DATE: October 30, 2006

In re:

SSN: -----------

Applicant for Security Clearance

ISCR Case No. 05-12054

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant accumulated numerous delinquent debts between April 1999 and March 2004. He made partial payments on several debts and filed a petition for bankruptcy after learning his delinquent debts could hinder his application for a security clearance. He falsely answered "no" to questions on his security clearance application (SF 86) asking if he had delinquent debts. Security concerns based on financial considerations and personal conduct have not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On January 9, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive). The SOR alleged security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on February 13, 2006, admitted the delinquent debts alleged under Guideline F, denied the falsifications of his SF 86 alleged under Guideline E, and elected to have a hearing before an administrative judge. The case was assigned to an administrative judge on April 13, 2006, and reassigned to another administrative judge on April 24, 2006, based on workload. On May 16, 2006, DOHA issued a notice setting the case for hearing on June 1, 2006. On May 25, 2006, the assigned administrative judge granted Applicant's request for a continuance. The case was reassigned to me on June 30, 2006.

On August 9, 2006, DOHA issued a notice rescheduling the case for August 29, 2006. The case was heard as scheduled. At the hearing, I kept the record open for 15 days to permit Applicant to submit additional documentation regarding his bankruptcy petition. I received his documentation on September 6, 2006, and it has been incorporated in the record as

Applicant's Exhibit (AX) G. DOHA received the hearing transcript (Tr.) on September 7, 2006.

PROCEDURAL RULINGS

At the hearing, Department Counsel moved to conform the dates alleged in SOR ¶¶ 2.a and 2.b to the evidence. I granted the motion (Tr. 18-19) and noted the amendment on the SOR.

During the hearing, Department Counsel moved to amend the SOR to add an allegation that Applicant falsified his SF 86 by not disclosing that he left a job under unfavorable circumstances. I denied the motion (Tr. 54-55).

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I make the following findings:

Applicant is a 30-year-old security guard employed by federal contractors since April 2003. He received an associate's degree in computer science in August 1997 and an associate's degree is massage therapy in November 2002 (Government Exhibit (GX) 1 at 2; Tr. 8). He was married in May 1999 and divorced in June 2000. He has worked for his current employer since January 2005 (Tr. 32), and was promoted to a supervisory position in July 2005 (Tr. 51). He has never held a security clearance.

Applicant's employment history included periods of employment in the private sector, self-employment, and state government employment. He worked as a state correctional officer from February 1999 until June 2001. This employment ended under unfavorable circumstances when he stopped coming to work (Tr. 52-54).

On October 5, 2004, Applicant executed a SF 86. He answered "no" to question 38, asking if he had been more than 180 days delinquent on any debt in the last seven years, and question 39, asking if he was currently more than 90 days delinquent on any debt (Government Exhibit (GX) 1 at 8-9. A credit report dated December 13, 2005, reflected 11 delinquent debts totaling $49, 975. The earliest debt became delinquent in April 1999. All but two of the debts had become delinquent during or before the year 2001 (GX 2, GX 3).

In response to the SOR, Applicant denied falsifying his SF 86. He asserted he thought questions 38 and 39 applied only to debts not reflected on his credit report. He stated he knew his credit report would be examined and any debts on the report would be revealed.

At the hearing, he testified he did not know why he answered the two questions on the SF 86 in the negative and did not remember what explanation he gave to a security investigator about the reason for his negative answers (Tr. 56-58). In his closing statement he stated, "the first time I ever saw my debts is when I was with the [security investigator]," and his explanation for not disclosing them was "either I misunderstood the question, misread, I was in a hurry." (Tr. 70.)

Applicant admitted at the hearing that he was terminated from his job as a correctional officer under unfavorable conditions. He testified that he incorrectly answered "no" to question 20 on his SF 86, asking if he had ever left a job under unfavorable circumstances, because he misunderstood the question (Tr. 54).

In his answer to the SOR, Applicant admitted the debt alleged in SOR ¶ 1.a, but at the hearing he testified he did not know what the debt was for (Tr. 34). He testified the debt for $27,708, alleged in SOR ¶ 1.b, was for the purchase of a truck about six years ago. He stopped making payments in 2001, but to his knowledge the truck was never repossessed. He testified the truck is parked in a friend's driveway (Tr. 36). It is inoperable (AX G at 10).

Applicant testified he stopped paying the utility bills alleged in SOR ¶¶ 1.d and 1.e because he was going through his divorce and could not afford to pay his bills. He knew the electric bill was delinquent because his power was shut off (Tr. 40). At about the same time, he was receiving letters about a delinquent credit card account (SOR ¶ 1.g), but he did nothing, because he could not afford to pay it (Tr. 41)

Applicant has not sought out any credit counseling services (Tr. 45). However, he has consulted with a bankruptcy

lawyer, and he filed a petition for Chapter 7 bankruptcy on June 30, 2006 (AX G at 41). His petition lists 22 creditors holding unsecured nonpriority claims totaling $29,897.74, including seven creditors alleged in SOR ¶¶ 1.c, 1.f, 1.g, 1.h, 1.i, 1.j, and 1.k (AX G at 14-18). The creditors alleged in SOR ¶¶ 1.a, 1.b, 1.d, and 1.e are not specifically listed in the bankruptcy petition. The record does not indicate whether any of the debts included in the bankruptcy petition encompass the debts alleged in SOR ¶¶ 1.a, 1.b, 1.d, and 1.e under other names.

On the same day Applicant filed his bankruptcy petition, he paid $200 on the medical bill alleged in SOR ¶ 1.c and $700 on the student loan debt alleged in SOR 1.j (AX B, AX C, Tr. 37). Both debts are included in his bankruptcy petition (AX G at 16, 18). At the hearing, he also presented evidence of three payments of debts not alleged in the SOR (AX D, E, F).

Applicant now lives frugally. He shares his rental and living expenses with a roommate (Tr. 31). He testified he does not have a car (Tr. 48). He testified his gross income every two weeks is about $2,400, and he has a net monthly remainder of about $3,000 (Tr. 32, 51). However, his bankruptcy petition reflects gross monthly income of $2,266, net monthly take-home pay of $1,655, net monthly expenses of $1,427, and a net remainder of $228 (AX G at 21-22).

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, 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." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

The Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1 through 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (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 applicant'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. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in persons with access to classified information. However, the decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3; *see* Directive ¶ E3.1.15. An applicant "has

the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

Guideline F (Financial Considerations)

Under Guideline F, "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Directive ¶ E2.A6.1.1. A person who fails or refuses to pay long-standing debts or is financially irresponsible may also be irresponsible or careless in his or her duty to protect classified information. Two disqualifying conditions (DC) under this guideline could raise a security concern and may be disqualifying in this case. DC 1 applies where an applicant has a history of not meeting his or her financial obligations. Directive ¶ E2.A6.1.2.1. DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3. Applicant's financial history and his admissions establish DC 1 and DC 3.

Since the government produced substantial evidence to establish DC 1 and DC 3, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. Applicant has the burden of proving a mitigating condition, and the burden of disproving it is never shifted to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

A security concern based on financial problems can be mitigated by showing the delinquent debts were not recent (MC 1) or was an isolated incident (MC 2). Directive ¶¶ E2.A6.1.3.1., E2.A6.1.3.2. Applicant has multiple delinquent debts that are not yet fully resolved. I conclude MC 1 and MC 2 are not established.

Security concerns arising from financial problems can be mitigated by showing they are the result of conditions "largely beyond the person's control" (MC 3). Directive ¶ E2.A6.1.3.3. Even if Applicant's financial difficulties initially arose due to circumstances beyond his control, it is appropriate to consider whether he acted in a reasonable manner when dealing with his financial difficulties. ISCR Case No. 02-02116 at 4 (App. Bd. Sep. 25, 2003). Applicant's divorce and the expenses related to it were circumstances beyond his control. However, he has been employed since his divorce and has modest living expenses, but he did virtually nothing to resolve his delinquent debts until after he received the SOR. I conclude MC 3 is not established.

A mitigating condition (MC 4) applies when an applicant "has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control." Directive ¶ E2.A6.1.3.4. Applicant did not seek financial counseling. However, he has adopted a frugal lifestyle, and he recently consulted with a bankruptcy lawyer and filed a Chapter 7 bankruptcy petition. While a discharge in bankruptcy will give Applicant immediate relief and an opportunity to start over, his financial problems will recur unless he learns to manage his money. The discrepancies between his testimony at the hearing about his financial situation and his description of his income and expenses in his bankruptcy petition suggest that he has little grasp of basic principles of financial management. I conclude MC 4 is partially established by the bankruptcy petition, but there is not yet any evidence that the problem is being resolved or under control.

A security concern arising from financial problems can be mitigated by showing a good-faith effort to resolve debts (MC 6). Directive ¶ E2.A6.1.3.6. The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999).

Although filing for bankruptcy does not necessarily constitute a good-faith effort to resolve a debt, it is relevant because a bankruptcy discharge would mean that Appellant would no longer be vulnerable to coercion or temptation to engage in illegal conduct to generate funds. However, evidence of past irresponsibility is not mitigated by resolving debts only under pressure of qualifying for a security clearance. Applicant took no affirmative action to resolve his long-standing debts until six months after he received the SOR. I conclude MC 6 is not established.

Guideline E (Personal Conduct)

Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1. A disqualifying condition (DC 2) under this guideline may be raised by "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." Directive ¶ E2.A5.1.2.2.

When a falsification allegation is controverted, the government has the burden of proving it. Proof of an omission, standing alone, does not prove an applicant's 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 state of mind at the time the omission occurred. *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)).

Applicant was aware that he had delinquent debts. He knew he had stopped paying his utility bills and his electricity was shut off. He knew he had stopped making payments on his truck and left it in a friend's driveway. His initial explanation in his response to the SOR was that he misunderstood the question. However, in his testimony at the hearing he backed away from that explanation and testified he did not know why he answered the financial questions in the negative. In his closing statement he reverted to his claim of misunderstanding and added a third excuse that he was in a hurry.

Although I denied Department Counsel's motion to amend the SOR to encompass a false answer to question 20 on his SF 86, pertaining to Applicant's employment record, I have considered that his explanation for his incorrect answer to question 20 was the same as his answer in the SOR for his incorrect answers to questions 38 and 39, *i.e.*, that he misunderstood the questions. I have limited my consideration of his answer to question 20 to its probative value in determining the plausibility and credibility of Applicant's explanation for his answers to questions 38 and 39.

I have also considered that Applicant has obtained two associates' degrees, was promoted to a supervisory position by his current employer, appeared intelligent and articulate at the hearing, and drafted a well-written and sophisticated *pro se* request to postpone the hearing originally set for June 1, 2006. Based on all the evidence before me, I conclude that Applicant's assertion that he misunderstood questions 38 and 39 is implausible and incredible. Accordingly, I conclude DC 2 is raised.

Two mitigating conditions (MC) are relevant to this case. MC 2 applies when the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily. Directive ¶ E2.A5.1.3.2. MC 3 applies when the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts. Directive ¶ E2.A5.1.3.3. Neither condition is established. Applicant's falsifications of questions 38 and 39 were recent, pertaining to his current security clearance, and he made no effort to correct them until he was questioned by a security investigator. No other enumerated mitigating conditions were established.

Whole Person Analysis

In addition to considering the specific disqualifying and mitigating conditions under each guideline, I have also considered the general adjudicative guidelines in the Directive ¶ E2.2.1. I have considered: (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 applicant'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. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

Applicant's indebtedness is extensive and long-standing. While his financial problems began as early as 1999, they were exacerbated by his divorce in 2000. He has done little to resolve them, even though he has been gainfully employed. He is an intelligent, well-educated, mature adult. While he has taken an important step by filing for bankruptcy, there is no evidence he has changed his attitude or his financial habits. A discharge in bankruptcy will virtually eliminate the

potential for pressure, coercion, exploitation, or duress, at least temporarily. The likelihood of recurrence cannot be determined, because Applicant has no track record of financial responsibility.

Applicant's falsification of his SF 86 was serious misconduct and undermined the integrity of the security clearance process. It was not an isolated incident. Although all the falsified answers occurred at the same time on one document, Applicant persisted in equivocating about the reasons for his false answers at the hearing. He has not offered plausible or credible explanations for his false answers, nor has he expressed remorse. While he understands the impact of being denied a clearance, he has not shown he understands the importance of candor. Without a demonstrated change of attitude, the risk of recurrence is unacceptable.

After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on based on financial considerations and personal conduct. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the interests of national interest to grant him a security clearance.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: 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

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

DECISION

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

LeRoy F. Foreman

Administrative Judge