

DATE: November 27, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-17074

DECISION OF ADMINISTRATIVE JUDGE

JUAN J. RIVERA

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, 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 four accounts, totaling \$20,000, 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. Clearance is denied.

STATEMENT OF THE CASE

On February 16, 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). 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. [\(1\)](#)

Applicant submitted an undated answer to the SOR (Answer), in which he admitted allegations 1.a, 1.h, and 1.i., denied the remaining allegations, and requested a hearing. On May 5, 2006, Department Counsel prepared a File of Relevant Material (FORM) which was mailed to Applicant on May 8, 2006. He acknowledged receipt of the FORM on May 18, 2006, 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 July 25, 2006.

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 36-year-old sandblaster who has worked for a Department of Defense (DoD) contractor since February [\(2\)](#)

2004. He married his wife in 1988, and apparently they have no children. There is no evidence Applicant has mishandled or compromised classified information while at his current job.

As a result of his employment, in November 2004, Applicant submitted an Office of Personnel Management Security Clearance Application, Standard Form (SF) 86. (3) In his answer to SF 86 question 35 (asking whether in the last seven years Applicant had any property repossessed for any reason), Applicant disclosed a 1999 car repossession. He failed to disclose, however, that he had a manufactured house repossessed in 2000. Additionally, 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 January 2006 credit bureau report (CBR). (4) The 2006 CBR showed Applicant had 11 delinquent accounts that had been placed in collection or charged off as bad debts. These accounts were alleged in the SOR.

SOR subparagraph 1.a alleges an account owing \$241 which was placed in collection around April 2004. In his answer to the SOR, (5) Applicant admitted this debt is still outstanding. He presented no evidence of efforts to pay or resolve this debt.

SOR subparagraphs 1.b and 1.c allege two accounts, owing \$832 and \$209, which were placed in collection with the same agency around June 2004. In his Answer, Applicant denied the allegations because he paid them off in March 2006.

SOR subparagraphs 1.d through 1.g allege four accounts, owing \$35 each, which had been in collection since 2002. In his Answer, Applicant denied the allegations because he paid them off in arch 2006.

SOR subparagraph 1.h alleges an account, owing \$1,061, which was charged off in about October 1999. Applicant admitted this debt is still outstanding. He presented no evidence of efforts to pay or resolve this debt.

SOR subparagraph 1.i alleges a July 2000 voluntary repossession of a manufactured house, owing \$11, 876. Applicant admitted this account is still outstanding. He claimed he attempted to make payment arrangements with the creditors holding debts 1.h and 1.i, but was unsuccessful. He presented no evidence, other than the statement provided in his Answer, to support his claims.

Applicant denied SOR subparagraph 1.j. He presented documentation to show that SOR subparagraphs 1.i and 1.j concern the same debt. Apparently, the collection agency alleged in 1.i purchased the debt from the creditor alleged in 1.j. Notwithstanding, Applicant owes at least \$11,876 on a debt that has been delinquent since around July 2000. He presented no evidence of efforts to pay or resolve this debt.

SOR subparagraph 1.k alleges a delinquent account resulting from a car repossession in about March 1999. Applicant denied this allegation because he only owes \$6,767 instead of the \$31,018 alleged in the SOR. (6) Nevertheless, Applicant owes at least \$6,767 since around March 1999, and presented no evidence of efforts to pay or resolve this debt.

Applicant presented no evidence to explain why the alleged debts became delinquent, what efforts, if any, he has taken to pay, settle, or resolve the debts (other than the uncorroborated claims made in his answer to the SOR); whether he made a consolidation loan to pay some of the debts; what is his current financial situation (i.e., income, monthly expenses, debts, etc.); whether he is not 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)⁽⁷⁾ and Guideline E (Personal Conduct)⁽⁸⁾ 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.⁽⁹⁾ 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⁽¹⁰⁾ 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.⁽¹¹⁾ 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.⁽¹²⁾

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.⁽¹³⁾ 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.

Applicant has a history of failing to meet his financial obligations dating back to the late 1990s. After receipt of the SOR in February 2006, he paid six of the 11 delinquent/charged off debts alleged in the SOR. Notwithstanding, as of the day he answered the SOR, he still had four outstanding delinquent debts, owing approximately \$20,000. 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.

Applicant failed to provide sufficient information to support the applicability of any of the Financial Considerations Mitigating Conditions (FC MC). I 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 six of his delinquent accounts. Notwithstanding, I conclude that based on the available evidence in this case, Applicant's last minute payment of the six 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'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. [\(14\)](#)

The government established that Applicant failed to disclose his manufactured house repossession in his response to SF 86 question 35. It also established that, in his response to SF 86 questions 38 and 39, Applicant failed to disclose debts over 90 days delinquent and debts over 180 days delinquent during the last seven years. Applicant seems to claim that he did not deliberately falsify his SF 86, and that he made an honest mistake, because he did not have current information on his accounts when he submitted the SF 86. Applicant's claims of honest mistake ring hollow for several reasons. The repossession of the car, owing \$6,767, and the manufactured house, owing \$11,876, happened within one year of each other. I do not believe it plausible for Applicant to forget the repossession of the house which involved the largest debt. He also failed to list his car repossession debt in his answers to SF 86 questions 38 and 39. Applicant's age and the number and value of his debts convinces me it is not likely that he could have forgotten all of his delinquent debts.

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-1.k Against Applicant

Paragraph 2, Personal Conduct (Guideline E) AGAINST APPLICANT

Subparagraphs 2.a-2.c 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. Required by 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.

2. Applicant disclosed no children in his SF 86.

3. Gov. Item 4.

4. Gov. Item 5.

5. Gov. Item 3.

6. The CBR shows, and the SOR alleged, Applicant owed \$31,018. He presented documentation, however, to show he only owes \$6,762. *See*, Ford Credit letter, dated March 30, 2006.

7. Directive, ¶ E2.A6.1.1.

8. Directive, ¶ E2.A5.1.1.

9. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

10. 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.

11. *Egan*, 484 U.S. 518, at 528, 531.

12. *See Egan*; Directive, ¶ E2.2.2.

13. Directive, ¶ E2.A6.1.1.

14. Directive, ¶ E2.A5.1.1.