

DATE: July 27, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-14974

DECISION OF ADMINISTRATIVE JUDGE

MARY E. HENRY

APPEARANCES

FOR GOVERNMENT

Richard Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

As a result of lost work assignments and unemployment, Applicant failed to pay his child support and some other bills for a period of time. He believed that his insurance company was responsible for his unpaid medical bills. He is current in his child support payments, and has paid some of his outstanding bills. He did not intentionally falsify his answers to his security clearance application. He has mitigated the government's concerns regarding his finances and his personal conduct. Clearance is granted.

STATEMENT OF THE CASE

On February 17, 2006, 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 arch 17, 2006, Applicant submitted a notarized response to the allegations. He requested a hearing.

This matter was assigned to me on April 5, 2006. A notice of hearing was issued on May 5, 2006, and a hearing was held on May 23, 2006. Two government exhibits and two Applicant exhibits were admitted into evidence. The record was held open until June 22, 2006 to allow Applicant time to submit additional evidence. The additional documentation was received. The government did not object to the admission of this evidence, which has been admitted as Applicant Exhibits C through H. ⁽¹⁾ Applicant testified. ⁽²⁾ The hearing transcript (Tr.) was received on June 1, 2006.

FINDINGS OF FACT

Applicant admitted the allegations under Guideline F in subparagraphs 1.d. through 1.f., 1.h. and Guideline E, subparagraphs 2.a. and 2.b. of the SOR. ⁽⁵⁾ Those admissions are incorporated as findings of fact. He denied the remaining allegations and deliberately falsifying his answers. ⁽⁶⁾ After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 64-year-old security guard for a defense contractor. ⁽⁷⁾ He has worked part-time for this contractor for two and one-half years. ⁽⁸⁾ He served more than thirteen years in the United States Army and was honorably discharged in 1973. ⁽⁹⁾ Applicant is divorced. ⁽¹⁰⁾ He has a 37-year-old disabled daughter and a 15-year-old son. ⁽¹¹⁾ He completed a security clearance application (SF 86) in November 2003. ⁽¹²⁾

Applicant started receiving a reduced social security benefit at age 62 to ensure his son would receive financial support. ⁽¹³⁾ His Social Security benefits total \$1,200.00 a month. ⁽¹⁴⁾ He also receives \$172.00 a month in retirement benefits. ⁽¹⁵⁾ From his part-time job, his gross monthly income is approximately \$1,250.00. ⁽¹⁶⁾ His monthly expenses are: \$495.00 for rent; \$150.00 for groceries; \$130.00 for car expenses, including insurance; \$80.00 for utilities; \$49.00 for telephone, \$14.00 for cable, \$100.00 for support of his disabled daughter; and \$100.00 for support of his son. ⁽¹⁷⁾ These expenses total \$1,118.00, and do not include other miscellaneous expenses such as laundry, medicine and medical insurance. His son receives a dependent child social security benefit of \$672.00 a month. ⁽¹⁸⁾ He owns his 1993 truck. ⁽¹⁹⁾

Applicant's debts alleged in the SOR, including current status, are summarized in the following table:

SOR ¶	TYPE OF DEBT	AMOUNT	CURRENT STATUS
1.a.	Cable bill ⁽²⁰⁾	\$ 28.00 ⁽²¹⁾	Paid ⁽²²⁾
1.b.	Medical bill ⁽²³⁾	\$ 189.00 ⁽²⁴⁾	Paid ⁽²⁵⁾
1.c.	Medical bill ⁽²⁶⁾	\$ 76.00 ⁽²⁷⁾	Unpaid ⁽²⁸⁾
1.d.	Medical bill ⁽²⁹⁾	\$3,327.00 ⁽³⁰⁾	Unpaid ⁽³¹⁾
1.e.	Credit card ⁽³²⁾	\$1,298.00 ⁽³³⁾	Paid ⁽³⁴⁾
1.f.	Consumer debt ⁽³⁵⁾	\$1,455.00 ⁽³⁶⁾	Paid ⁽³⁷⁾
1.g.	Child support ⁽³⁸⁾	\$2,794.00 ⁽³⁹⁾	Paid arrearage ⁽⁴⁰⁾

Applicant worked for 15 years as a truck driver for a private company. ⁽⁴¹⁾ His pay was based on the number of driving assignments and the driving distance, i.e. local or long distance. ⁽⁴²⁾ After many years at this company, he participated in a whistleblower activity by reporting a manager for misuse of funds. ⁽⁴³⁾ Subsequent to exposing the manager's conduct, his employer began to slowly reduce the number of his weekly truck driving assignments and changed his driving routes from long-distance to local, causing a loss of income each month and a substantial loss of income over a lengthy period of time. ⁽⁴⁴⁾ His employment with this company ended in 2003, when after he complained about his limited driving assignments, he declined a company job offer, for which he was not qualified. ⁽⁴⁵⁾ He got further behind in his bills. ⁽⁴⁶⁾ Ultimately, the state unemployment commission found that he had been constructively discharged from his job. ⁽⁴⁷⁾

In 1998, Applicant's debts were discharged after he filed bankruptcy because of credit card debt totaling between \$6,000 and \$8,000. ⁽⁴⁸⁾ As a result, he pays cash for all his purchases. ⁽⁴⁹⁾ He states he has no debts because some have been written off. ⁽⁵⁰⁾

Applicant pays his cable bill on a monthly basis, and is current in his payments. ⁽⁵¹⁾ He states that his medical bills

should have been paid by his prior employer's insurance, but were not for reasons unknown to him. ⁽⁵²⁾ At the hearing, he acknowledged his responsibility for these bills. He also stated that he had paid off the old credit card and consumer credit bills. He has documented the payment of the credit card, which apparently was not included in his bankruptcy filing. ⁽⁵³⁾ He did contact the second company to verify payment of his consumer debt, which was also part of his bankruptcy. ⁽⁵⁴⁾ The company advised that it sold his account in 2002 and could not provide him with further information. ⁽⁵⁵⁾ He estimated he paid approximately \$750.00 to settle this account. ⁽⁵⁶⁾

Applicant had been ordered to pay \$440.00 in child support for his son. ⁽⁵⁷⁾ He regularly paid his child support through payroll deductions. ⁽⁵⁸⁾ When he lost his job, he got behind in his child support. ⁽⁵⁹⁾ In June 2004, the court directed him to pay \$25.00 a week in child support. ⁽⁶⁰⁾ The court suspended his monthly child support payments because his son received \$672.00 a month from social security. It also noted that the court listed his arrearage as \$4,500.00 in 2004. ⁽⁶¹⁾ The state took his 2005 tax refund of \$500.00 and his 2004 tax refund and applied it to child support arrearage. ⁽⁶²⁾ His documents indicate he has no arrearage. ⁽⁶³⁾

At the hearing, he credibly testified that he had not seen his credit report until provided a copy of the report submitted into evidence. ⁽⁶⁴⁾ On November 28, 2003, Applicant completed his security clearance application. He answered "yes" to the following question in the SOR. ⁽⁶⁵⁾

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 listed two debts, but not all his unpaid debts listed in his credit reports. ⁽⁶⁶⁾ He does not believe he owes the medical bills listed and showed that he had paid the other debts listed. ⁽⁶⁷⁾

He answered "no" to the following question in the SOR: ⁽⁶⁸⁾

Question 39. Your Financial Delinquencies - 90 Days

Are you currently over 90 days delinquent on any debt?

He did not identify any debts for this question, since according to his testimony he owed no debts, has no credit cards, and pays cash for his purchases.

Applicant's contract manager describes him as a reliable and trustworthy employee with an exemplary work attendance record. ⁽⁶⁹⁾ Applicant served in the United States Army for over 13 years. ⁽⁷⁰⁾ His service included a tour of duty in Vietnam, for which he received a Bronze Star Medal. As a civilian, the Medal of Valor. ⁽⁷¹⁾

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.⁽⁷²⁾

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.⁽⁷³⁾ The government has the burden of proving controverted facts.⁽⁷⁴⁾ The burden of proof is something less than a preponderance of the evidence.⁽⁷⁵⁾ 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.⁽⁷⁶⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁷⁷⁾

No one has a right to a security clearance,⁽⁷⁸⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁷⁹⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽⁸⁰⁾ 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.⁽⁸¹⁾ 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 history of excessive debt, including unpaid medical bills, some of which have not been paid. Applicant's financial problems clearly fall within the Financial Considerations Disqualifying Conditions (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*).

A security concern based on financial problems can be mitigated in several ways. Applicant's unresolved debt problems had existed for a number of years, and are not an isolated incident. Thus, he has not established a mitigating condition under Financial Considerations Mitigating Conditions (FC MC) E2.A6.1.3.2. (*It was an isolated incident*). Likewise, since he has not received counseling for his credit problems, and has not established a repayment plan for his debt, 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, however, has mitigated the government's concerns under FC MC E2.A6.1.3.1. (*The behavior was not recent*), FC MC E2.A6.1.3.3. (*The conditions that resulted in the behavior were largely beyond the person's control*), and FC MC E2.A6.1.3.6. (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Despite the elimination of debt in 1998, he incurred more debt when his monthly income steadily declined after his

employer regularly reduced his driving assignments over a long period of time. After his job ended in 2003, he had difficulty obtaining work and unemployment benefits. Without regular income between 2000 and 2003, his was unable to pay existing debt and his child support obligations. Since this time, he has not incurred new, unpaid debt. Rather, once he started receiving his social security benefits and began his current part-time employment, he began resolving his credit problems. On his own initiative, he negotiated a reduced settlement amount with two creditors, which he then paid in 2003. For many months, he has timely paid his cable bill just as he has paid his usual living expenses. By filing for social security benefits at age 62, he assured that his child support payments would continue. He also paid his child support arrearage through the courts. He did not pay his outstanding medical bills because he believed that the insurance company should have been paid his bills. Recently, he paid one medical bill and now understands that he is still responsible for the medical bills not paid by his insurance carrier, even if this amount is not on his credit report. Since stabilizing his income, he resolved many of his overdue debt problems. As he has made a good faith effort to resolve his outstanding debt, he has overcome the government's concerns. Guideline F is found in his favor.

Under Guideline E, the government has established the Applicant omitted material facts on his security clearance application when answering Questions 38 and 39. It alleges that he intentionally falsified material facts when he failed to provide complete information in response to Question 38 and answered "no" to Question 39. 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.

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. [\(82\)](#)

The government has not established its case of deliberate falsification. Applicant listed the debts which came within the time frame of the question, and he still owed. He did not list many of his medical bills because he believed the insurance company was responsible for these bills. He was paying his cable bill and his child support obligation. Although he had an arrearage in his child support obligation, he believed that he was providing accurate up to date information. He had no intent at the time he completed his security clearance application to falsify his answers. Thus, he did not intentionally falsifying his answers to Questions 38 and 39. He has demonstrated that he is financially responsible and trustworthy. It is unlikely he could be coerced or exploited because the insurance company did not pay his medical bills. Guideline E is found in favor of Applicant. Accordingly, for the reasons stated, I find that it is 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): FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

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

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is granted.

Mary E. Henry

Administrative Judge

1. Applicant Exhibit C is an account and payment summary on his child support, dated May 24, 2006. Applicant Exhibit D is a copy of Applicant's cable bills from January 1, 2005 through June 2006. Applicant Exhibit E is a copy of a medical bill dated May 24, 2006 for services in 2000. Applicant Exhibit F is a letter dated June 14, 2006 regarding a credit account. Applicant Exhibit G is a statement of account dated June 7, 2006, and a letter regarding a medical bill. Applicant Exhibit H is a letter from a credit card company, dated June 19, 2006.

2. At the hearing, the government made a proffer to treat Applicant's opening statement as part of the evidentiary record. [\(3\)](#)

3. Tr. at 20. [\(4\)](#)

4. *Id.* '

5. Applicant's response to the SOR, dated March 17, 2006, at 1.

6. *Id.*; Tr. at 15.

7. Government Exhibit 1 (Applicant's security clearance application) at 1; Tr. at 29.

8. Government Exhibit 1, *supra* note 5, at 2; Tr. at 29.

9. Government Exhibit 1, *supra* note 5, at 4.

10. *Id.* at 2.

11. *Id.* at 3; Tr. at 55.

12. Government Exhibit 1, *supra* note 5, at 1.

13. Tr. at 15.

14. *Id.* at 54.

15. *Id.*

16. *Id.* at 30. This amount is an estimate based on his hourly wage of \$11.29 times approximately 110 hours of work a

month.

17. *Id.* at 58-60.

18. Applicant Exhibit B (Unsigned court order, dated June 3, 2004) at 1.

19. Tr. at 50.

20. Government Exhibit 2 (Credit report, dated January 9, 2006) at 1.

21. *Id.*

22. Applicant Exhibit D, *supra* note 1, at 1-12.

23. *Id.*

24. *Id.*

25. Applicant Exhibit G, *supra* note 1, at 2.

26. *Id.*

27. *Id.*

28. *Id.* at 1.

29. *Id.*

30. *Id.*

31. Applicant Exhibit E, *supra* note 1, at 1. Statement of account reflects a zero balance on this account, a zero balance patient account, and an office balance of \$3,329.29. The office balance correlates with the amounts listed in the credit report as owed by Applicant and not paid by insurance.

32. *Id.* at 2.

33. *Id.* at 1.

34. Applicant Exhibit H, *supra* note 1, at 1. Applicant settled his account in July 2003. *Id.* The credit card company failed to notify the credit reporting agencies. *Id.*

35. *Id.* at 2.

36. *Id.*

37. Applicant Exhibit F, *supra* note 1, at 1; Tr. at 35-36.

38. Government Exhibit 2, *supra* note 18, at 2.

39. *Id.*

40. Applicant Exhibit C, *supra* note 1, at 1.

41. Tr. at 28.

42. *Id.* at 33.

43. *Id.* at 28.

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.* at 11, 28.

48. *Id.* at 10, 49; Government Exhibit 2, *supra* note 18, at 1.

49. Tr. at 10.

50. *Id.*

51. *Id.* at 31-32.

52. *Id.* at 33.

53. *Id.* at 35-36.

54. Applicant Exhibit F, *supra* note 1, at 1.

55. *Id.*

56. Tr. at 35-36.

57. *Id.* at 23-24.

58. *Id.* at 11.

59. *Id.*

60. Applicant Exhibit B, *supra* note 16, at 1.

61. *Id.*

62. Tr. at 13.

63. Applicant Exhibit B, *supra* note 16, at 1.

64. Tr. at 53-54.

65. Government Exhibit 1, *supra* note 5, at 7.

66. *Id.*; Government Exhibit 2, *supra* note 18, at 1-2.

67. Tr. at 10.

68. *Id.*

69. Applicant Exhibit A (letter dated May 22, 2006) at 1.

70. Government Exhibit 1, *supra* note 5, at 4.

71. Tr. at 55.

72. Directive, Enclosure 2, ¶ E2.2.1.1. through E2.2.1.9.
73. ISCR Case No. 96-0277 at 2 (App. Bd. July 11, 1997).
74. ISCR Case No. 97-0016 at 3 (App. Bd., Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
75. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
76. ISCR Case No. 94-1075 at 3-4 (App. Bd., Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
77. ISCR Case No. 93-1390 at 7-8 (App. Bd. Decision and Reversal Order, Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
78. *Egan*, 484 U.S. at 531.
79. *Id.*
80. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
81. Executive Order No. 10865 § 7.
82. *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)).