

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 44-year-old employee of a defense contractor. During his prior marriage, he and his former wife incurred significant debt. He had surgery in 1999 and has significant medical bills from this surgery. He has not made any effort to pay any of his debt. When completing his security clearance application, he denied that he had any outstanding, overdue debt. He has not mitigated the government's concerns about his finances or his personal conduct. Clearance is denied.

CASE NO: 05-02027.h1

DATE: 05/31/2006

DATE: May 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-02027

DECISION OF ADMINISTRATIVE JUDGE

MARY E. HENRY

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 44-year-old employee of a defense contractor. During his prior marriage, he and his former wife incurred significant debt. He had surgery in 1999 and has significant medical bills from this surgery. He has not made any effort to pay any of his debt. When completing his security clearance application, he denied that he had any outstanding, overdue debt. He has not mitigated the government's concerns about his finances or his personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On October 12, 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*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons 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. Specifically, the SOR set forth security concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct), of the Directive. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On November 21, 2005, Applicant's notarized response to the allegations was filed. He elected to have his case decided on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and provided Applicant with a complete copy on March 8, 2006. Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit a response or additional evidence. This case was assigned to me on April 28, 2006.

FINDINGS OF FACT

Applicant admitted allegations under Guideline F, subparagraphs 1.c., 1.f., 1.g., and 1.i. through 1.m. of the SOR.⁽¹⁾ Those admissions are incorporated as findings of fact. He denied the remaining allegations. After a complete review of the evidence in the record, I make the following additional findings of fact:

Applicant is a 44-year-old pipe fitter for a defense contractor.⁽²⁾ He has worked for this contractor for more than three years.⁽³⁾ Applicant has been married twice.⁽⁴⁾ He has three sons, ages 21, 20, and 15, and a daughter, age 5.⁽⁵⁾ For the last 10 years, he has worked in the building industry.⁽⁶⁾ He completed a security clearance application (SF 86) in March 2003.⁽⁷⁾

Financial

Applicant earned approximately \$26,478.00 in 2004.⁽⁸⁾ His net monthly income averaged \$1,759.00 in the same year.⁽⁹⁾ His spouse had a monthly income of approximately \$1,000.00, for a total household monthly income of approximately \$2,759.00. His 2004 monthly expenses were: \$750.00 for rent; \$500 for groceries; \$200.00 for car insurance; \$500 for utilities, including telephone; \$80.00 for clothing; \$399.00 on credit payments; and \$150 on miscellaneous.⁽¹⁰⁾ These expenses total \$2,429.00, leaving \$330.00 a month to pay his debts.

Applicant's debts listed in the SOR are as follows:

SOR ¶	TYPE	DATE BAD DEBT	AMOUNT	STATUS
1.a.	Store account ⁽¹¹⁾	July 1996 ⁽¹²⁾	\$ 432.00 ⁽¹³⁾	Ex-wife to pay; no longer on credit report ⁽¹⁴⁾
1.b.	Car loan ⁽¹⁵⁾	July 1996 ⁽¹⁶⁾	\$7,922.00	Ex-wife to pay; no longer on credit report ⁽¹⁸⁾

			(17)	
1.c.	Medical bill (19)	February 1998 (20)	\$ 35.00.(21)	Unpaid (22)
1.d.	Car loan (23)	February 1998 (24)	\$4,832.00 (25)	Unknown. Debt denied; not listed on two most recent credit reports (26)
1.e.	Personal loan (27)	September 1997 (28)	\$2,399.00 (29)	Ex-wife to pay; no longer on credit report (30)
1.f.	Medical bill (31)	April 2000 (32)	\$ 421.00 (33)	Unpaid (34)
1.g.	Medical bill (35)	April 2000 (36)	\$3,866.00 (37)	Unpaid (38)
1.h.	Medical bill (39)	February 1999 (40)	\$ 37.00.(41)	Unpaid (42)
1.i.	Loan (43)	August 1999 (44)	\$ 266.00 (45)	Unpaid, account closed (46)
1.j.	Medical bill (47)	April 2000 (48)	\$ 207.00 (49)	Unpaid (50)
1.k.	Medical bill (51)	June 2000 (52)	\$1,494.00 (53)	Unpaid (54)
1.l.	Medical bill (55)	August 2000 (56)	\$2,787.00 (57)	Unpaid (58)
1.m.	Store account (59)	February 2003 (60)	\$ 891.00 (61)	Unpaid (62)

Applicant and his first wife divorced in 1999. (63) He contends that as part of the divorce settlement, his ex-wife was to pay the \$432.00 store account debt, the two outstanding car loans, and the \$2,399.00 personal loan account. (64) He did not submit a copy of their divorce settlement documents showing who was responsible for these debts. In the two most recent credit reports, none of these marital debts are listed. (65) With the exception of the one store account debt in the amount of \$891.00, his remaining individual debt is for medical bills incurred when he had carpal tunnel surgery in early 1999. (66) He did not have medical insurance at the time of the surgery. (67) He has not made any payments on these bills in seven years.

Falsification

On March 24, 2003, Applicant completed his security clearance application. He answered "no" to each of the following questions in the SOR: (68)

Question 38. Your Financial Delinquencies - 180 days

In the last 7 years, have you ever been over 180 days delinquent on any debt(s)?

Question 39. Your Financial Delinquencies - 90 Days

Are you currently over 90 days delinquent on any debt?

Applicant denies giving false information when responding to these questions. He states that he misunderstood the questions without further explanation. [\(69\)](#)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the adjudicative process provision in Paragraph E2.2., Enclosure 2 of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Included in the guidelines are disqualifying conditions and mitigating conditions applicable to each specific guideline. 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. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in the Directive. Specifically, these are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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. [\(70\)](#)

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. [\(71\)](#) The government has the burden of proving controverted

facts.⁽⁷²⁾ The burden of proof is something less than a preponderance of the evidence.⁽⁷³⁾ Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁷⁴⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁷⁵⁾

No one has a right to a security clearance,⁽⁷⁶⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁷⁷⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽⁷⁸⁾ Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.⁽⁷⁹⁾ 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 clearance.

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

Financial Considerations - Guideline F: 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.

Personal Conduct - Guideline E: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulation could indicate that the person may not properly safeguard classified information.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

The government has established its case under Guideline F. Applicant has a long history of excessive and unpaid debt,

including two car repossessions, medical bills, and personal debts. Applicant's financial problems clearly fall within the Financial Considerations Disqualifying Conditions E2.A6.1.2.1. (*A history of not meeting financial obligations*) and E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*)

I have considered the mitigating conditions and conclude that none apply. Applicant is responsible for any medical bills he incurred, including bills not paid by insurance or any other entity. In the seven years since his carpal tunnel surgery, he has not made any effort to pay his numerous outstanding medical bills. He also has failed to make any effort to pay the long overdue store account of \$891.00. Prior to his divorce in 1999, he and his former wife had excessive debt, which he claims she agreed to pay. The fact that these debts are not on his 2005 credit report does not show the debts are paid or his former wife is responsible for the debts under a divorce settlement agreement. Applicant has simply made no effort to pay the old outstanding bills listed in the SOR, nor has he established his former wife's responsibility for the old debt. Thus, he has not reduced or eliminated his vulnerability to coercion, exploitation or duress. Given his refusal to acknowledge old debts and to pay his medical debts, he has not mitigated the government's security concerns. He has not mitigated the government's concerns regarding his debt. Guideline F is found against applicant.

Under Guideline E, the government alleges Applicant deliberately falsified material facts on his latest security clearance application when he answered "no" to Questions 38 and 39. He denies intentionally falsifying his answers. When a falsification allegation is controverted, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.⁽⁸⁰⁾ For Personal Conduct Disqualifying Conditions (PC DC) E2.A5.1.2.2. (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . .*) and PC DC E2.A5.1.2.3. (*Deliberately providing false or misleading information concerning relevant and material matters to an investigator . . .*) to apply, the government must establish that Applicant's omission, concealment or falsification in his answers related to a relevant and material fact and was deliberate.

The government has established its case under Guideline E. Although Applicant has denied that he intentionally falsified his answers to Questions 38 and 39, the questions are clear about the information requested from him. He knew that he had unpaid medical bills and that this debt had not been paid for sometime. He also knew that he had incurred significant debt during his first marriage, for which he had an obligation to pay.

I have considered the mitigating factors and conclude that none apply. Applicant chose to deny the existence of his long overdue debt when he completed his security clearance application. He did not, thereafter, voluntarily provide correct information. He has not explained how he misunderstood a very clear question regarding his debts. Guideline E is found against Applicant. Accordingly, for the reasons stated, I find that it is not clearly consistent with the national interest to grant a security clearance to Applicant.

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

Paragraph 2, Guideline F (Personal Conduct): AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

DECISION

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

Mary E. Henry

Administrative Judge

1. Item 2 (Response to SOR, filed November 21, 2005) at 1-3.
2. Item 4 (Applicant's Security Clearance Application, dated March 24, 2003) at 1-2.
3. *Id.* at 2.
4. *Id.* at 3-4.
5. *Id.* at 4-5.
6. *Id.* at 2-3.
7. *Id.* at 1.
8. Item 6 (Applicant's signed statement, dated February 26, 2004) at 3.
9. *Id.*
10. *Id.*
11. Item 7 (Credit report, dated May 29, 2003) at 4.
12. *Id.*
13. *Id.*
14. *Id.*; Item 2, *supra* note 1, at 1, 4-6.
15. Item 7, *supra* note 11, at 4.

16. *Id.*
17. *Id.*
18. *Id.*; Item 2, *supra* note 1, at 1, 4-6.
19. Item 7, *supra* note 11, at 7.
20. *Id.*
21. *Id.*
22. *Id.*; Item 2, *supra* note 1, at 1, 5.
23. Item 7, *supra* note 11, at 4.
24. *Id.*
25. *Id.*
26. *Id.*; Item 2, *supra* note 1, at 2, 4-6; Item 8 (Credit Report, dated August 9, 2005).
27. Item 7, *supra* note 11, at 5.
28. *Id.*
29. *Id.*
30. *Id.*; Item 2, *supra* note 1, at 1, 4-6.
31. Item 2, *supra* note 1, at 5; Item 7, *supra* note 11, at 7.
32. Item 7, *supra* note 11, at 7.
33. *Id.*
34. Item 2, *supra* note 1, at 5.
35. *Id.*
36. Item 7, *supra* note 11, at 7.
37. *Id.*
38. Item 2, *supra* note 1, at 5.
39. *Id.*
40. Item 7, *supra* note 11, at 7.
41. *Id.*
42. Item 2, *supra* note 1, at 5.
43. *Id.*
44. *Id.*

45. *Id.*
46. *Id.* at 2, 5.
47. *Id.* at 5.
48. *Id.*
49. *Id.*
50. *Id.*
51. *Id.*
52. *Id.*
53. *Id.*
54. *Id.*
55. *Id.*
56. *Id.*
57. *Id.*
58. *Id.*
59. *Id.*
60. *Id.*
61. *Id.*
62. *Id.*
63. Item 4, *supra* note 2, at 4.
64. Item 2, *supra* note 1, at 1-2.
65. Item 7, *supra* note 11, at 4-7; Item 8, *supra* note 26, at 1-2.
66. Item 2, *supra* note 1, at 2.
67. *Id.*
68. Item 4, *supra* note 2, at 8.
69. *Id.*
70. Directive, Enclosure 2, ¶ E2.2.1.1. through E2.2.1.9.
71. ISCR Case No. 96-0277 (July 11, 1997) at 2.
72. ISCR Case No. 97-0016 (App. Bd., December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.

73. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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

75. ISCR Case No. 93-1390 (App. Bd. Decision and Reversal Order, January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.

76. *Egan*, 484 U.S. at 531.

77. *Id.*

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

79. Executive Order No. 10865 § 7.

80. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).