

DATE: March 19, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-13533

ECISION OF ADMINISTRATIVE JUDGE

JUAN J. RIVERA

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of failing to meet his financial obligations dating back to the late 1990s. As of the date he answered the SOR, he had six accounts, totaling \$33,135, that have been delinquent for many years. Although he has made some effort to pay creditors, Applicant's evidence is insufficient to show he is in control of his finances, is not overextended, and that he has a track record of financial responsibility. Furthermore, he deliberately falsified his security clearance application. Clearance is denied.

STATEMENT OF THE CASE

On June 12, 2006, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).⁽¹⁾ The SOR informed Applicant that, based on information available to the Government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant him access to classified information.⁽²⁾

On July 6, 2006, Applicant answered the SOR (Answer). He admitted the SOR allegations under ¶¶1.a - 1.h, denied the allegations under ¶¶2.a - 2.b, provided explanations, and requested a decision without a hearing. On December 21, 2006, Department Counsel prepared a File of Relevant Material (FORM) which was mailed to Applicant on December 22, 2006. He acknowledged receipt of the FORM on January 4, 2007, and did not object to anything contained in the FORM or submit additional information for consideration within the 30-day period provided to him. The case was assigned to me on February 28, 2007.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein as findings of facts. After a thorough review of the pleadings and the evidence, I make the following additional findings of facts:

Applicant is a 59-year-old quality engineer who has worked for a Department of Defense (DoD) contractor since August 1981.⁽³⁾ From August 1965 to October 1968, he served in the U.S. Navy, and achieved the rate of Petty Officer First Class (E-4) prior to his discharge. He married his wife in 1984, and apparently they have no children.⁽⁴⁾ There is no evidence Applicant has mishandled or compromised classified information while at his current job.

In March 2004, Applicant submitted an Office of Personnel Management Security Clearance Application, Standard Form (SF) 86. Applicant answered "No" to questions 38 and 39, and failed to list any debts over 180 days delinquent he had during the last seven years, or any current debts over 90 days delinquent (respectively).

The subsequent background investigation addressed Applicant's financial situation and included the review of his May 2004 credit bureau report (CBR),⁽⁵⁾ and his January 2006 CBR⁽⁶⁾. Around February 2006, DOHA asked him to provide documentation corroborating the status of six of the debts alleged in the SOR (¶¶ 1.a - 1.f). He was specifically asked to provide evidence to show that he was taking care of/resolving his debts in the form of canceled checks, receipts of payments, and settlement agreements with creditors. Applicant failed to provide such evidence. Instead, Applicant stated he had entered into payment arrangements with creditors, that the debts charged-off were through mutual agreement with creditors after he had paid a substantial amount of the debt, and that he was looking at refinancing his home to pay the remaining debts. He provided no evidence to corroborate his assertions.

In his June 2006 answer to the SOR, Applicant admitted all the financial allegations (SOR ¶¶ 1.a - 1.h) and claimed he had refinanced his home and paid off all the alleged debts. He provided no evidence to substantiate his claims. After reviewing Applicant's three CBRs, I find as follows:

SOR ¶1.a alleges a wireless service account owing \$88 which, based on the January 2006 CBR, was placed in collection around April 2004.⁽⁷⁾ The account is not reflected in the May 2004 or in the December 2006 CBR. Although there is no direct evidence it was paid off, because it is no longer shown as a delinquent/charged off debt in the December 2006 CBR, and the debt has not been delinquent for close to seven years, it appears it was paid off.

SOR ¶1.b alleges a credit card debt, owing \$4,589, which was shown delinquent in the May 2004 and January 2006 CBRs. Applicant's "date of last activity" on this account was March 2004. The December 2006 CBR shows the account is closed at Applicant's request with a "0" balance. The information available is not sufficient to determine whether the debt was paid off, or sold to a collection agency.⁽⁸⁾

SOR ¶1.c alleges a credit card debt, owing \$12,255, which was shown delinquent in the May 2004 CBR and the January 2006 CBR. Based on the May 2004 CBR, Applicant's "date of last activity" in this account was January 2004. The December 2006 CBR shows the account as "closed or paid" with a "0" balance. The information available is not sufficient to determine whether the debt was paid off or sold to a collection agency.

SOR ¶ 1.d alleges a charged off credit card debt, owing \$436, which was charged off in about September 2003. The account is not reflected in the December 2006 CBR. The account was opened in October 1998, and Applicant's "date of last activity" was September 2003. The information available is not sufficient to determine whether the debt was paid off, sold to a collection agency, or removed from Applicant's CBR after being delinquent for a number of years.

SOR ¶ 1.e alleges a charged off credit card account, owing \$912. Applicant's "date of last activity" was August 2002. Both the May 2004 and the December 2006 CBRs also show the account charged off as a bad debt.

SOR ¶1.f alleges a delinquent credit card debt, owing \$4,340, which was shown 90 days past due on the May 2004 CBR. Applicant's "date of last activity" on this account was January 2002. The January and December 2006 CBRs show the account more than 120 days past due and closed by the creditor.

SOR ¶1.g alleges a delinquent credit card debt, owing \$10, 633, which was also shown delinquent on the May 2004 CBR. Applicant's "date of last activity" on this account was December 1999. The December 2006 CBR shows the account is closed at the creditor's request with a "0" balance. The information available is not sufficient to determine whether the debt was paid off, or sold to a collection agency.

SOR ¶1.h alleges a charged off credit card debt, owing \$11, 587. Applicant's "date of last activity" on this account was July 2003. Applicant's January and December 2006 CBRs show he paid this debt after it was charged off, I presume after December 2005.

In December 2004, Applicant was interviewed by a defense background investigator concerning his financial situation. (9) He stated his financial problems resulted from his wife quitting her job and having to take another job with a reduction in pay. This resulted in Applicant and his wife not having enough income to pay for their household living expenses and their accrued debts. The monthly household debts exceeded the household's income and they could not afford to meet all of their obligations. He continued to make payments on some of his financial obligations, but only to the extent that he could afford the payments. Applicant was forced to use his credit cards to pay for day-to-day living expenses and his finances snowballed out of control. He understands the importance of having good credit, and promised that he will not let this situation happen again. Applicant stated he had recently refinanced his home, and the refinancing had helped his financial situation.

Applicant presented no evidence (other than his uncorroborated statements) to explain why the alleged debts became delinquent, what efforts, if any, he has taken to pay, settle, or resolve the debts; whether he made a consolidation loan to pay some of the debts; the status of his current financial situation (i.e., income, monthly expenses, debts, etc.); whether he is still financially overextended; whether he has participated in financial counseling; or whether he has taken any measures to avoid future financial problems.

POLICIES

The Directive sets forth adjudicative guidelines which must be considered in evaluating an Applicant's eligibility for access to classified information. The administrative judge must take into account both disqualifying and mitigating conditions under each adjudicative guideline applicable to the facts and circumstances of the case. The guidelines are not viewed as inflexible ironclad rules of law. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. Each decision must reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive, and the whole person concept. Having considered the record evidence as a whole, I conclude Guideline F (Financial Considerations)-(10) and Guideline E (Personal Conduct) (11) are the applicable relevant adjudicative guidelines.

BURDEN OF PROOF

The purpose of a security clearance decision is to determine whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information. (12) 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 to ensure each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own.

The government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the government must establish by substantial evidence (13) a prima facie case that it is not clearly consistent with the national interest for the applicant to have access to classified information. The responsibility 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 carries a heavy burden of persuasion. (14) The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security. (15)

CONCLUSIONS

Under Guideline F (Financial Considerations), a security concern exists when a person has significant unpaid debts. An individual who is financially overextended is at risk to engage in illegal or unethical acts to generate funds to meet financial obligations. (16) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligation to protect classified information. Behaving responsibly or irresponsibly in one

aspect of life can often indicate how a person may behave in other aspects of life.

It was Applicant's responsibility to refute, extenuate or mitigate the government's allegations against him. He failed to provide sufficient evidence to do so. Based on the limited evidence provided, I conclude that as of the December 2006, Applicant had six outstanding delinquent debts (¶¶1.b - 1.g) owing approximately \$33,135. He paid the debts alleged in SOR ¶¶1.a and 1.h. Applicant's financial problems are recent, not isolated, and ongoing. Applicant's unwillingness or inability to honor his financial obligations is evidenced by the delinquent debts he has been carrying for years, and his failure to show meaningful efforts to repay creditors or otherwise resolve his financial situation. 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 in this case.

I specifically note that in February 2006, DOHA asked Applicant to provide documents to verify he was current on his debts, or to establish his good faith efforts to resolve his financial problems. He failed to produce the documents. In January 2007, Applicant was provided with a copy of the FORM in which the government strongly argued that Applicant had failed to demonstrate he had resolved the debts alleged in the SOR, that he was financially solvent, that he had a track record of financial responsibility, and/or that circumstances beyond his control mitigated his financial condition. Notwithstanding the government's concerns, Applicant did not answer the FORM and failed to provide documents to corroborate his assertions.

Applicant raised facts that may be considered as circumstances beyond his control, i.e., his wife's change of jobs and her reduction in pay. Notwithstanding, under the totality of the circumstances of his case, Applicant failed to provide sufficient information to support the applicability of Financial Considerations Mitigating Conditions (FC MC) 3: *the conditions that resulted in the behavior were largely beyond the person's control* (e.g., loss of employment, a business turnaround).⁽¹⁷⁾ Applicant's December 2004 personal financial statement (PFS) shows a net remainder of \$2,330 and his February 2006 PFS shows a net remainder of \$850. He failed to establish how his wife's lesser income affected his ability to pay his financial obligations.

I also specifically considered FC MC E2.A6.1.3.6: *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*, and conclude it does not apply. I give Applicant credit for paying two of his delinquent accounts. Notwithstanding, I conclude that based on the available evidence in this case, Applicant's last minute payment of the two debts do not raise to the level of "good-faith efforts" to repay creditors. He carried those delinquencies for many years with no evidence of efforts taken to resolve them. Applicant failed to provide sufficient information to support the applicability of any of the Financial Considerations Mitigating Conditions (FC MC).

Applicant's evidence is not sufficient to show he has dealt responsibly with his financial obligations. Applicant presented little or no evidence of meaningful efforts taken to resolve his debts before receipt of the SOR (i.e., paid debts, settlements, negotiations, payment plans, budgets, financial assistance/counseling). Furthermore, he failed to present sufficient evidence to show he is not overextended or that his financial problems will not be a concern in the future. Applicant's financial history and lack of favorable evidence preclude a finding that he has established a track record of financial responsibility. Applicant's available evidence is not sufficient to demonstrate he has taken control of his financial situation and is capable of overcoming his financial difficulties.

Under Guideline E, personal conduct is always a security concern because it asks the ultimate question - whether a person's past conduct instills confidence the person can be trusted to properly safeguard classified information. An applicant's conduct is a security concern if it involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Such behavior could indicate that the person may not properly safeguard classified information.⁽¹⁸⁾

The government established that Applicant failed to disclose the debts alleged in SOR ¶¶1.d - 1.h in his response to SF 86 questions 38 and 39. Applicant claimed that he was unaware of the delinquent debts, and that he made an honest mistake. Applicant's claims of honest mistake ring hollow for several reasons. Based on his own assertions, he knew or should have known that, because of his wife's reduced income they were not meeting their financial obligations. Some of the debts have been delinquent since 1999. He admits to using his credit cards to pay for day to day expenses. Applicant's age, employment, and the number and value of his debts convinces me it is not likely that he could have

forgotten all of his delinquent debts. Furthermore, Applicant clearly demonstrated a lack of interest in establishing his financial responsibility.

Considering all the available evidence in this case, I find Appellant did intend to falsify his SF 86 and to mislead the government. 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.*

I carefully considered the applicability of all the Personal Conduct Mitigating Conditions and conclude that none apply. The evidence available in this case is not sufficient to support the applicability of any of the mitigating conditions.

I have carefully weighed all evidence, and I applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guidelines. I specifically considered Applicant's answer to the SOR, his efforts to rectify his financial situation, and the fact that there is no evidence that he ever mishandled or caused the compromise of classified information. Considering all available information, and the whole person concept, I find Applicant has not mitigated the Financial Considerations and Personal Conduct security concerns.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Financial Considerations (Guideline F) AGAINST APPLICANT

Subparagraphs 1.a and 1.h For Applicant

Subparagraphs 1.b - 1.g Against Applicant

Paragraph 2, Personal Conduct (Guideline E) AGAINST APPLICANT

Subparagraphs 2.a - 2.b Against Applicant

DECISION

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

Juan J. Rivera

Administrative Judge

1. Government Exhibit (GE) 1.
2. *See* Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992) (Directive), as amended.
3. GE 4 (Office of Personnel Management Security Clearance Application (SF86), dated March 19, 2004), unless indicated otherwise, is the source for the facts in this paragraph.
4. Applicant disclosed no children in his SF 86.
5. GE 7.
6. GE 8.

7. GE 8.
8. I note that the CBRs show other accounts where the Applicant had settled or paid the debt after charged off.
9. GE 6, unless otherwise stated, is the source of the facts in this paragraph.
10. Directive, ¶ E2.A6.1.1.
11. Directive, ¶ E2.A5.1.1.
12. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
13. ISCR Case No. 98-0761, at p. 2 (December 27, 1999)(Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.); ISCR Case No. 02-12199, at p. 3 (April 3, 2006)(Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.); Directive, ¶ E3.1.32.1.
14. *Egan*, 484 U.S. 518, at 528, 531.
15. *See Egan*; Directive, ¶ E2.2.2.
16. Directive, ¶ E2.A6.1.1.
17. Directive, ¶ E2.A6.1.3.3.
18. Directive, ¶ E2.A5.1.1.