

ISCR Case No. 06-24669

SSN: -----

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APPEARANCES

Rita O'Brien, Esquire, Department Counsel

Pro Se

Security concerns raised by Applicant's financial problems are mitigated by recent changes in his financial condition and by the fact they were due to circumstances beyond his control. However, he was unable to satisfactorily explain several omissions of information about his finances from a security clearance application he submitted in March 2007. Clearance is denied.

STATEMENT OF THE CASE

After reviewing the results of Applicant's most recent background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to give Applicant a security clearance. On May 2, 2007, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Revised Adjudicative Guidelines under Guideline F (financial considerations).²

Applicant timely responded to the SOR and requested a hearing. The case was assigned to me on July 6, 2007, and I convened a hearing on September 6, 2007, at which the parties appeared as scheduled. I admitted 12 exhibits proffered by the government (Gx. 1- 12³). Applicant testified and offered five exhibits, which were admitted without objection as Applicant's Exhibits (Ax.) A - E.⁴ I also left the record open to receive additional information from Applicant. On September 14, DOHA received the transcript (Tr.). The record closed on September 16, 2007, when I received Applicant's post-hearing submission, which is included in the record as Ax. F.

PROCEDURAL ISSUE

On June 29, 2007, Department Counsel submitted a Motion to Amend the SOR, whereby the government sought to add new allegations under Guideline E (personal conduct). Specifically, the motion proposed to add the following:

“2. Guideline E: 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. Available information raising this concern shows that:

a. You falsified material facts on a security clearance application (SF-86), signed by you on March 21, 2007, in which you were required to reply to the following question, “**34. Your Financial Record - Wage Garnishments:** In the last 7 years, have you had your wages garnished for any reason?” You answered “No,” deliberately failing to disclose the garnishment in June 2004, as set forth in subparagraph 1.b., above.

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

² Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, the Revised Adjudicative Guidelines supercede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

³ Gx. 12 was admitted as demonstrative evidence related to the allegations in SOR ¶ 1. Its sole purpose was to assist me in understanding and organizing the information presented in support of the SOR.

⁴ Tr., 35 - 61.

b. You falsified material facts on a security clearance application (SF-86), signed by you on March 21, 2007, in which you were required to reply to the following question, “**35. Your Financial Record - Repossessions:** In the last 7 years, have you had any property repossessed for any reason?” You answered “No,” deliberately failing to disclose the repossession by [named creditor], referenced in subparagraph 1.c., above.

c. You falsified material facts on a security clearance application (SF-86), signed by you on March 21, 2007, in which you were required to reply to the following question, “**37. Your Financial Record - Unpaid Judgements:** In the last 7 years, have you had any judgements that have not been paid?” You answered “No,” deliberately failing to disclose the judgment set forth in subparagraph 1.k, above.

d. You falsified material facts on a security clearance application (SF-86), signed by you on March 21, 2007, in which you were required to reply to the following question, “**37. Your Financial Record - 180 Days:** In the last 7 years, have you been over 180 days delinquent on any debt(s)?” You answered “No,” deliberately failing to disclose the delinquent debts set forth in subparagraphs 1.d through 1.i and 1.l through 1.o, above.”

On August 6, 2007, Applicant responded to the motion by denying the proposed allegations. At hearing, I granted the government’s motion after Applicant confirmed his response and indicated he did not object to the motion.⁵

FINDINGS OF FACT

Applicant’s admissions in response to the SOR are incorporated herein as facts. After a thorough review of the pleadings, transcript, and exhibits, I make the following additional findings of fact.

Applicant is 42 years old and works as an independently-employed computer systems security specialist on a contract for work being performed by a large defense contractor. Applicant served in the U.S. Air Force from 1989 until 1995, and was assigned as an information systems operator with training in information systems security. Between November 1995, when he left active duty, and March 2007, he worked for four different defense contractors in jobs related to information systems and computer security. He has held security clearances up to and including TS/SCI continuously since 1989.

Applicant has been married twice. He and his first wife were married in October 1988, separated in February 2003, and divorced in February 2005. They had four children together, including twins (a boy and a girl) born in 1995. Applicant re-married in February 2005. Applicant

⁵ Tr., 11 - 12.

supports his current wife and her five-year-old son. She has been unable to work since late 2005 due to chronic pain from a chronic internal condition that has required several surgeries.⁶

Applicant and his first wife filed a Chapter 7 bankruptcy petition on February 16, 1999. On June 4, 1999, they were discharged of \$154,836 in debts and other liabilities. (SOR ¶1.a) Applicant's financial problems at that time stemmed from unexpected medical costs associated with the birth of one of their twins, and the financial impacts from an unplanned but related change in Applicant's employment. Although Applicant was still in the Air Force when the children were born, he and his wife were improperly charged for significant medical costs. Additionally, the child required extensive medical care for several years thereafter. Around the time these problems arose, Applicant also had to decide whether to accept unaccompanied orders to an overseas duty station and leave his family at a difficult time. His only other option, which he eventually selected, was to leave the Air Force at the end of his enlistment. Although he found work right away, his gross annual income (e.g., \$39,300 in 1997; \$42,900 in 1998⁷) was not enough to keep up with the medical bills along with their other routine expenses.

When Applicant and his first wife separated in February 2003, he paid her \$4,250 each month in spousal support, child support, and health care insurance. The divorce decree entered in February, 2005, reduced his monthly obligation to \$3,000, but he was later ordered to pay an additional \$420 each month for health insurance. Additionally, Applicant lived and worked in an area where the cost of living is relatively high, and had to rent a house sufficient for the child visitation he was awarded.⁸

From 2003 through 2006, Applicant incurred several debts in the form of unpaid rent, delinquent credit cards, and arrearages for the monthly support to his ex-wife. Between June 2004 and June 2007, he paid \$2,368 a month through a wage garnishment ordered to satisfy an arrearage in his child and spousal support obligations. (SOR ¶1.b) This constituted nearly 50% of his monthly pay. The arrearage was satisfied and Applicant's support obligations ended in July 2007, when his ex-wife became a registered nurse and obtained full-time employment.

Applicant also incurred the following delinquent debts:

SOR ¶ 1.c: \$3,492 for a 2006 car repossession.

SOR ¶ 1.d: \$265 for an unpaid medical bill placed for collection in February 2006.

SOR ¶ 1.e: \$221 for an unpaid telephone bill placed for collection in February 2006.

SOR ¶ 1.f: \$561 for an unpaid medical bill placed for collection in October 2005.

SOR ¶ 1.g: \$50 for an unpaid medical bill placed for collection in October 2005.

SOR ¶ 1.h: \$673 for an unpaid medical bill placed for collection in October 2005.

SOR ¶ 1.i: \$536 for an unpaid credit card account charged off in April 2005.

SOR ¶ 1.j: \$140 for a judgment entered in January 2005.

SOR ¶ 1.k: \$2,125 for a judgment for unpaid rent entered in December 2004.

⁶ Her most recent surgery occurred in August 2007, accounting, in part, for the delay in convening a hearing in this matter.

⁷ Ax. A.

⁸ Answer; Gx. 4; Tr., 66 - 67.

SOR ¶ 1.l: \$148 for a bad check placed for collection in December 2004.

SOR ¶ 1.m: \$57 for an unpaid cash advance loan placed for collection in April 2004.

SOR ¶ 1.n: \$11,305 for an unpaid personal loan charged off in March 2004.

SOR ¶ 1.o: \$82 for an unpaid medical bill placed for collection in January 2003.

Applicant has paid or otherwise resolved the debts listed at SOR ¶¶ 1.e and 1.j. In March 2007, he began repaying the debt listed in SOR ¶ 1.n. He made an initial payment of \$200 and is paying \$50 each month on the debt.

After leaving the Air Force, Applicant worked for several defense contractors as a regular salaried employee. His highest gross annual income was between \$75,000 and \$87,500 during his employment with a large defense contractor between June 2002 and March 2007. Thereafter, he began working as an independent contractor through a personnel placement firm that found him assignments on contracts held by companies such as those by whom he was once employed. In March 2007, his gross annual pay increased to about \$128,000. On the Monday following his hearing, Applicant was due to start a new independent job paying about \$187,200. From his gross pay, he must cover his own benefits, such as life insurance and health coverage.

Applicant submitted a security clearance application (SF 86) on October 11, 2003.⁹ On April 21, 2004, Applicant made pen-and-ink changes to the SF 86, and affixed a dated signature at the end of the form and on the appended “Authorization for Release of Information.” On July 6, 2004, he again reviewed the form, this time writing “All information has been reviewed and are (sic) certified as correct.”¹⁰ On March 21, 2007, he signed and submitted another SF 86 which bore a pre-printed date of October 2, 2003.¹¹ Prior to October 2003, Applicant’s last known application for clearance was made through a personnel security questionnaire (DD Form 398) submitted on March 9, 1994.¹²

In response to question 20 (“Credit History”) of the 1994 application, Applicant disclosed a 1990 car repossession, but stated that the car was returned to him after he repaid the deficiency on the loan. In his response to question 33 (“Your Financial Record - Bankruptcy”) of his October 2003 SF 86, Applicant disclosed his 1999 bankruptcy. In response to question 35 (“Your Financial Record - Repossessions”) of the same SF 86, he disclosed a 1998 car repossession.¹³ When he updated the October 2003 SF 86 in April 2004 and in July 2004, he corrected information about his residences, his employment history, his personal references, his relatives, and his marital status. He also added a zip code to the repossession creditor’s address.¹⁴ He added no new information about any delinquent debts or judgments.

⁹ Gx. 2.

¹⁰ *Id.*

¹¹ Gx. 1.

¹² Gx. 3.

¹³ Gx. 2.

¹⁴ *Id.*

Since his obligation to make monthly support payments to his ex-wife ended in July 2007, Applicant has had excellent positive cash flow. Since March 2007, he has realized about \$10,000 in net income each month after taxes. From that, after paying for his own health care and insurance, as well as rent, car expenses, utilities, and so forth, available information shows he would have had at least \$3,000 remaining each month but for the monthly support payments.¹⁵

Applicant's March 2007 SF 86 contains largely the same information as his October 2003 SF 86. The 2007 SF 86 shows additional pen-and-ink updates to his employment history and one of his personal references. It also reflects a change in his history of residences, in that, whereas in October 2003¹⁶ he had listed an address where he was living when he incurred a delinquent debt and civil judgment for unpaid rent in December 2004. That address was missing from his March 2007 SF 86.¹⁷

At hearing, Applicant testified he submitted the 2007 SF 86 in response to a request by the company for whom he was working before he started work as an independent contractor. He also testified he did not update his financial information in his 2004 or 2007 updates because the Facilities Security Officer (FSO) at work told him to update only information pertaining to residences, job history, personal references, and so on. Applicant asserts he took their guidance to mean he should not disclose any new adverse information.¹⁸

Applicant has amassed an impressive work record, both in the military and as a civilian. He presented numerous awards and commendations, both formal and informal, from his civilian employers. He also presented several performance evaluations from his military service reflective of a highly qualified and reliable junior enlisted member.¹⁹

POLICIES AND BURDEN OF PROOF

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Revised Adjudicative Guidelines.²⁰ Decisions must also reflect consideration of the factors listed in the ¶ 2(a) of the new guidelines.²¹ The presence or

¹⁵ Tr., 125 - 129.

¹⁶ Gx. 2.

¹⁷ Gx. 1.

¹⁸ Tr., 62, 92 - 96, 132 - 142.

¹⁹ Ax. E.

²⁰ Directive. 6.3.

²¹ Commonly referred to as the "whole person" concept, these factor are:(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 extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the

absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties at hearing require that Revised Adjudicative Guideline E (personal conduct) and Guideline F (financial considerations) be applied.

_____ A security clearance decision is intended to resolve whether it is clearly consistent with the national interest²² for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.²³ 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 in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.²⁴

CONCLUSIONS

Financial Consideration. Under Guideline F, "[f]ailure 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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds."²⁵ The government presented sufficient information, consisting of two credit reports (Gx. 9 and 10), Applicant's response to DOHA interrogatories (Gx. 4), and records pertaining to a garnishment of Applicant's pay (Gx. 6) and two civil judgments against him (Gx. 7 and 8) to support the allegations in SOR ¶¶ 1.a - 1.o. Additionally, Applicant admitted all of the SOR allegations except SOR ¶ 1.j. Available information shows Applicant received a discharge of debts through bankruptcy in 1999 (SOR ¶ 1.a), satisfied a child and spousal support arrearage through wage garnishment between 2004 and 2007 (SOR ¶ 1.b) and accumulated at least \$19,000 in other delinquent debts and civil

motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

²² See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

²³ See *Egan*, 484 U.S. at 528, 531.

²⁴ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

²⁵ Revised Adjudicative Guidelines, ¶ 18.

judgments (SOR ¶¶ 1.c - 1.o) between 2003 and 2006, most of which remains unpaid to date. The foregoing requires consideration of Guideline F disqualifying conditions 19(a)²⁶ and 19(c).²⁷

The record also requires consideration of Guideline F mitigating conditions 20(a)²⁸ and 20(b).²⁹ Since 2003, most of Applicant's income has been obligated to support payments for his first wife and their children. While under that obligation, Applicant relied on personal credit to make ends meet and was unable to stay current on those accounts and other obligations. However, he has tried to live within his means while still preserving his ability to see his children, and despite an onerous support obligation imposed in his divorce. Only in the past few months, as a result of greatly increased income and the end of his support obligations, has Applicant had sufficient funds with which to start paying down his debts. He has begun repaying his outstanding obligations, and it is unlikely he will incur such delinquencies in the future.

The mere presence or absence of delinquent debts does not end the inquiry into whether one's financial problems present an unacceptable security risk. The issue is whether Applicant's unpaid debts put him at risk of engaging in illegal acts to generate funds to pay his debts, or whether his financial problems reflect adversely on his judgment, reliability, self-control, or willingness to follow rules and regulations. There is no denying Applicant still owes significant debts that will take time to repay. However, he did not incur the debt through mismanagement of his finances, through frivolous spending, or through deceptive financial practices. Nor has he tried to evade his obligations. He now has the means to repay his debts while avoiding similar problems in the future. All of the foregoing presents sufficient information showing he will not violate the government's trust for financial reasons. Accordingly, the Guideline F security concerns are resolved in favor of the Applicant.

Personal Conduct. Under Guideline E, "[c]onduct 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."³⁰ Through its Motion to Amend, the government alleged Applicant deliberately falsified answers to questions about his finances in his March 2007 SF 86. The government submitted sufficient information, through the March 2007 SF 86 (Gx. 1) and the October 2003 SF 86, as updated in April and July 2004 (Gx. 2), to support the allegations of deliberate falsification.

²⁶ "a history of not meeting financial obligations;"

²⁷ "inability or unwillingness to satisfy debts;"

²⁸ "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;"

²⁹ "the conditions that resulted in the financial problem were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;"

³⁰ Revised Adjudicative Guidelines, ¶ 15.

The March 2007 SF 86 cited in SOR ¶ 2 plainly shows Applicant did not disclose adverse financial information in his background. As someone who has held a security clearance since 1989, he knew or should have known the government would want to know about.

I have considered Applicant's explanation that he was directed by one or more FSO's to only update information such as addresses and references. However, all of the information bearing on Applicant's intentions when he submitted his most recent SF 86 persuades me he knowingly withheld information about judgments, wage garnishments, and delinquent credit accounts. As to his omission of information about wage garnishments (SOR ¶ 2.a), when he updated his SF 86 in July 2004, a garnishment against nearly half his pay had started the previous month. It was still in effect when he submitted his March 2007 SF 86. As to SOR ¶ 2.b alleging he answered "no" to question 35 (repossessions), the allegation is technically defective. Applicant, in fact, answered "yes" and disclosed a repossession, albeit the repossession in 1998, as opposed to the 2006 repossession presented through SOR ¶ 1.c. Nonetheless, this was his third repossession since 1990, and it had occurred less than a year before he signed and submitted his March 2007 SF 86. He omitted that event even though he had declared two previous repossessions and had updated in 2004 the address of the creditor on his 1998 repossession. As to his omission of unpaid civil judgments (SOR ¶ 2.c), he knew a judgment was filed against him for unpaid rent (SOR ¶ 1.k). His omission of that debt must be considered along with the fact he also omitted from his March 2007 SF 86 the address where he was living when he failed to pay the rent. That address had been listed in his 2003 SF 86, which was submitted and updated before the judgment was entered. Finally, Applicant does not contest that he was aware when he submitted his March 2007 SF 86 that he owed several thousand dollars in unpaid credit accounts. The largest such account (SOR ¶ 1.n) was a loan he obtained in 2004 to help pay off delinquent credit cards.

I have also considered the argument that Applicant disclosed some adverse information in his October 2003, thereby putting the government on notice of his financial problems. However, between his October 2003 SF 86, through the two 2004 updates, and his March 2007 SF 86, Applicant's financial problems became much more serious than they had been in 2003 and 2004. Most of his debts became delinquent after his July 2004 update, yet Applicant did not see fit to disclose any of them in March 2007. The government, therefore, was not given adequate notice about the recency and severity of Applicant's financial difficulties.

Even in light of the unusual circumstances surrounding Applicant's submission of his March 2007 SF 86, and the submission and updates to his October 2003 SF 86,³¹ I find Applicant's claims he relied on the guidance of his FSO's implausible. Having extensive experience in the clearance process, Applicant knew or should have known he was responsible for his answers and statements made to the government. His assertion that an FSO knew of certain changes to be made in Applicant's questionnaire and directed those changes, but somehow limited Applicant from updating possibly adverse information, taken together with all of the evidence of his delinquent debts, is simply untenable and strains credulity. On balance, I conclude Applicant deliberately, and of his own volition, withheld information about his debts from his March 2007 SF 86. Accordingly, Guideline

³¹ Normally, a request for clearance or to commence a periodic review would entail submission of an entirely new SF 86. Should the request for clearance be lost, it stands to reason the Applicant would have to resubmit a new questionnaire.

E mitigating conditions 16(a)³² must be considered, and I find Applicant's arguments in support of mitigating condition 17(b)³³ wholly unpersuasive. The Guideline E security concerns are resolved against the Applicant.

Whole Person. I have evaluated the facts presented in this record and have applied the appropriate adjudicative factors, pro and con, under Guidelines E and F. I have also reviewed the record before me in the context of the whole person factors listed in section 2(a) of the Revised Adjudicative Guidelines.³⁴ It is uncontroverted that Applicant is an accomplished professional in his field, who has established an excellent military and civilian work record, and is highly regarded by his peers and superiors at work.³⁵ Application of the whole person factors to Applicant's financial problems makes clear his delinquent debts were the result of his divorce and subsequent support obligations, which left him with little control over his financial destiny. Now that his circumstances have changed, there is little potential he can be pressured because of his finances or that he will incur similar debts in the future. However, when these same factors are applied to his omission of adverse financial information from his SF 86, it is equally clear that he has engaged in serious misconduct, that he did so knowingly and wilfully, and that he did so recently despite having extensive experience in these matters. The record as a whole in this regard shows Applicant was trying to protect his own interests by trying to retain his clearance so he would remain eligible for employment on classified projects. Because he withheld such information in July 2004 and in March 2007, and absent a satisfactory explanation of his conduct or an acceptance of responsibility for it, I conclude it is likely his lack of candor will continue to be a concern in the future. Despite the recent improvement in his financial affairs, his deliberate falsification of his most recent security questionnaire sustains the government's doubts about his judgment and trustworthiness. Such doubts must be resolved in favor of the national security.³⁶ A fair and commonsense assessment³⁷ of all available information before me shows that the Applicant has not yet overcome the government's reasonable doubts about his ability to protect classified information and to exercise the requisite good judgment and discretion expected of one who holds a security clearance.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

³² "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;"

³³ "the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;"

³⁴ See footnote 17, *supra*.

³⁵ Ax. D.

³⁶ See footnote 24, *supra*.

³⁷ See footnote 20, *supra*.

Paragraph 1, Guideline F (Financial Considerations): FOR THE APPLICANT
Subparagraph 1.a - 1.o: For the Applicant

Paragraph 2, Guideline E (Personal Conduct): AGAINST THE APPLICANT
Subparagraph 2.a - 2.d: Against the 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 the Applicant. Clearance is denied.

Matthew E. Malone
Administrative Judge