

DATE: February 20, 2007

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 06-13462

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has 11 delinquent debts, an approximate total of \$48,819, including a \$25,000 judgment entered against him in October 2002. His financial situation, his deliberate omission of his judgment and delinquent debts on his security clearance application, and past criminal conduct raise security issues under the Financial Considerations, Personal Conduct, and Criminal Conduct. He has failed to mitigate the security concerns. Clearance is denied.

STATEMENT OF CASE

On August 28, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. This action was taken under Executive Order 10865, dated February 20, 1960, as amended and DoD Directive 5220.6, dated January 2, 1992, as amended. The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F, Financial Considerations; Guideline J, Criminal Conduct; and Guideline E, Personal Conduct.

In a sworn statement dated October 7, 2006, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on November 1, 2006. A notice of hearing was issued on November 14, 2006, scheduling the hearing for December 4, 2006. The hearing was conducted as scheduled. The government submitted five exhibits that were marked as Government Exhibits (Gov. Ex.) 1-5. The exhibits were admitted into the record without objection. Applicant testified on his own behalf, and submitted 11 exhibits that were marked as Applicant's Exhibits (AE) A-K, which were admitted without objection. The record was kept open until December 18, 2006, for the submission of additional documents. An extension was granted. Applicant timely submitted two additional documents that were marked as AE L and AE M and admitted without objection. DOHA received the hearing transcript (Tr.) on December 12, 2006.

FINDINGS OF FACT

In his SOR response, Applicant admits the allegations in ¶¶ 1.a, 1.b, 1.d, 1.g, 2.a, 2.b, 2.c, and 3.e. He denies the allegations in ¶¶ 1.c, 1.e, 1.f, 1.h, 1.i, 1.j, 1.k, 2.d, 3.a, 3.b, 3.c, and 3.d. Applicant's admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 47 years old and is employed as a lead equipment operator with a Department of Defense contractor. He has been employed with the defense contractor since November 2003. ⁽¹⁾ He is a high school graduate. ⁽²⁾ He is divorced and has two children, a daughter, age 20, and a son, age 15. ⁽³⁾

On July 22, 1994, Applicant was charged with knowingly possessing a dangerous drug, methamphetamine, a class IV felony. On October 21, 1994, he pled guilty to attempted possession of a dangerous drug, methamphetamine, a class IV felony. On November 1, 1994, he was sentenced to three years supervised probation and 200 hours community service. ⁽⁴⁾ Applicant had approximately one quarter gram of methamphetamine on his person at the time of the arrest. ⁽⁵⁾

On August 30, 1994, Applicant was arrested and charged with the offense of criminal damage. He is not quite certain but thinks this may have involved an incident where he pulled the phone cord out of the wall in his home. ⁽⁶⁾ On November 18, 1994, he was found guilty. ⁽⁷⁾

On August 28, 2000, Applicant was arrested and charged with assault and disorderly conduct. He got into an argument with his 17 year old step-daughter who was making a lot of noise at around 3 am. He claims he did not hit her but was trying to calm her down. During this incident, his step-daughter bit and stabbed him. ⁽⁸⁾ On November 8, 2000, he pled guilty to Disorderly Conduct and received a deferred sentence. ⁽⁹⁾

On May 18, 2005, Applicant submitted a security clearance application. ⁽¹⁰⁾ In response to question 37. Your Financial Record - Unpaid Judgments, which reads "In the last 7 years, have you had any judgments against you that have not been paid?" he answered "No." He did not list the \$25,000 judgment obtained against him in October 2002. ⁽¹¹⁾ In response to question 38. Your Financial Delinquencies - 180 Days, which reads, "In the last 7 years have you been over 180 days delinquent on any debt(s)?" he answered "No." In response to question 39. Your Financial Delinquencies - 90 days, which reads, "Are you currently over 90 days delinquent on any debt(s)?" he answered "No." He did not list any of his delinquent debts in response to questions 38 and 39. ⁽¹²⁾

Applicant answered "No" in response to question 26. Your Police Record - Other Offenses, which reads,

In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in modules 21, 22, 23, 24 or 25? (Leave out traffic fines of less than \$150 unless the violation was alcohol or drug related.) For this item, report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607. ⁽¹³⁾

He did not list his August 28, 2000, charge for assault and disorderly conduct. ⁽¹⁴⁾ He could not explain why he did not list this offense in response to the question. He remembered the arrest and the event leading to the arrest. ⁽¹⁵⁾ I find Applicant deliberately failed to list his August 2000 arrest for assault and disorderly conduct in response to question 26.

Applicant's background investigation revealed eleven delinquent accounts with a total approximate balance of \$48,819. ⁽¹⁶⁾ The accounts included a delinquent collection account for \$120 (SOR ¶ 1.a); a collection account for \$326 (SOR ¶ 1.b); a \$2,677 charged off credit card account (SOR ¶ 1.c); a \$58 charged off account (SOR ¶ 1.d); a \$7,117 collection account (SOR ¶ 1.e); a \$2,204 charged off account (SOR ¶ 1.f); a \$25,557 judgment entered against Applicant on October 3, 2002 (SOR ¶ 1.g); a \$7,229 collection account (SOR ¶ 1.h); a \$98 collection account (SOR ¶ 1.i); a \$1,610 collection account (SOR ¶ 1.j) and a \$1,823 collection account (SOR ¶ 1.k).

The current status of the debts are:

SOR Paragraph	Debt	Status	Record
1.a	\$120 collection account	Paid.	AE J; Tr. at 40; Gov Ex 3 at 1; Gov Ex 4 at 4.
1.b	\$326 collection account	Admits. Resolved on January 26, 2007.	AE M; Tr. at 41; Gov Ex 3 at 1; Gov Ex 4 at 5, 10.
1.c	\$2,677 charged off credit card account.	Denies. Claims ex-wife's. Unresolved.	Tr. at 41; Gov Ex 3 at 1; Gov Ex 4 at 3.
1.d	\$58 charged off account	Admits. Paid.	AE I; Tr. at 41-42; Gov Ex 3 at 1; Gov Ex 4 at 6.
1.e	\$7,116 collection account.	Denies. Not aware of account. Unresolved.	Tr. at 42; Gov Ex 3 at 2; Gov Ex 4 at 3.
1.f	\$2,204 charged off account.	Denies. Not aware of account. Unresolved.	Tr. at 43; Gov Ex 3 at 2; Gov Ex 4 at 9.
1.g	\$25,557 judgment entered in October, 2002.	Admits. Financially unable to make payments. Unresolved.	Tr. at 44; Gov Ex 2; Gov Ex 3 at 2; Gov Ex 4 at 2, 6.
1.h	\$7,229 collection account.	Denies. Not aware of account. Unresolved.	Tr. at 44-45.
1.i	\$98 collection account.	Denies. Not aware of account. Unresolved.	Tr. at 45; Gov Ex 4 at 5, 10.
1.j	\$1,610 collection account.	Denies. Not aware of account. Unresolved.	Tr. at 45; Gov Ex 4 at 6.
1.k	\$1,823 collection account.	Denies. Not aware of account. Unresolved.	Tr. at 46; Gov Ex 4 at 8.

Applicant denies most of the accounts listed in the SOR because he claims that he does not recognize the account. He divorced his second wife in 2000, and states that half of the marital debts were her responsibility. She filed for bankruptcy shortly after the divorce. [\(17\)](#) He has not formally disputed any of the delinquent debts on his credit report that he denies are his.

He paid off the accounts in SOR ¶¶ 1.a, 1.b, and 1.d. [\(18\)](#) He intends to pay his other debts off in the future but cannot afford to do so at this time. Child support obligations have prevented him being able to pay his delinquent accounts. He recently stopped paying child support for his daughter but still provides child support for his 15 year old son. He pays \$814 a month in child support. [\(19\)](#) His mother who is a business manager is helping him with his budget. [\(20\)](#) His current budget allows for only \$56 to be applied toward delinquent debts each month. [\(21\)](#) In November 2006, he was offered a substantial raise and promotion which he expects will be approved in the near future. [\(22\)](#)

In February 2006, Applicant was interviewed during his background investigation by a Special Agent with the Office of Personnel Management. The Special Agent asked Applicant about his arrest record and his financial issues. Specifically, he asked why he did not list the 2000 arrest for assault and disorderly conduct and why he did not list his delinquent judgment and delinquent debts. Applicant did not explain why he left off the 2000 arrest. Pertaining to the financial issues, Applicant claims he gave "an incomplete answer but not an incorrect answer" but did not elaborate further. [\(23\)](#)

During the interview, the Special Agent asked Applicant to sign a release form for financial-related documents. The purpose of the release form was to verify that the adverse information on the credit report was accurate. The Special Agent told Applicant that signing the release form was voluntary. Applicant refused stating that his financial issues were his to address and there was no need for Defense Investigative Services to get involved. The interview ended at that point. [\(24\)](#)

At hearing, Applicant stated that he knew he had delinquent accounts but claims he did not have the money to obtain a credit report. He knew that the government would obtain his credit report during the investigation.⁽²⁵⁾ He refused to sign the consent form for release of his financial information because he did not think the government needed to dig any deeper.⁽²⁶⁾

Applicant's manager wrote a letter on his behalf. He has worked with Applicant since December 2005. He describes him as "honest, hard-working, and dependable" and the company is fortunate to have him as an employee.⁽²⁷⁾ Another fellow employee worked with Applicant on a daily basis for three years. She describes him as "a reliable and trustworthy employee who takes his job seriously."⁽²⁸⁾ A senior security administrator has known Applicant for six years. He fully trusts Applicant and believes he would faithfully protect our nation's secrets.⁽²⁹⁾ Similar comments have been made by other friends and co-workers.⁽³⁰⁾ He has also received several awards.⁽³¹⁾

POLICIES

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."⁽³²⁾ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline F, Financial Considerations: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.⁽³³⁾

Guideline J, Criminal Conduct: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.⁽³⁴⁾

Guideline E, Personal Conduct: 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.⁽³⁵⁾

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance."⁽³⁶⁾ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽³⁷⁾ An administrative judge should consider the following factors: (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 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 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.⁽³⁸⁾

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.⁽³⁹⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts admitted by the applicant or proven by Department Counsel. The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision.⁽⁴⁰⁾ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.⁽⁴¹⁾

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. ⁽⁴²⁾ It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F, Financial Considerations; Guideline J, Criminal Conduct; and Guideline E, Personal Conduct.

Financial Considerations

Applicant has approximately \$48,819 in delinquent debt. Under Guideline F, Disqualifying Conditions (FC DC) E2.A6.1.2.1: (*A history of not meeting financial obligations*) and FC DC 3 E2.A6.1.2.3: (*Inability or unwillingness to satisfy debts*) apply to Applicant's case. The majority of the debt consists of a \$25,000 judgment issued against Applicant in October 2002. He paid three of his delinquent accounts (SOR ¶¶ 1.a, 1.b, and 1.d) but is unable to repay his remaining debts based on his current income and child support obligations.

The security concern under Guideline F can be mitigated. I find Financial Considerations Mitigating Condition (FC MC) E2.A6.1.3.1: (*The behavior was not recent*) does not apply. Although Applicant has paid the debts alleged in ¶¶ 1.a, 1.b, and 1.d, all other debts remain unpaid. Therefore, I conclude the behavior is recent. Based on his numerous debts, I cannot apply FC MC E2.A6.1.3.2: (*It was an isolated incident*).

FC MC E2.A6.1.3.3: (*The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation)*) applies, in part, because Applicant has encountered financial difficulty as a result of his two divorces. However, his most recent divorce occurred in 2000. He has had six years to work on resolving his financial difficulties. For these reasons, I give little weight to the application of FC MC E2.A6.1.3.3.

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 under control*) is not applicable because Applicant has not received financial counseling. Although he has paid off three of the debts, the other debts remain outstanding. While Applicant should be commended for starting to work on his financial delinquencies, his financial issues are unlikely to be resolved or under control in the near future. FC MC E2.A6.1.3.6: (*The individual initiated a good-effort to repay overdue creditors or otherwise resolve debts*) does not apply because the majority of his delinquent debts remain unresolved. Based on his current budget, he is unable to resolve his delinquent accounts.

A security concern remains under Guideline F. It is too early to conclude that Applicant's financial situation is completely under control. I find against him under Guideline F.

Criminal Conduct

Applicant has a history of criminal conduct. He has been arrested and charged with criminal offenses on three occasions in the past. In 1994, he was arrested on two occasions. He was convicted for a drug offense and found guilty of a criminal damage charge. In 2000, he was convicted of disorderly conduct after a domestic argument with his step-daughter. His most recent criminal conduct was his intentional failure to list his judgment, delinquent debts, and his 2000 criminal offense on his security clearance application. His deliberate omissions violated Title 18 United States Code § 1001. The record supports the application of Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1: (*Allegations or admission of criminal conduct, regardless of whether the person was formally charged*) and CC DC E2.A10.1.2.2: (*A single serious crime or multiple lesser offenses*).

I find none of the mitigating conditions apply under criminal conduct. While I acknowledge that Applicant has not been

arrested or charged with a crime since the last incident in 2000, the deliberate falsifications on his May 18, 2005, security clearance application is considered recent criminal behavior. Therefore, Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.3.1: *(The criminal behavior was not recent)* does not apply. CC MC E2.A10.1.3.2: *(The crime was an isolated incident)* does not apply since he has a history of criminal offenses. I cannot apply CC MC E2.A10.1.3.6: *(There is clear evidence of successful rehabilitation)* since it is too soon to conclude that Applicant has been rehabilitated based on his recent falsification. I find against Applicant under Guideline J.

Personal Conduct

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance or in other official matters is a security concern. It is deliberate if it is done knowingly and willfully.

In this case, the record evidence establishes that Applicant deliberately falsified his responses to questions 37, 38, 39, and 26 on his security clearance application dated May 18, 2005. He deliberately omitted his \$25,000 judgment in response to question 37. He deliberately omitted his delinquent debts in response to questions 38 and 39. He admits that he was aware that he had delinquent debts but did not list them because he assumed the government would obtain his credit report anyway. This is not a sufficient justification for failing to list his delinquent debts on his security clearance application. He also failed to explain why he did not list his August 2000 arrest for Assault and Disorderly Conduct in response to question 26. His deliberate falsifications supports the application of 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)*.

Considering the Personal Conduct Mitigating Conditions (PC MC), only PC MC E2.A5.1.3.3: *(The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts)* has the potential to apply to the facts of this case. I find that it does not apply. The OPM Special Agent testified that he raised the issues regarding Applicant's omission of his delinquent debts, 2002 judgment, and his 2000 criminal offense on his security clearance application. Applicant did not fully disclose the omitted information prior to being confronted about it. As such PC MC E2.A5.1.3.3 does not apply. I find against Applicant with respect to personal conduct SOR ¶¶ 3.a, 3.b, 3.c, and 3.d.

I find for Applicant with respect to SOR ¶3.e pertaining to his refusal to sign a requested financial release to the OPM Agent. The Agent testified that he advised Applicant that his willingness to sign a release was voluntary. Since he was given a choice in the matter, I cannot hold his refusal to sign a financial release against Applicant. The credit report already obtained by the government raised sufficient financial considerations concerns. I find for Applicant with respect to personal conduct SOR ¶ 1.e. However, Applicant did not mitigate the personal conduct security concerns pertaining to the falsification of his security clearance application. I find against Applicant under Guideline E.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, common sense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

In reaching my decision, I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I acknowledge that Applicant is highly thought of by his superiors and co-workers. However, an applicant with a good or even exemplary work history may engage in conduct that has negative security implications. Applicant failed to mitigate the security concerns under Guidelines F, J, and E based on his financial history, criminal record, and his deliberate falsification of his security clearance application. Therefore, I am persuaded by the totality of the evidence in this case that it is not clearly

consistent with the national interest to grant Applicant a security clearance.

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: AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: For 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 J: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

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Paragraph 3. Guideline E 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: For Applicant

DECISION

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

ERIN C. HOGAN

Administrative Judge

1. Tr. at 4, 51.
2. Tr. at 5.
3. Tr. at 52, 55.
4. Tr. at 46.
5. Tr. at 58-59.
6. Tr. at 47-48.
7. Gov Ex 5 at 2.
8. Tr. at 47, 59-60.
9. Gov Ex 5 at 1.
10. Gov Ex 1.
11. Gov Ex 2.
12. *See* Gov Ex 3 and 4.
13. Gov. Ex. 2.
14. Gov Ex 5.
15. Tr. at 22, 46-47; 59-60.
16. Gov Ex 3; Gov Ex 4.
17. Tr. at 37; AE L.
18. AE I and AE J.
19. Tr. at 37-38.
20. Tr. at 37.
21. AE A.
22. Tr. at 38.
23. Tr. at 22 -23.
24. Tr. at 22-25.
25. Tr. at 38.

26. Tr. at 39-40.

27. AE B.

28. AE C.

29. AE D.

30. AE E and AE F.

31. AE G.

32. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

33. Directive, ¶ E2.A6.1.1.

34. Directive, ¶ E2.A10.1.1.

35. Directive, ¶ E2.A5.1.1.

36. Directive, ¶ E2.2.1.

37. *Id.*

38. *Id.*

39. Directive, ¶ E3.1.14.

40. Directive, ¶ E3.1.15.

41. Directive, ¶ E.2.2.2.

42. Exec. Ord. 10865, § 7.