, 2005, I was assigned the case.

FINDINGS OF FACT

The SOR alleges security significant Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Applicant admits owing four of the debts, denies the remaining debts, and denies he falsified his security clearance application, Standard Form (SF) 86. The admissions are incorporated herein as findings of fact. After a thorough review of the entire record, I make the following additional findings of fact:

The Applicant is a 43 year old information management specialist who started working for a defense contractor in January 2003, but whose job was terminated when his interim clearance was withdrawn. The contractor is still interested in hiring Applicant should his clearance be restored. Applicant was named contractor of the year for his duty performance. He is currently unemployed living on unemployment compensation of \$900 every two weeks.

Applicant is a single father raising three daughters ages 19, 14, and 12. In 1998, Applicant and his wife separated. Prior to their separation his wife managed the household's finances. In May 1998 or May 1999, Applicant, accompanied by his daughters, left State # 1 on the East Coast and moved to State # 2 on the West Coast. Applicant continued to send his wife in State # 1 money for rent, car payment, necessities, and payment on other debts. His wife was not using the money to pay these obligations. His wife has a drug problem. Prior to renting his apartment a credit check was run that disclosed no credit problems. In 2002, Applicant purchased a new car at which time a credit report was run and no problems were disclosed.

In 2002, Applicant asked his wife to come to his location and talk about their children and the future, which she did. While living with him, but unknown to him at the time, his wife ordered two credit cards online. Applicant was at work when the cards arrived in the mail at this address. When he discovered the cards, he called the creditors and cancelled them. Applicant's credit report indicates the accounts were closed at the consumer's request. Since 2002, after she returned to State # 1, Applicant has not seen or heard from his wife. He believes she is living on the street or has been arrested. He has been attempting to file for divorce but has had difficulty getting service on her.

In September 2003, Applicant completed his SF 86 ignorant of any credit problems. In January 2004, Applicant was shown a copy of his credit report and asked to explain the credit problems on it. Applicant was shocked that it contained two car debts, an apartment debt, two credit card obligations, unpaid water bill, telephone bill, credit union debt, garbage bill, and back taxes from 1996 through 1998. Applicant and his wife had filed joint returns for those years and Applicant gave the returns to his wife for her to mail them to the IRS. However, she failed to mail in the tax returns. (Gov Ex 6)

Applicant was making \$47,000 per year when informed of the unpaid debts. He informed the special agent he would

begin paying his debts with the limited funds that were available starting with the smaller debts first. Between his January 2004 interview and his July 2005 answer to the SOR, he paid \$3,000 in back taxes, paid \$600 on the garbage bill, water bill, and credit union debt, and \$400 on the two credit card obligations. The \$450 per week he is now receiving in unemployment compensation does not afford him the opportunity to make payment on the two remaining debts.

Eight debts totaling more than \$19,000 were listed in the SOR. He has paid six of the debts and the two largest remain unpaid. A summary of those debts follows:

	Creditor	Amount Owed	Current Status
a.	Car loan opened June 1996. Last transaction May 1998. Bad debt charged off	\$8,032	Admits the debt, however his unemployment compensation is insufficient for him to make payments on this debt.
b.	water - utility bill.	\$58	Paid
c.	garbage - utility bill.	\$37	Paid
d.	Rental debt.	\$1,282	Debt is paid in full see letter dated Sept 29, 2005.
e.	Collection account.	\$8,855	Admits the debt, however his unemployment compensation is insufficient for him to make payments on this debt.
f.	Credit Union account.	\$560	Paid. Two accounts are listed on credit report as "Paid account/Zero Balance."
g.	Credit card account closed at consumer's request.	\$163	Paid see letter dated September 27, 2005.
h.	Credit card account closed at consumer's request.	\$320	Zero balance. See letter of October 14, 2005.
	Debt alleged in SOR	\$19,307	

POLICIES

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines 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. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guidelines to be applied here are Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

BURDEN OF PROOF

The sole 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. 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, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. 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. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. [\(2\)](#)

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." A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

CONCLUSIONS

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive E.2.A.6.1.1.

The Government has satisfied its initial burden of proof under financial considerations concerns. The Applicant owed

eight debts totaling more than \$19,000, two of which remain unpaid. Disqualifying Conditions (DC) 1 (E2.A6.1.2.1 *A history of not meeting financial obligations*) and 3 (E2.A6.1.2.3 *Inability or unwillingness to satisfy debts*) apply.

Applicant has paid six of the debts (SOR paragraphs 1.b, 1.c, 1.d, 1.f, 1.g, and 1.h). Mitigating Conditions (MC) 6 (E2.A6.1.3.6 *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies to these six debts. Applicant is currently living on unemployment compensation which pays his living expenses but provides no additional compensation to address the two remaining debts.

Applicant finds himself in a "catch" because he cannot pay the two obligations without a job and he cannot get his job without a clearance, which requires him to have paid these debts or worked out a satisfactory repayment plan with the creditors. Past performance is one of the most reliable methods to determine if Applicant will pay these debts.

I believe Applicant will pay these two remaining when funds become available based on his past payment history. In the 18-month period between being initially notified of the debts and his answer to the SOR, he paid \$4,000 in past due accounts. Being unemployed is a condition beyond Applicant's control making MC3 (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)*) applicable. I find for Applicant as to financial considerations.

Applicant and his wife separated in May 1998 or May 1999 when he moved to a new state. He was sending her money to pay the bills. Unbeknown to him she was not using the money to pay the debts. Between the time they separated and September 2003 when the SF 86 was conducted, Applicant had two opportunities to have credit check conducted. First when he rented his apartment after moving to the new state and second in 2002, when he purchased a new car. Neither credit check revealed any problem. Applicant's wife had a job and was responsible for making the payments on the vehicle she had. Applicant was unaware she let the vehicle be repossessed until confronted about the debt during his DSS interview. It was during this same interview he learned of the other delinquent debts, two of which came from credit cards his wife had ordered and had delivered to his address when he was at work. Not knowing any of his debts were 90 days delinquent or had ever been 180 delinquent, Applicant answered "No" to both questions on his SF 86. His finances may have been delinquent, but he did not falsify his SF 86 because he was unaware they were delinquent.

The allegations listed under personal conduct concerns are unfounded. The Government has shown Applicant's answer to questions 38 and 39 were incorrect, but this does not prove the Applicant deliberately failed to disclose information about his finances. The Applicant has denied intentional falsification. 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 is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. Omissions concerning unpaid debts and delinquencies are not deliberate if the person did not know of their existence.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline F (Financial Considerations): FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For Applicant

Paragraph 2 Guideline E (Personal Conduct): FOR THE APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

DECISION

In light of all 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 the Applicant. Clearance is granted.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.
2. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15