

KEYWORD: Financial; Personal Conduct; Criminal Conduct

DIGEST: From 1997 to 2001, Applicant and his wife incurred approximately \$33,000 in delinquent accounts. Between 1988 and April 2002, he was charged with criminal offenses on seven different occasions. Six of the offenses related to insufficient funds checks. He paid off about half of the delinquent accounts. Although making payments towards other delinquent debts, the record evidence is insufficient to conclude he pays on a consistent basis. It is too soon to conclude his financial situation is under control. He deliberately failed to list his delinquent debt and three of his criminal charges on his May 2003 security clearance application. Security concerns remain under Guidelines F, J, and E. Clearance is denied.

CASENO: 04-09192.h1

DATE: 05/17/2006

DATE: May 17, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09192

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

From 1997 to 2001, Applicant and his wife incurred approximately \$33,000 in delinquent accounts. Between 1988 and April 2002, he was charged with criminal offenses on seven different occasions. Six of the offenses related to insufficient funds checks. He paid off about half of the delinquent accounts. Although making payments towards other delinquent debts, the record evidence is insufficient to conclude he pays on a consistent basis. It is too soon to conclude his financial situation is under control. He deliberately failed to list his delinquent debt and three of his criminal charges on his May 2003 security clearance application. Security concerns remain under Guidelines F, J, and E. Clearance is denied.

STATEMENT OF CASE

On January 10, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. 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. The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F, Financial Considerations, Guideline J, Criminal Conduct, and Guideline E, Personal Conduct.

In a sworn statement dated January 10, 2005, Applicant responded to the SOR allegations and requested a hearing. Department Counsel was ready to proceed on January 6, 2006. The case was assigned to another administrative judge on March 9, 2006. The case was transferred to me on March 14, 2006. A notice of hearing was issued on March 14, 2006, scheduling the hearing for March 27, 2006. The hearing was conducted on that date. The government submitted seven exhibits that were marked as Government Exhibits (Gov. Ex.) 1-7. The exhibits were admitted into the record without objection. Applicant testified on his own behalf, and submitted 11 exhibits that were marked as Applicant's Exhibits (AE) A-T. Applicant Exhibits A-T were admitted without objection. The record was kept open until April 10, 2006. No additional documents were submitted. DOHA received the hearing transcript (Tr.) on April 7, 2006.

FINDINGS OF FACT

In his SOR response, Applicant denies the allegations in subparagraphs 1.c, 1.g, 3.a, 3.b, and 3.c but admits to all remaining allegations. Applicant's admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is employed as a computer technician with a Department of Defense contractor. He submitted a security clearance application on May 1, 2003.⁽¹⁾ He is applying for a SECRET clearance.⁽²⁾ He is 40 years old.⁽³⁾ In May 2004, he separated from his wife of 18 years. They are now divorced.⁽⁴⁾ He has two sons, ages 18 and 16.⁽⁵⁾ He has a college degree with a major in computer science.⁽⁶⁾ From August 1983 to August 1988, he served on active duty in the United States Marine Corps achieving the rank of E-4. From March 1989 to February 1999, he served as a reservist in the United States Coast Guard achieving the rank of E-7.⁽⁷⁾ He was granted a TOP SECRET clearance in 1983 and a SECRET clearance in 2002.⁽⁸⁾

Applicant's background investigation revealed twelve delinquent accounts with a total approximate balance of \$28,370.⁽⁹⁾ Applicant admits to having approximately \$33,010 in delinquent debt.⁽¹⁰⁾ The accounts included a delinquent credit card account for \$2,468 (SOR ¶ 1.a); a medical collection account for \$74 (SOR ¶ 1.b); a \$3,773 charged off account with AAFES (SOR ¶ 1.c); a \$1,253 judgment on behalf of a financial services company (SOR ¶ 1.d); a \$600 collection account (SOR ¶ 1.e); a \$550 collection account (SOR ¶ 1.f); a \$5,217 account that was past due since 1998 (SOR ¶ 1.g); a \$4,781 collection account (SOR ¶ 1.h); a \$1,955 collection account (SOR ¶ 1.i); a \$356 collection account related to a utility bill (SOR ¶ 1.j); a \$110 collection account for two medical bills (SOR ¶ 1.k); and a \$7,232 collection account related to a military credit union (SOR ¶ 1.l).

The current status of the debts are:

SOR Paragraph	Debt	Status	Record
1.a	\$2,468 credit card account, placed for collection in May 1997	Making payments; \$1,343.72 balance as of 1-17-06	AE A
1.b	\$74 medical bill, placed for collection in August 1997	Paid	AE 0; Tr. at 66
1.c	\$3,773 military exchange account, charged off in December 1997	Paid	Answer to SOR, enclosure 2
1.d	\$1,253 judgment entered in January 1998	Unknown- claims same as 1.e- no proof.	Tr. at 79.
1.e	\$600 account, #21817301, placed for collection in May 1998	Debt cancelled 12-3-05	AE D; AE H; Tr. at 58.

1.f	\$550 account, #21705901, placed for collection in June 1998	Debt cancelled 12-3-05	AE E; AE H; Tr. at 80.
1.g	\$5,217 past due account, past due since October 1998	Making payments; \$3,881.34 balance as of 10-19-05	AE C; Tr. at 83-84.
1.h	\$4,781.34 account, #24479518, placed for collection in April 2000	Claims same debt as 1.g.	Tr. at 81; no verification
1.i	\$1,955.12 account, #25068893, placed for collection in June 2000	Making payments; \$1,303.52 balance as of 10-19-05	AE B; Tr. at 82-83.
1.j	\$356 utility account, placed for collection in July 2001	Paid	AE K; Tr. at 84.
1.k	\$110 two medical accounts, placed for collection in July 2001	Paid	AE P; Tr. at 67, 84.
1.l	\$7,232 military credit union account, placed for collection in November 2001	Making payments; \$4,600 balance as of 6-3-05	AE F; AE G; Tr. at 85.

Applicant claims that his wife had sole control over the finances during the last eight years of their marriage. He thought his wife was paying all of their debts and there were no delinquent accounts. He claims he was not aware of any of the delinquent debt until his interim security clearance was suspended. [\(11\)](#) At that time, he took over handling the financial accounts. In June 2004, he initially consulted Consumer Credit Counseling to arrange a repayment plan. [\(12\)](#) He later decided to enter repayment agreements himself because he thought Consumer Credit Counseling was taking too long. [\(13\)](#)

Applicant's security clearance application indicates he was unemployed from February 1999 to February 2000 and from November 2002 to April 2003. [\(14\)](#) He has been employed with his current company since May 2003. [\(15\)](#) As of June 16, 2004, his net monthly income was \$10,122. After expenses, he had a net remainder of \$4,723. [\(16\)](#) This figure did not take into account the \$1,342 per month in child support he pays since his separation/divorce. [\(17\)](#) Subtracting the child support, his monthly net remainder is actually \$3,381.00.

Applicant has a criminal history. In 1988, he was charged and found guilty of resisting arrest and disturbing the peace. In 1989, he was charged and pled guilty to writing a bad check. On July 22, 1998, he was charged with Fraud Insufficient Funds Check - Obtaining Property in Return for a Worthless Check. In December 1999, he was charged and found guilty of Petit Theft. On May 12, 2000, he was charged with Fraud - Utter False Instrument. He pled guilty. On May 19, 2000, he was charged with Fraud Uttering False Instrument and Larceny over \$300 but under \$20,000. The charge was later dropped. On April 4, 2002, he was charged with Fraud - Utter a False Instrument. He pled nolo contendere. [\(18\)](#)

Applicant claims some of the bad check charges resulted from his wife's failure to inform him of insufficient funds

notices. He claims that in 1999, when he and his family moved from Hawaii to Florida, they ran out of checks and made their own checks on the computer until their new checks arrived. They mistakenly put the wrong account number on the checks. They were off by one number. They had written ten checks before realizing the mistake. (19) The charges in ¶¶ 1.d, 1.e and 1.f, resulted from this mistake. The April 4, 2002, charge related to writing a check with insufficient funds in his account. (20)

On his security clearance application submitted in May 2003, Applicant responded "No" to question "26. Your Police Record - Other Offenses. In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in modules 21, 22, 23, 24 or 25? (Leave out traffic fines of less than \$150 unless the violation was alcohol or drug related.) For this item, report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607." Although he listed a July 1989 and a July 2000 bad check charge in response to question 21, he did not list his arrests alleged in SOR ¶¶ 2.c, 2.d, and 2.g. He did not list a July 22, 1998, arrest for Fraud Insufficient Funds Check. For this charge, the case was dismissed after he completed pre-trial intervention. He did not list a December 10, 1999, arrest and charge of Petit Theft. He was found guilty of this offense and was sentenced to six months probation. He also did not list an April 4, 2002, arrest for Fraud - Uttering False Instrument. He pled nolo contendere and was ordered to pay \$405. (21)

Applicant claims that the Facility Security Officer (FSO) from his previous company told him he did not have to list these charges. He thought if something was adjudicated, it would not appear in his record. (22) He asked his current FSO if he needed to list his adjudicated check charges on his security clearance application. He claims that the FSO told him he did not need to list the adjudicated charges. He could just explain the charges later to the investigator during his background investigation. To verify this, he provided a copy of an e-mail exchange between himself and his program manager. (23) He sent his program manager an e-mail asking whether he needed to list some adjudicated charges on his clearance paperwork. His program manager responded:

The FSO in Miami has said not to include the charges and if after your information is processed, they will contact you if they have questions. I don't know how this works as I am not an FSO. Do what ever she says when you speak to her. (24)

The FSO of the company Applicant works for testified during the hearing. She has worked as an FSO for ten years. Part of her job is assisting applicants when filling out their security clearance applications. She routinely advises applicants to put everything on their security clearance applications. She tells them that the more information provided, the less problems later. She does not recall specifically talking to the Applicant but her records indicate she spoke with him in 2003. He asked her about whether he needed to list some bad check charges. She told him that he needed to list them. She does not recall telling him that he did not need to list certain information on his security clearance application. She would never advise applicants to withhold information that was relevant to the questions on the security clearance application. (25)

Applicant also responded "No" to questions "38. Your Financial Delinquencies - 180 Days. In the last 7 years, have you ever been over 180 days delinquent on any debt(s)?" and "39. Your Financial Delinquencies - 90 Days. Are you

currently over 90 days delinquent on any debt(s)?" He did not list the debts listed in SOR ¶¶ 1.a through 1.i. He claims he was not aware of these debts until he was interviewed by the security investigator for his background investigation since his wife handled the family finances. [\(26\)](#)

An Air Force Master Sergeant who worked with Applicant from March to July 2004 while deployed in the Middle East submitted a statement on his behalf. The Master Sergeant was in charge of the unclassified and classified network for the base. Applicant was his senior network administrator. He indicates Applicant took the security of the classified network seriously and no security compromises ever occurred. [\(27\)](#) Another co-worker and friend who has worked with Applicant for three years attests to his work ethic. He states he always displayed common sense when it came to security matters and was always willing to help someone out whether it was technical or personal. He cannot think of anything negative to say about him. [\(28\)](#)

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." [\(29\)](#) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline F, Financial Considerations: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. [\(30\)](#)

Guideline J, Criminal Conduct: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. [\(31\)](#)

Guideline E, Personal Conduct: 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.⁽³²⁾

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"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."⁽³³⁾ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽³⁴⁾ An administrative judge should consider the following factors: (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 individual'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.⁽³⁵⁾

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.⁽³⁶⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts admitted by the applicant or proven by Department Counsel. The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision.⁽³⁷⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽³⁸⁾

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 a determination as to the loyalty of the applicant.⁽³⁹⁾ It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F - Financial Considerations; Guideline J, Criminal Conduct; and Guideline E, Personal Conduct.

Financial Considerations

Applicant has incurred significant delinquent debts. The total approximate balance was once \$33,010. Under Guideline F, Disqualifying Conditions (FC DC) E2.A6.1.2.1: (*A history of not meeting financial obligations*) and FC DC 3 E2.A6.1.2.3: (*Inability or unwillingness to satisfy debts*) apply to Applicant's case. uch of the debt went delinquent between 1997 - 2001. Applicant's failure to address these delinquent debts until after applying for a security clearance in 2003 indicates either an inability or an unwillingness to satisfy debts. Although he blames his wife for all the delinquent debt, ultimately, it was his responsibility to see that his finances were in order.

In addition to the delinquent debt, Applicant admits to being charged with offenses dealing with bad checks on six occasions from April 1989 to April 2002. FC DC E2.A6.1.2.2: (*Deceptive illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, or other intentional financial breaches of trust.*) applies based on his history of bad check offenses..

The security concern under Guideline F can be mitigated. I find that none of Financial Considerations Mitigating Conditions (FC MC) apply. Although Applicant has paid the debts alleged in ¶¶ 1.b, 1.c, 1.e, 1.f, 1.j and 1.k, approximately \$17,161 of the debt remains unpaid. He maintains that he is making payments on these debts but has failed to provide proof that he has been making payments on a routine basis. All the receipts submitted in support of this assertion were months old. The record was held open for Applicant to provide additional proof that he is making regular payments but nothing was submitted. Although he blames his ex-wife for all of the delinquent debt, he should have been aware something was wrong with his finances when he began to face criminal charges for writing bad checks. He was ultimately responsible for paying his bills as well as balancing his checking account.

FC MC 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)*) has the potential to apply since Applicant is recently divorced. However, the divorce does not appear to have made a significant financial impact. In fact, his financial situation has improved since he has been working overseas. His security clearance application indicates that he was unemployed for four months from November 2002 to April 1, 2003, and for about a year from February 1999 to February 2000. This may have had some impact on his financial situation. Applicant did not bring up these periods of unemployment at the hearing so what affect it had on his finances is unknown. Since 2004, he has held a steady job which pays approximately \$10,000 per month. FC MC E2.A6.1.3.3 does not apply.

I find for the Applicant with respect to SOR ¶¶ 1.b, 1.c, 1.e, 1.f, 1.j and 1.k since he has paid these debts. He has made great progress in resolving his financial situation but still has a long way to go. Applicant appears to be making payments towards his debts. However, I cannot conclude that he is making payments on a timely regular basis. He also has not provided information to prove that the debts in ¶¶ 1.d and 1.e and the debts in ¶¶ 1.g and 1.h are duplicates of each other.

A security concern remains under Guideline F. It is too early to conclude that Applicant's financial situation is completely under control. I find against him under Guideline F.

Criminal Conduct

Applicant has a history of criminal conduct since 1988 beginning with a Resisting Arrest and Disturbing the Peace charge. In 1989, he was prosecuted for his first bad check offense. Between 1998 and April 2002, he was charged with bad check offenses at least five times during this period. As such, Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1: (*Allegations or admission of criminal conduct, regardless of whether the person was formally charged*) and CC DC E2.A10.1.2.2: (*A single serious crime or multiple lesser offenses*) apply.

I find none of the mitigating conditions apply under criminal conduct. Since 1998, Applicant has been charged with a criminal offense on average once a year. He maintains that these charges all occurred at the same time but took several years to get through the court system. He has not provided sufficient information to support this assertion. Considering his history of bad check writing, I cannot conclude the behavior was not recent. The conduct cannot be considered isolated, since he was charged six times. Due to his history of writing bad checks, it is too soon to conclude that he has been successfully rehabilitated. I find against Applicant under Guideline J.

Personal Conduct

Applicant did not list all of his criminal charges on his security clearance application in response to question 26. He also did not list his delinquent debts in response to questions 38 and 39 on his security clearance application. Personal Conduct Disqualifying Condition (PC DC) 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*) applies with respect to Applicant deliberately withholding three criminal charges, SOR ¶¶ 2.c, 2.d, and 2.g, in response to question 26 on his security clearance application. I do not find credible his claims that his FSO told him he did not need to list the charges. I find the FSO more credible. Although she could not remember the specific conversation with Applicant, she was adamant that she would never tell an applicant to withhold information that was relevant to a question on a security clearance. She has had over ten years experience as an FSO and demonstrated a keen insight as to the responsibilities of her job.

I do not give much weight to the e-mail Applicant provided since it is rather vague and there was no opportunity to question the program manager who took part in the e-mail exchange. The e-mail was not conclusive. The program manager's response indicates that Applicant should speak with the FSO directly and to do whatever she tells you to do. The FSO credibly testified that she told him to list his bad check charges on the security clearance application.

I also conclude that Applicant deliberately falsified his security clearance application with respect to questions 38 and 39 by deliberately failing to list his delinquent debts. I find implausible his claims that his wife was responsible for

paying all the bills and that he had no idea there were any delinquent debts considering the extent of the debt. Much of the delinquent accounts were placed for collection. A judgment was entered against Applicant with respect to the debt alleged in SOR ¶ 1.d. At the very least, Applicant should have been on notice in the late 1990s or early 2000 that something was not quite right with the family finances since he was facing prosecution for bad check offenses. Given the extent of the debt, I do not find his explanations as to why he did not list his delinquent debt credible.

I conclude none of the mitigating conditions apply. Applicant's failure to provide complete and accurate information on his security clearance application is pertinent to a determination of his judgment, trustworthiness and reliability. There is no evidence that Applicant attempted to supplement his security clearance application with the omitted information. I find against the Applicant under Guideline E.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude 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:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: For Applicant

Subparagraph 1.k: For Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m: Against Applicant

Paragraph 2. Guideline J: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Paragraph 2. Guideline E FOR APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

DECISION

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

Erin C. Hogan

Administrative Judge

1. Gov Ex. 1 and 2.
2. Tr. at 9.
3. Tr. at 7.
4. Tr. at 49, 87.
5. Tr. at 92.
6. Tr. at 7.
7. Gov.Ex. 1 at questions 6 and 11.
8. Gov. Ex. 2 at question 31.
9. Gov. Ex. 4 at 6-10; Gov. Ex. 5 and 6.
10. Answer to SOR.
11. Tr. at 48-49; Gov. Ex. 4 at p. 1-2.
12. *Id.* at 6-8; Tr. at 52-53.
13. Tr. at 52-53; Gov. Ex. 5.
14. Gov Ex 2, question #6.
15. *Id.*
16. *Id.* at 4.
17. Tr. at 98.
18. Gov. Ex. 3.
19. Tr. at 87-90.
20. Tr. at 90.
21. Gov. Ex. 3.
22. Tr. at 75.

23. AE T.
24. *Id.*
25. Tr. at 28 - 45.
26. Gov. Ex. 2, Answer to SOR.
27. AE R.
28. AE S.
29. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
30. Directive, ¶ E2.A6.1.1.
31. Directive, ¶ E2.A10.1.1.
32. Directive, ¶ E2.A5.1.1.
33. Directive, ¶ E2.2.1.
34. *Id.*
35. *Id.*
36. Directive, ¶ E3.1.14.
37. Directive, ¶ E3.1.15.
38. Directive, ¶ E.2.2.2.
39. Exec. Ord. 10865, § 7.