

DATE: October 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-16895

DECISION OF ADMINISTRATIVE JUDGE

MARY E. HENRY

APPEARANCES

FOR GOVERNMENT

John Bayard Glendon, Esq., Department Counsel

FOR APPLICANT

Francis P. Castrovillari, Esq.

SYNOPSIS

Applicant and his wife incurred significant unpaid credit debt. They began repaying some of this debt in January 2005, and recently paid all their outstanding and current debt by refinancing their house. They also closed most of their credit accounts. 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 January 27, 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 February 20, 2006, Applicant submitted a notarized response to the allegations. He requested a hearing. DOHA assigned this matter to me on August 25, 2006, and issued a notice of hearing on August 31, 2006. I convened a hearing on September 22, 2006. Government Exhibits 1 through 4, and Applicant Exhibits A-1 and A-2 were marked and admitted into evidence. I held the record open for 30 days to allow Applicant the opportunity to submit additional evidence. Applicant timely submitted six additional documents, which have been marked and admitted as Applicant Exhibits B through G. Applicant and his wife testified. The hearing transcript was received on September 29, 2006.

FINDINGS OF FACT

Applicant denied the allegations under Guidelines F and E in his response.⁽¹⁾ After a complete review of the evidence in the record and upon due consideration, I make the following findings of fact.

Applicant is a 56-year-old area superintendent for a defense contractor. He began his employment with this contractor 37 years ago. He initially worked as an hourly employee. In 1974, his employer promoted him to supervisor. Over the years, his employer continued to promote him, increasing his job responsibilities and income. Each day, he leaves for work between 3:30 and 4:00 a.m. and returns home between 5:00 and 6:00 p.m. He works either Saturday or Sunday every weekend. With his work schedule, he is seldom at home.⁽²⁾

Applicant married his wife 37 years ago. They have two sons, ages 36 and 32, and four grandchildren. His wife does not work outside the home. Due to his long work hours over the years, she provided the primary care while raising their sons, and now cares for two grandchildren. She managed all matters related to the house, including cleaning, repairs, and shopping. She also paid all the bills and handled the family finances. He did not become involved in the weekly or monthly bills, nor did he pay close attention to financial matters.⁽³⁾

Financial Considerations

Appellant earns \$81,000 a year plus bonuses. His monthly pay after taxes and other deductions, including a \$1,400 deposit to savings, is approximately \$3,900. His original mortgage on his house is paid, but he pays \$326 on a home equity loan (balance around \$17,000). His general monthly expenses include \$478 on education loans, \$469 on a car loan, \$48 for cable service, \$40 for a telephone bill, \$365 for utility bills on average, \$340 for food, \$196 for car insurance, and \$20 for the gym, for a total of approximately \$2,300, not including miscellaneous expenses. He also pays monthly on one credit card.⁽⁴⁾

A review of Appellant's credit reports dated June 9, 2004, January 13, 2006, August 14, 2006, and the SOR shows six unpaid debts totaling \$22,216. The current status of these debts is as follows:⁽⁵⁾

SOR ¶	TYPE OF DEBT	AMOUNT	CURRENT STATUS
1.a.	Bank credit card	\$4,436.00	Paid-in-full ⁽⁶⁾
1.b.	Credit card	\$1,972.00	Paid-in-full (2/17/06) ⁽⁷⁾
1.c.	Discover card	\$6,390.00	Paid-in-full ⁽⁸⁾
1.d.	Department store account	\$2,999.00	Paid-in-full ⁽⁹⁾
1.e.	Mail Order account	\$2,236.00	Paid-in-full (11/30/05) ⁽¹⁰⁾
1.f.	Credit card	\$4,183.00	Paid-in-full ⁽¹¹⁾

Subsequent to the hearing, Applicant negotiated a settlement of the remaining balances on his four unpaid debts. He then refinanced his house for \$144,000.00. He paid all his debt with the proceeds from his refinancing, including education loans, his car payment, equity loan on the house, and other credit cards. His only current debt is his mortgage, which is approximately \$1,560.00 a month.⁽¹²⁾ When he paid each of the above old debts, he requested the company to close his account.⁽¹³⁾

Personal Conduct

When he started his employment, he obtained a confidential clearance. In 1986, the government granted him a secret clearance. He completed the renewal of his security clearance application (SF 86) on May 12, 2004. At this time, he met with a representative of the government to discuss any changes in the information on the application. He advised that there were no changes in information and signed a form attesting to this fact, but did not actually type his security clearance information into the computer. He did not know about any debt problems when he met and spoke with the representative. Thus, he answered "no" to the following question:⁽¹⁴⁾

Question 38. Your Financial Delinquencies - 180 days

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

Applicant's wife paid the bills and managed their finances. She did not tell him about the outstanding debts and the creditor's efforts to collect overdue and unpaid debts. She handled all problems without discussing the situation with him. She hid the bills and late notices from him. (15) Applicant showed visible distress about this situation at the hearing. I note that this situation also caused stress between he and his wife.

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. (16)

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. (17) The government has the burden of proving controverted facts. (18) The burden of proof is something less than a preponderance of the evidence. (19) 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. (20) Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. (21)

No one has a right to a security clearance, (22) and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." (23) Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. (24) 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. (25) 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 regulations 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:

Financial Considerations

The government has established its case under Guideline F. Applicant has a history of excessive debt because of credit card usage. 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*)

A security concern based on financial problems can be mitigated in several ways. Applicant's debt problems have been ongoing for a number of years, are not recent, and are not an isolated incident. Thus, he has not established a mitigating condition under Financial Considerations Mitigating Conditions (FC MC) E2.A6.1.3.1 (*The behavior was not recent*) and E2.A6.1.3.2 (*It was an isolated incident*). In addition, FC MC E2.A6.1.3.3 (*The conditions that resulted in the behavior were largely beyond the person's control*) does not apply, as neither Applicant nor his wife can explain the reason for not paying these debts. They have not received counseling for their financial problems, thus, 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.

In January 2005, Applicant's wife began repaying the Discover card debt at \$100 a month. In April 2005, she began paying the department store debt, also at \$100 a month. The repayment plans for these two debts began almost one year prior to the issuance of the SOR, and continued until the debts were paid in full. In November 2005, two months before the issuance of the SOR, Applicant, through his wife, paid the mail order account in full. Shortly after receiving the SOR, he paid another credit card debt in full. To fully resolve all his unpaid debt listed in the SOR, he and his wife decided to remortgage their home. His evidence reflects that he used the mortgage proceeds to pay the debts identified in the SOR as well as other existing debts. At this time, he owes only the debt on his house. When he paid his debts, he cancelled the credit card and closed his account. He made a good faith effort to reduce his debt and pay his creditors. His new mortgage can easily be paid with his income, and will be paid given that he previously paid his mortgages. He has mitigated the government's concerns under FC MC E2.A6.1.3.6 (*The individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts.*).

Personal Conduct

Under Guideline E, the government established that Applicant omitted material facts from his SF-86 when he answered Question 38. He denies, however, that he deliberately falsified his answer to this question, arguing that he did not know about his unpaid debts because his wife managed the family finances. 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. ⁽²⁶⁾ 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 was deliberate.

For most of his working career, Applicant has worked long hours. He usually works six days a week and 12 to 14 hours a day, including his travel to and from work. Because of his work schedule, his wife manages most matters related to the running of the household, including the finances. For many years, they had no unusual financial problems; thus, to his knowledge he had no unusual financial concerns. His wife candidly admitted that she did not tell her husband about the unpaid credit cards or the court actions taken to collect the unpaid debt. Because she never advised him of any financial problems, he truthfully answered Questions 38, based on his knowledge of the family finances. I find that Applicant did

not deliberately falsify his answer to Question 38. Thus,

the government has not established that Applicant intentionally falsified his answers on his security clearance application. Guideline E is found in favor of Applicant.

Whole Person Analysis

Protection of our national security is of paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the adjudicative process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Thus, in reaching this decision, I have considered the whole person concept in evaluating Appellant's risk and vulnerability in protecting our national interests.

Applicant credibly testified that when he completed his most recent security clearance application, he was unaware of the significant unpaid debt because his wife kept this information from him. His wife also credibly testified about her decision not to keep Applicant informed as to the nature and type of family debt problems. At the hearing, he and his wife's demeanor reflected the stress between them about her decision not to pay bills. Because he has accepted responsibility for this problem and resolved it, the potential for pressure, coercion, exploitation or duress does not exist. Likewise, this problem is not likely to reoccur. He is a loyal and dependable employee with many years of service to his employer. He desires to continue with his job. He can pay the mortgage he has undertaken, and will involve himself more directly with family finances. He has mitigated the government's security concerns. 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 : 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

Paragraph 2, Guideline E : FOR APPLICANT

Subparagraph 2.a: 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's response to the SOR, dated February 20, 2006, at 1-2.

2. Government Exhibit 1 (Security Clearance Application, dated May 12, 2004) at 1-2; Tr. at 16-17, 56.
3. Tr. at 15-21, 55-60.
4. Appellant Exhibit A-1 and A-2 (Copies of recent pay stub and salary confirmation); Tr. at 39-40, 68-69.
5. Report of Investigation. The SDI lists multiple debts based on all the credit reports in the ROI. All of the 2005 credit report debts are the same debts listed on the 2006 credit report.
6. Applicant Exhibit C (Copy of settlement offer, October 3, 2006 and checks to pay debt, October 16, 2006).
7. Response to SOR, *supra* note 1, at 5.
8. Applicant made monthly payments of \$100 from January 2005 until recently. *Id.* at 6; Tr. at 35, 61. He negotiated a settlement of the remaining balance and made a final one time payment on October 23, 2006. Applicant Exhibit D (Settlement letter, dated September 27, 2006 and copy of payment check, dated October 23, 2006).
9. Applicant made monthly payments of \$100 from April 2005 until recently. Response to SOR, *supra* note 1, at 8-9. He negotiated a settlement of the remaining balance and made a final one time payment on October 23, 2006. Applicant Exhibit E (Settlement letter, dated September 27, 2006 and copy of payment check, dated October 23, 2006).
10. Response to SOR, *supra* note 1, at 7.
11. Applicant Exhibit B (Copy of settlement offer, dated September 27, 2006 and payment check, dated October 23, 2006).
12. Applicant Exhibit F (loan papers, dated October 17, 2006); Applicant Exhibit G (Letter from Applicant's counsel, dated October 18, 2006).
13. Applicant Exhibit B, *supra* note 11, at 3; Applicant Exhibit C, *supra* note 6, at 3; Applicant Exhibit D, *supra* note 8, at 3; Applicant Exhibit E, *supra* note 9, at 3.
14. Government Exhibit 1, *supra* note 2, at 1, 10-11.
15. Tr. at 24-26, 30, 61, 63.
16. Directive, Enclosure 2, ¶ E2.2.1.1. through E2.2.1.9.
17. ISCR Case No. 96-0277 at 2 (App. Bd., July 11, 1997).
18. ISCR Case No. 97-0016 at 3 (App. Bd., December 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
19. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
20. ISCR Case No. 94-1075 at 3-4 (App. Bd., August 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
21. ISCR Case No. 93-1390 at 7-8 (App. Bd. Decision and Reversal Order, January 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
22. *Egan*, 484 U.S. at 531.
23. *Id.*
24. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
25. Executive Order No. 10865 § 7.

26. *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)).