

KEYWORD: Financial; Alcohol; Personal Conduct; Criminal Conduct

DIGEST: Applicant's accrual of 86,000 of delinquent debt and his security clearance omissions create security concerns that he failed to mitigate at the hearing. Clearance is denied.

CASENO: 06-24386.h1

DATE: 09/11/2007

DATE: September 11, 2007

In re:

SSN: -----

Applicant for Security Clearance

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) ISCR Case No. 06-24386
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**DECISION OF ADMINISTRATIVE JUDGE
MARC E. CURRY**

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

____ Applicant's accrual of 86,000 of delinquent debt and his security clearance omissions create security concerns that he failed to mitigate at the hearing. Clearance is denied.

STATEMENT OF THE CASE

On March 27, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) explaining why it was not 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. He answered the SOR on May 15, 2007, and requested a hearing.

The case was assigned to me on June 28, 2007. On July 6, 2007, DOHA issued a notice of hearing scheduling it for August 2, 2007. During the hearing, I received 10 government exhibits, 14 Applicant exhibits, and Applicant's testimony. DOHA received the transcript on August 15, 2007.

FINDINGS OF FACT

_____Applicant admitted all of the allegations in SOR except subparagraphs 1.n through 1.q, and 2.b.¹ The admissions are incorporated into the findings of fact. In addition, I make the following findings of fact.

Applicant is a 63-year-old married man. He earned a bachelor's degree majoring in mathematics in 1969 and a master's degree in physics in 1974. He worked in the federal government for 25 years until his retirement in 1993. Since then, he has been working on missile programs as an operations research analyst for a defense contractor. He has held a security clearance for more than 30 years.

Since 1997, Applicant has accrued approximately 86,000 of delinquent debt. Two of the delinquencies are utilities (1.a and 1.g) and the remainder are either owed on lines of credit or owed to credit card companies.

Applicant collectively owes the utility companies approximately \$200. He is "in the process of communicating" with the creditor listed in subparagraph 1.a,² and has been corresponding with the creditor listed in subparagraph 1.g for approximately one year.³ He has satisfied neither debt.

Subparagraphs 1.b, 1.f, and 1.j comprise approximately \$87,000 of the SOR debt. Subparagraph 1.b has been delinquent for approximately 10 years.⁴ Applicant alleges he only owes \$25,000 toward the satisfaction of this delinquency rather than \$62,000 as alleged. He offered no documentary proof to verify his contention, nor any evidence that he has begun to make payments. Exhibit 4 establishes that he owes the creditor \$62,000.

¹Applicant admits the debt listed in SOR subparagraph 1.b, but denies the amount alleged due.

²Tr. 36.

³Tr. 42.

⁴Tr. 37.

Subparagraph 1.f is a line of credit Applicant opened in 1997 which is approximately \$7,450 delinquent. He contends he has been making payments toward its satisfaction for one year. He provided no documentary support to verify this contention.⁵

Applicant owes approximately \$7,640 towards the satisfaction of the creditor listed in subparagraph 1.j. By June 2005, the creditor had reported this delinquency as a loss.⁶ Applicant has not satisfied or begun making payments on any of the remaining SOR debts.

Applicant met with an investigative agent in October 2005.⁷ Among other things, she informed him of the government's concerns regarding his finances. Seven months later, Applicant began contacting creditors to resolve the delinquencies.

Applicant has not sought the assistance of a credit counselor.⁸ For the past six years, Applicant has earned a gross income of approximately \$90,000 per year.⁹

In January 1991, Applicant was charged with driving under the influence (DUI). In October 1991, the court fined him \$500 and dismissed the charge.

In August 1995, Applicant was charged with assault causing bodily injury after a domestic violence incident. The charge was later dismissed.

In April 1997, Applicant was charged with DUI. In March 2001, he pled guilty to a reduced charge of obstruction of a public highway, was fined approximately \$1,700 and ordered to attend DUI school.¹⁰

Applicant was charged in January 1999 with DUI. He pled guilty to three lesser traffic offenses, and was fined \$400.

In July 2000, Applicant was charged with assault causing bodily injury after a domestic violence incident. The charge was later dismissed.

Applicant completed a security clearance Application in October 2004. He did not disclose his criminal charges as required in response to Questions 24 and 26, and his financial delinquencies in response to Questions 38 and 39. When asked to explain these omissions at the hearing, he stated

⁵Tr. 41.

⁶Exhibit 3 at 4.

⁷Tr. 90.

⁸Tr. 98.

⁹Tr. 95.

¹⁰According to the original SOR allegation (subparagraph 2.b), Applicant pleaded guilty to the DUI charge. In his Answer, he denied this, asserting that he pleaded guilty to a reduced charge. The government moved to amend the SOR to conform to his answer, Applicant consented, and I incorporated it into the Findings of Fact.

that he “was a little cavalier” in completing the application, and did not read the questions carefully enough.¹¹

POLICIES

The adjudicative guidelines, as revised December 29, 2005, and implemented September 1, 2006, apply to the analysis of this case. In addition to brief introductory explanations for each guideline, they are divided into those that may be considered in deciding whether to deny or revoke an individual’s eligibility for access to classified information (disqualifying conditions) and those that may be considered in deciding whether to grant an individual’s eligibility for access to classified information (mitigating conditions).

Because the entire process is a scrutiny of a number of variables known as the “whole person concept,” all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. Specifically these are: (1) the nature 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 age of the applicant; (5) the extent to which the participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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.

The following adjudicative guidelines are raised:

Guideline F - Financial Considerations: Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.

Guideline G - Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.

Guideline E - Personal Conduct: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Guideline J - Criminal Conduct: Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.

¹¹Tr. 82.

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

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is “clearly consistent with the national interest.”¹² In reaching this decision, I have drawn only those conclusions that are based on the evidence contained in the record.

The Government is responsible for presenting evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the Government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

CONCLUSIONS

Financial Considerations

Applicant’s history of financial problems triggers the application of Financial Considerations Disqualifying Conditions (FC DC) 19(a): *inability or unwillingness to satisfy debts*, FC DC 19(c): *a history of not meeting financial obligations*, and FC DC 19(e): *consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis*.

I have considered all of the mitigating conditions and conclude none apply. Applicant contends he is negotiating settlement amounts with some of the creditors, and contesting debts that accrued as the result of identity theft, but offered scant corroborating evidence. Considering that his highest debt (subparagraph 1.b) has been delinquent for more than 10 years, his contention that he is resolving his debts, absent supporting evidence has little probative value. Applicant has failed to mitigate the financial considerations security concern.

Alcohol Consumption

Applicant’s history of alcohol-related arrests triggers the application of Alcohol Consumption Disqualifying Conditions (AC DC) 22(a): *alcohol related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern*. His last arrest was more than eight and a half years ago, and there is no other record evidence of alcohol abuse. Alcohol Consumption Mitigating Condition (AC MC) 23(a): *So much time has passed . . . that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment*, applies. Applicant has mitigated the alcohol consumption security concern.

Personal Conduct

¹²See generally, Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

Applicant's SF-86 omissions trigger the issue of whether Personal Conduct (PC DC) 16 (a): *deliberate omission, concealment, or falsification of relevant 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. Given his level of education and experience, Applicant's explanation that he misread the questions is not credible. PC DC 16(a) applies without mitigation. Also, I was troubled by Applicant's assertion that he completed the security clearance application in a cavalier manner. This demonstrates a disregard for the investigative process that alone generates an unmitigated personal conduct security concern.

Criminal Conduct

Applicant's security clearance application omissions represent falsifications under 18 U.S.C. § 1001 for the reasons set forth in the Personal Conduct section above. Considered in tandem with his history of arrests, Criminal Conduct Disqualifying Condition 31(a): *a single serious crime or multiple lesser offenses*, and 31(c): *allegation of admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted*, apply without mitigation.

Whole Person Concept

Applicant failed to take responsibility for the accrual of his financial delinquencies. Because of the dishonesty demonstrated in completing the security clearance application, and the length of time many of his debts have been delinquent, his promises to begin resolving them were not persuasive. Evaluating this case in the context of the whole person concept, I conclude that Applicant remains a security concern. Clearance is denied.

FORMAL FINDINGS

Paragraph 1 – Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a - 1.r:	Against Applicant
Paragraph 2 - Guideline G:	FOR APPLICANT
Subparagraph 2.a - 2.c:	For Applicant
Paragraph 3 - Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a - 3.d	Against Applicant
Paragraph 4 - Guideline J:	AGAINST APPLICANT
Subparagraphs 4.a - 4.d	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.

Marc E. Curry
Administrative Judge