

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant accrued over \$20,000 in delinquent or past due debts due in part to circumstances beyond his control. Applicant mitigated the resulting security concerns by resolving all of the debts listed in the SOR and demonstrating his current finances are sound. Concerns that he deliberately omitted information about his debts from his security clearance application are mitigated because he disclosed other adverse financial information therein, and it appears he was unaware of the delinquencies alleged when he submitted the questionnaire. Clearance is granted.

CASENO: 05-00894.h1

DATE: 02/15/2006

DATE: February 15, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-00894

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant accrued over \$20,000 in delinquent or past due debts due in part to circumstances beyond his control. Applicant mitigated the resulting security concerns by resolving all of the debts listed in the SOR and demonstrating his current finances are sound. Concerns that he deliberately omitted information about his debts from his security clearance application are mitigated because he disclosed other adverse financial information therein, and it appears he was unaware of the delinquencies alleged when he submitted the questionnaire. Clearance is granted.

STATEMENT OF THE CASE

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to give Applicant a security clearance. On July 13, 2005, DOHA issued an SOR to Applicant regarding facts in his background that raise security concerns addressed in the Directive under Guideline F (financial considerations) and Guideline E (personal conduct).

Specifically, the government alleged Applicant had generated about \$24,590 in delinquent or overdue debts in the form of 14 personal credit accounts either charged off or placed for collection and two car repossession debts (SOR ¶¶ 1.a - 1.p), and that a December 2004 personal financial statement showed he had sufficient funds after expenses each month with which to pay down his debts (SOR ¶ 1.q). The government also alleged Applicant deliberately falsified his answers to questions in his security clearance questionnaire by omitting the aforementioned bad debts (SOR ¶¶ 2.a and 2.b). Applicant timely answered the SOR,⁽²⁾ and denied with explanation all of the allegations therein. Attached to Applicant's Answer are several documents admitted collectively as Applicant's exhibits (AE) A and B.⁽³⁾

Applicant requested a hearing, and the case was assigned to me on September 14, 2005. I convened a hearing on October 13, 2005. The government presented five exhibits (GE 1 through 5), which were admitted without objection. Applicant testified and submitted two additional exhibits admitted into the record as AE C and D. DOHA received the transcript (Tr) on October 26, 2005.

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is 45 years old and employed since April 2003 as an electrical technician by a company doing business with the State Department. Much of Applicant's work is conducted overseas and requires a security clearance. He previously worked for a company supporting the Department of Energy and held a clearance for work in nuclear power plants.

Applicant is a trade school graduate with three years of college-level course work in electrical engineering to his credit. He has been married twice. His first marriage began in 1996 and ended in divorce in 1997. Applicant re-married in 1998, but that marriage also ended in divorce in October 2004 after the couple had separated in September 2001. Applicant has two children by his first wife, and pays \$500 a month in child support. Applicant has lived at his current residence since September 2001. He pays \$650 rent each month and has never been late in paying.

Applicant bought a house in 1999 using all of his savings. His job paid well enough that he was able to keep up with his financial obligations. His job also required him to be away from home for long periods of time, and he expected his wife to take care of their finances by paying bills on time and keeping track of their expenses. In December 1999, Applicant was fired from his job because he refused to falsify information as part of a government audit of his company's contract with the federal government. Thereafter, Applicant had a difficult time finding work. Throughout 2000 and into 2001, he struggled to make ends meet, but eventually lost his car to repossession and his house to foreclosure.

The company that financed his car contacted Applicant once after the repossession to tell him he owed \$10,000 after resale, but that he could settle the debt for a lump sum payment of \$4,000. Applicant was advised by a friend that he should ignore the debt unless and until the creditor obtained a civil judgment against Applicant for the amount due. Applicant acted on this advice but learned during his background investigation he in fact owed \$10,000 but settled the matter in July 2005 for \$4,000 (SOR ¶ 1.h). Applicant also had a car repossessed in 1999, and handled the resulting \$10,000 debt claimed by the finance company the same way. The amounts at issue were similar and Applicant settled the debt for \$4,300 in July 2005 (SOR ¶ 1.b).

Applicant's second marriage ended when Applicant learned his wife had a drug problem and had not been tending to their finances. He continued to travel a lot as part of his job and thought she was paying their bills on time. He satisfied their debts as best he could while traveling and trying to keep his wife from completely depleting their bank account. After several attempts by his wife at rehabilitation, the couple separated in September 2001. Applicant moved to his current residence and did not receive notice of any overdue bills. When he was interviewed by a Defense Security Service (DSS) agent in December 2004, Applicant was shown a credit report obtained for investigative purposes that reflected he and/or his ex-wife were delinquent on at least 14 other debts totaling about \$4,220 (SOR ¶¶ 1.a, 1.c - 1.g, 1.i - 1.p).

Applicant submitted a signed, sworn statement when DSS interviewed him. Part of that statement was a personal financial statement (PFS) that showed Applicant, at that time, had about \$575 left over each month after expenses. He did not include in that calculation payment of any of the debts listed in the SOR. Since submitting the PFS, Applicant's financial status has remained about the same. He has not incurred any recent delinquencies and appears to live within his means.

Applicant paid or otherwise resolved each of these debts between May and July 2005. Some of the debts listed in the SOR are duplicate entries of the same obligation. Specifically, the debts listed in SOR ¶¶ 1.c and 1.m are the same, and Applicant paid it off in June 2005. The debts listed in SOR ¶¶ 1.o and 1.p are the same debt, which was resolved when the creditor acknowledged Applicant did not, in fact, owe them anything. Applicant also disputed the debt listed in SOR ¶ 1.d as wrongfully billed to him in violation of his original agreement with the credit card company. However, he decided to pay the debt in July 2005 rather than run the risk this debt might keep him from getting a clearance.

Applicant submitted a security clearance application (SF 86) on April 11, 2003. In response to question 34, he disclosed a September 2000 car repossession and the May 2001 home foreclosure. Applicant answered "no" to questions 38 and 39, which asked if he had been 180 days delinquent on any debt in the preceding seven years or if he was then more than 90 days past due on any debt, respectively. In block 43, the general remarks section, Applicant noted he was unaware of any past due debts other than those he listed because he had not seen a recent report of his credit.

Applicant has a sound work record. He received a pay raise in May 2004 and June 2005 after having met or exceeded all of the criteria on which he is evaluated. Applicant's supervisors and co-workers are very impressed with his work and his reliability.

POLICIES AND BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽⁴⁾ for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for the Applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it establishes that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.⁽⁵⁾ 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 as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁽⁶⁾

To that end, the Directive sets forth adjudicative guidelines⁽⁷⁾ for consideration when evaluating an Applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive.⁽⁸⁾ The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Given the record evidence as a whole, the relevant adjudicative guidelines to be applied here are Guideline F (financial considerations) and Guideline E (personal conduct).

CONCLUSIONS

The facts presented through the government's information offered in support of the SOR allegations raise security concerns addressed in the Directive under Guideline F. Specifically, an applicant who is financially overextended through delinquent debt and poor personal financial management may be at risk of engaging in illegal acts to generate funds to resolve their fiscal difficulties.⁽⁹⁾ Failure to reasonably attend to personal finances may also indicate poor judgment and reliability in other facets of one's conduct. These facts also support application of Guideline F disqualifying condition (DC) 1⁽¹⁰⁾ and DC 3.⁽¹¹⁾

The government is reasonably concerned about Applicant's suitability for continued access to classified information, especially in light of his history of indebtedness. However, his obligations went unpaid due to a period of unemployment in 1999 and 2000, and, after he again found work, when his wife neglected their bills in his absence because she was a drug abuser. While Applicant has acted only recently to resolve his financial difficulties, it is apparent he did not know about most of the delinquencies until his background investigation was well underway. Based

on the actions he did take, it is reasonable to assume he would have resolved these matters sooner had he been aware of them. Finally, it appears Applicant is now in good financial condition and he has not incurred any recent delinquencies. He has steady income, is now in sole control of his affairs after having divorced his wife, and appears to be up-to-date in his current obligations, such as rent and child support. It is unlikely he will again find himself faced with such financial problems. Based on the foregoing, Guideline F mitigating condition (MC) 1, [\(12\)](#) MC 3, [\(13\)](#) and MC 6 [\(14\)](#) apply here. Based on all of the available information on this issue, I conclude Guideline F for the Applicant.

Under Guideline E, a security concern arises where it is shown an applicant has exhibited questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Such conduct may indicate the person may not properly safeguard classified information. [\(15\)](#) Available information establishes the underlying debts and that they were not disclosed in Applicant's SF 86. Accordingly, the government is reasonably concerned, in light of the results of Applicant's background investigation, about whether he can be relied on to tell the truth even under adverse circumstances. An applicant's completion of a security questionnaire is the initial step in requesting a security clearance. Because false or incomplete information given in the questionnaire is capable of affecting the way in which the government assesses a person's suitability to hold a clearance, it is material. Moreover, a false answer is material even if there is no proof that it actually influenced an agency's investigatory functions.

However, to be disqualifying such omissions must have been made deliberately. [\(16\)](#) Simple mistakes through forgetfulness, confusion about the question, or lack of available information do not indicate a defect in a person's reliability or integrity. Here, the Applicant disclosed two significant debts when he answered question 35 (repossessions), and disclosed other non-financial adverse information [\(17\)](#) in response to other SF 86 questions. In the remarks section, Applicant provided amplifying information about the cause of the debts he disclosed. He also notified the government he was unaware of any other past due debts. This is consistent with his response to the SOR and his testimony at hearing. It is also consistent with an intent to be open and candid about all facets of his background. Given all the available information on this issue, I conclude Applicant did not wilfully withhold information from the government, or try to mislead the government about the state of his finances. Accordingly, no Guideline E disqualifying conditions apply here and I conclude this guideline for the Applicant.

I have carefully weighed all of the available evidence, and I have applied the appropriate disqualifying and mitigating conditions. Further, I have tried to make a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. Any reasonable doubts arising from the results of Applicant's background investigation have been satisfactorily addressed and he has overcome the government's case.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline F (Financial): FOR THE APPLICANT

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d: For the Applicant

Subparagraph 1.e: For the Applicant

Subparagraph 1.f: For the Applicant

Subparagraph 1.g: For the Applicant

Subparagraph 1.h: For the Applicant

Subparagraph 1.i: For the Applicant

Subparagraph 1.j: For the Applicant

Subparagraph 1.k: For the Applicant

Subparagraph 1.l: For the Applicant

Subparagraph 1.m: For the Applicant

Subparagraph 1.n: For the Applicant

Subparagraph 1.o: For the Applicant

Subparagraph 1.p: For the Applicant

Subparagraph 1.q: For the Applicant

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

Subparagraph 2.a: For the Applicant

Subparagraph 2.b: For the 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.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Applicant initially answered the SOR on July 26, 2005. He supplemented his answer with additional information on August 9, 2005.
3. Information provided in Applicant's initial response to the SOR and in his supplemental response, which specifically addresses the debts alleged comprises AE A. The information he provided regarding his work performance and evaluations comprises AE B. See also, Tr., 7 - 10.
4. See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
5. See *Egan*, 484 U.S. at 528, 531.
6. See *Egan*; Directive E2.2.2.
7. Directive, Enclosure 2.
8. Commonly referred to as the "whole person" concept, these factor are as follows:
 1. Nature and seriousness of the conduct and surrounding circumstances.
 2. Frequency and recency of the conduct.
 3. Age of the applicant.
 4. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences involved.
 5. Absence or presence of rehabilitation.
 6. Probability that the circumstances or conduct will continue or recur in the future;
9. Directive, E2.A6.1.1.
10. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;
11. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;
12. Directive, E2.A6.1.3.1. The behavior was not recent;
13. Directive, 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);

14. Directive, E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

15. Directive, E2.A5.1.1.

16. Directive, 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; (emphasis added)

17. For example, Applicant disclosed he had been fired from a job in 1999 (question 20) and that he was charged with and fined for disorderly conduct in 1998 (question 26).