

KEYWORD: Financial Considerations; Personal Conduct

DIGEST: Applicant is a 36-year-old computer system analyst working for a defense contractor. Starting with a delinquency on a car loan and continuing through two periods of unemployment in 1996 and 1998, Applicant acquired many debts. Although he has demonstrated that some of the debts cited are in error, satisfied, or in dispute, he has not mitigated financial concerns regarding the remaining \$20,000 of debt. His lack of knowledge with regard to his finances at the time he signed a security clearance application with incomplete financial answers in 2001, however, mitigates concerns regarding his personal conduct. Clearance is denied.

CASE NO: 04-10983

DATE: 06/16/2006

DATE: June 16, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-10983

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is a 36-year-old computer system analyst working for a defense contractor. Starting with a delinquency on a car loan and continuing through two periods of unemployment in 1996 and 1998, Applicant acquired many debts. Although he has demonstrated that some of the debts cited are in error, satisfied, or in dispute, he has not mitigated financial concerns regarding the remaining \$20,000 of debt. His lack of knowledge with regard to his finances at the time he signed a security clearance application with incomplete financial answers in 2001, however, mitigates concerns regarding his personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On November 26, 2001, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86). On May 24, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons, under Guideline F (Financial Considerations) and Guideline E (Personal Conduct), why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a notarized statement, dated June 16, 2005, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel prepared the government's written case on December 21, 2005. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Any such submissions were due by January 27, 2006. Applicant's response to the FORM, dated January 20, 2006, was timely received. The case was assigned to me on May 31, 2006.

FINDINGS OF FACT

Applicant's answers to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the evidence and exhibits, I make the following findings of fact:

Applicant is a 36-year-old computer system analyst working for a defense contractor. He has been with his present employer since July 2001, shortly after he completed seven months of training at a post-secondary vocational college. He has worked for other business entities in the technology field, including other defense contractors, since receiving a medical discharge from the U.S. Army in November 1996. He has been married for 11 years. He and his wife care for four children, and Applicant has a child from a former relationship.

In the latter part of 1994, Applicant bought a car which was financed through a branch of a nationally known bank. When he moved to another state at the end of the year, he continued making payments to a local branch of that bank. He eventually learned that his deposits were not going to his car loan obligation. The payments apparently "disappeared." He later found out that the branches of the bank in his prior state of residence were not linked to those in his then-current state of residence. The car was eventually repossessed in 1995.⁽¹⁾ Although he disputes the assessment as unfair, the debt created was for \$8,810.⁽²⁾ Applicant points to this debt as the beginning of his financial troubles.⁽³⁾

Applicant retained counsel to address the money lost at the bank. The attorney advised him to file Chapter 13 bankruptcy to repay the car and other debt. That bankruptcy was filed on May 9, 1995. The following year he was diagnosed with asthma. His condition was sufficiently debilitating to interfere with his military physical requirements, and he was medically discharged in 1996. Suddenly unemployed, and with his wife and five children to support, Applicant found himself accruing additional debt and failing to pay on his Chapter 13 repayment plan. That bankruptcy was dismissed for non-payment on October 3, 1997. He filed a second Chapter 13 bankruptcy on March 27, 1998. He soon thereafter lost his job when a project on which he was working came to an end. This led to the dismissal of the second bankruptcy on September 8, 1998, for non-payment.

The debts acquired in the mid-1990s through 2004 are reported on Applicant's December 4, 2001, and March 24, 2005, credit reports. Of the 17 debts cited in the SOR, Applicant admitted seven of them,⁽⁴⁾ amounting to an obligation of approximately \$17,770.⁽⁵⁾ He has since offered to pay off two of those debts.⁽⁶⁾ The remaining 10 debts, denied by Applicant, were unsatisfied as of November 17, 2004, amount to approximately \$9,425, and are as follows:

SOR	CREDITOR ⁽⁷⁾	STATUS	DOCUMENTATION
1.c.	ABC FINANCIAL - \$93.69 in collection since about May 1996.	Allegedly paid; no proof of payment.	Response to FORM attachments (RFA) pgs. 16-18. ⁽⁸⁾

1.d.	ABC FINANCIAL SYSTEM/ INSURANCE - \$233 in collection since about April 1997.	Same as above.	Same as above. (9)
1.f.	CREDIT COLLECTION AGENCY - \$537 charged off as bad debt in about November 1998.	Allegedly paid; no proof of payment.	RFA at 27-29. (10)
1.h.	MILITARY CREDIT - \$10 charged off as bad debt in about October 1998.	Attempts made to verify/locate account. Unpaid.	RFA at 23-26. (11)
1.l.	APARTMENT - \$932 judgment entered in about June 2000.	Judgment satisfied.	RFA at 1-2. (12)
1.n.	REALTY - \$1,507 for judgments entered in about July 2001.	Judgment satisfied.	Same as above.
1.o.	CREDITOR - \$3,595 in collection since about November 2001.	Judgment satisfied.	Same as above.
1.p.	SOCIAL SERVICES - \$875 judgment entered in about February 2002.	Paid.	RFA at 11. (13)
1.r.	COMMUNICATIONS - \$670 in collection since about October 2002.	Disputed.	RFA at 21. (14)
1.s.	TELECOMMUNICATIONS - \$972 in collection since about April 2004.	Unaddressed. (15)	None.

With the disputed accounts for which Applicant has demonstrated proof of payment or satisfaction, the amount at issue for the denied sub-allegations on the SOR is approximately \$2,515. Taken together with the debts to which Applicant has admitted, the total sum at issue is \$20,285.

On November 26, 2001, Applicant signed a security clearance application (SF-86). To Question 33 (**Your Financial Record - Bankruptcy** *In the last 7 years, have you filed a petition under any chapter of the bankruptcy code (to include Chapter 13)?*), Applicant answered "Yes," and noted his May 1995 bankruptcy filing, but not the filing of March 1998. In response to Question 37 (**Your Financial Record - Unpaid Judgments** *In the last 7 years, have you had any judgments against you that have not been paid?*), Applicant answered "Yes," and listed one unpaid judgment in the amount of \$1,013. He did not list other judgments noted as sub-allegation 1.j., 1.l., and 1.n. in the SOR. When answering Question 38 (**Your Financial Delinquencies - 180 Days** *In the last 7 years, have you ever been over 180 days delinquent on any debt(s)?*), he wrote "No," and did not mention the debts noted in the SOR as sub-allegations 1.c. through 1.i., 1.k., and 1.m. Finally, regarding Question 39 (**Your Financial Delinquencies - 90 Days** *Are you currently over 90 days delinquent on any debt(s)?*), Applicant responded "No," and did not mention the debts noted at SOR sub-allegations 1.c. through 1.i., 1.k., and 1.m. Department Counsel argues that those items that Applicant failed to include in his answers represent falsifications of material facts on a SF-86 form.

Applicant previously had held both a security clearance and access to sensitive compartmented information. [\(16\)](#) He therefore knew the security clearance vetting process. He urges that he knew a credit check would be conducted, and that he did not intentionally attempt to conceal any debts. He knew the importance of updating the SF-86, and had a couple of versions of the form on his computer that were at various stages of completion. When it came time to submit this SF-86, he picked the copy that seemed the newest, not necessarily the most complete. He concedes his answers were based on his memory, not on his credit report's depiction of his finances. He further notes that some of the debts cited to in the SOR had already been satisfied, while he had no ideas others existed. He states that this process has

brought him to closely examining his credit report, understanding his financial situation, and has prompted him to report errors. (17) Applicant said he did not list the second Chapter 13 bankruptcy filing, when he tried to put the information into the computer, the program sent an "Out of Requested Range" error message.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security 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 considerations listed in the Directive. Specifically these considerations are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. 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.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. (18) The government has the burden of proving controverted facts. (19) The burden of proof is something less than a preponderance of evidence. (20) Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him. (21) Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. (22)

No one has a right to a security clearance (23) and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." (24) Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. (25) The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. (26) It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a security clearance.

Based upon consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline F - Financial Considerations. *The Concern:* An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts. [\(27\)](#)

Guideline E - Personal Conduct. *The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. [\(28\)](#)

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

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) and Guideline E (Personal Conduct). For clarity, I will discuss each separately.

Financial Considerations

The government has provided substantial evidence that Applicant accrued a significant amount of debt since the mid-1990s. Moreover, Applicant admits to seven of the 17 debts noted in the SOR. Consequently, under Guideline F, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*a history of not meeting financial obligations*) and FC DC E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*) apply.

With the government's case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. Here, Applicant admits to multiple debts, many of which remain unpaid. Therefore, neither FC MC E2.A6.1.3.1 (*the behavior was not recent*) nor FC MC E2.A6.1.3.2 (*it was an isolated incident*) applies.

Applicant notes that he was forced to take a medical discharge in 1996, leaving him unemployed for a period of time as he reentered civilian life. During this time period, debt grew and additional bills went unpaid, including his payments to the bankruptcy court. Two years later, in 1998, he again found himself unemployed, unable to pay his bills, and missing payments to his second bankruptcy trustee. Inasmuch as a number of the debts at issue arose from 1996 through 1999, 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)*) applies.

There is no evidence that Applicant received financial counseling. In the absence of such counseling, FC MC E2.A6.1.3.4 (*the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*) does not apply.

Applicant has endeavored to satisfy two of the seven debts noted on the SOR to which he admitted delinquency and was awaiting a payment plan. Of the remaining 10 debts noted on the SOR to which he denied obligation, he has provided sufficient proof that three judgments have been satisfied, one debt paid, and one debt formally disputed. Therefore, half of the debts in the SOR Applicant denied have been addressed; the remaining creditors, however, have only been contacted as to balance clarification or other information. Therefore, FC MC E2.A6.1.3.6 (*[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) marginally applies.

Although Applicant has mitigated some security concerns regarding his finances and has shown that he has put together a process to begin correcting his financial situation, security concerns linger due to the large amount of debt remaining. With more effort, the remaining debt may be addressed and the related security concerns may be mitigated. In light of the fact that his debt started growing in the mid-1990s and still remains an issue, however, his finances still pose security concerns.

Personal Conduct

The SOR alleges that Applicant deliberately falsified material facts on his SF-86 regarding his debts and bankruptcies because his answers to Questions 33, 37, 38, and 39 on his SF-86 were incomplete. Under this theory, Personal Conduct Disqualifying Condition E2.A5.1.2.2 (*[t]he 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*) would apply. Applicant's argument in his defense, however, is highly credible.

Applicant spent nearly a decade in the military and understood the vetting process involved with a security clearance,

and he has been through the process at least once. He knew a credit check would be conducted. Experience would have told Applicant that providing some, but not all, the information available on a common credit check would only increase the degree of financial scrutiny, not bypass it. Given the fact he had multiple copies of an SF-86 in various stages of completion on his computer at the time, and in light of his obvious lack of knowledge regarding his own debt and what his credit report detailed prior to this process, the evidence does not demonstrate that Applicant falsified or intentionally omitted facts in his SF-86 answers.

The lack of appreciation and understanding of his finances, however, raises another issue for Applicant. By failing to generally educate himself with regard to his finances and credit report as a matter of course, and, more specifically, for not doing so prior to completing his SF-86, Applicant displayed judgment sufficiently questionable to raise PC DC E2.A5.1.2.4 (*[p]ersonal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or pressure*). In response to the SOR and this process, however, Applicant has spent a great deal of effort learning what is on his credit report, making inquiries, and submitting corrections to the credit reporting bureaus. As a result, he is now fully informed regarding his finances and he has begun taking action to clarify listed debts and dispute contested entries. Consequently, Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.5 (*[t]he individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*) applies. Given all these considerations, Applicant has mitigated personal conduct concerns regarding his finances.

I have considered both the record evidence and Applicant in light of the "whole person" concept. Applicant is a mature, married man who, through two bouts of unemployment in the late 1990s, acquired a little over \$20,000 in debts. Previously uninformed with regard to the true extent of his debt, he is now educated and in the process of clearing up his financial condition. Although he has successfully demonstrated that some of the debts cited in the SOR have been satisfied or disputed, and despite a good faith effort to clarify his true financial standing by contacting his creditors, he still lacks professional counseling or assistance to help him address the main security concern, the possession of an extraordinarily high level of debt. Although I find he has mitigated personal conduct security concerns, I cannot find, based on the evidence of record, that he has similarly satisfied the security concerns raised by his finances. Clearance is denied.

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 (Financial Considerations): 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

Subparagraph 1.h. Against Applicant

Subparagraph 1.i. Against 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. Against Applicant

Subparagraph 1.q. Against Applicant

Subparagraph 1.r. Against Applicant

Subparagraph 1.s. Against Applicant

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

Subparagraph 2.a. For Applicant

Subparagraph 2.b. For Applicant

Subparagraph 2.c. For Applicant

Subparagraph 2.d. For Applicant

DECISION

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

Arthur E. Marshall, Jr.

Administrative Judge

1. Applicant's materials cite to the repossession as being in 1996/1997, and elsewhere as being what led to his filing for bankruptcies in May 1995, and in arch 1998. For this chronology, the May 1995 date will be assumed to preserve Applicant's assertion that the automobile loan was the root of his financial problems. Government Item 7 (Applicant Statement, dated February 5, 2002) at 1.
2. *See* SOR subparagraph allegation 1.e.
3. Government Item 7, *supra*, note 3 at 1.
4. SOR subparagraphs 1.e., 1.g, 1.i., 1.j., 1.k. 1.m., and 1.q.
5. Applicant has made contact with many of these creditors. *See* Response to FORM attachments (January 20, 2006).
6. Applicant was awaiting payment instructions on the debts found under SOR subparagraphs 1.k. and 1.m. when the record closed. *Id.* at attachment p. 9, 22.
7. All creditor names have been made generic and the debt amounts are approximations.
8. Following a May 2005 telephone conversation with the creditor, Applicant wrote to request documentation that this debt had been previously paid. It was his third such request. (Letter to ABC, undated, at attachment p. 16). On November 22, 2005, Applicant sent a request under the Fair Debt Collection Practices Act (FDCPA) for verification of the debt status and notice he was disputing any debt determined. (FDCPA letter to ABC, dated November 22, 2005, at attachment p. 17). A notice was sent to ABC that after four unsuccessful requests, he would notify the credit bureaus and dispute the debt. (Dispute letter, dated December 29, 2005, at attachment p. 18). No other proof was submitted.
9. Applicant constructively made requests for both alleged debts in his correspondence by citing to the amount allegedly

paid on sub-allegation 1.c. and in reference to the underlying insurance creditor noted in 1.d.

10. Request to Creditor for account update and paid in full receipt, undated, and FDCPA letter, dated November 22, 2005. No proof of payment or response from creditor.

11. Request to Creditor for account update and paid in full receipt, undated; FDCPA letter, dated November 22, 2005; third attempt and notice to forward correspondence to credit bureaus, undated. No proof of payment or response from creditor.

12. Correspondence to creditor, dated March 25, 2005, confirming payment of settled amount and acknowledgment of payment by creditor, dated May 9, 2005. *See also* RFA at 3-8.

13. Letter from Social Services, dated March 22, 2005, indicating no arrearage is owed. It states that Applicant has made an overpayment and a request was to be made to adjust the lien against Applicant.

14. Letter of dispute to creditor, dated December 29, 2005.

15. Inasmuch as Applicant has demonstrated extreme diligence in contacting these creditors, the absence of evidence here is most likely the result of oversight or misplacement.

16. *See* Applicant's SF-86 form, signed November 26, 2001.

17. As noted *infra*, Applicant has put several listed accounts in dispute. He has also made corrections on the personal information contained on his credit report. *See* Applicant's Response to the FORM attachments at 30.

18. ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).

19. ISCR Case No. 97-0016 at 3 (App. Bd. Dec 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

20. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

21. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

22. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

23. *Egan*, 484 U.S. 518, at 531.

24. *Id.*

25. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

26. Executive Order 10865 § 7.

27. Directive, Enclosure 2, ¶ E2.A6.1.1

28. Directive, Enclosure 2, ¶ E2.A5.1.1.