

KEYWORD: Financial; Personal Conduct; Criminal Conduct

DIGEST: Applicant is 29 years old and works for a federal contractor. Since 1999, he has accumulated several delinquent debts and a judgment listed in the Statement of Reasons (SOR), most of which he has not resolved. Applicant intentionally failed to disclose the delinquent debts on his security clearance applications. His financial considerations, personal conduct, and criminal conduct concerns are not mitigated. Clearance is denied.

CASENO: 06-24900.h1

DATE: 07/17/2007

DATE: July 17, 2007

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In re:)
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 ISCR Case No. 06-24900
 SSN: -----
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Applicant for Security Clearance)
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**DECISION OF ADMINISTRATIVE JUDGE
SHARI DAM**

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 29 years old and works for a federal contractor. Since 1999, he has accumulated several delinquent debts and a judgment listed in the Statement of Reasons (SOR), most of which he has not resolved. Applicant intentionally failed to disclose the delinquent debts on his security clearance applications. His financial considerations, personal conduct, and criminal conduct concerns are not mitigated. Clearance is denied.

STATEMENT OF THE CASE

On January 19, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, 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 Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified and revised.¹ The SOR alleges security concerns under Guidelines F (Financial Considerations), E (Personal Conduct), and J (Criminal Conduct). 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 him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a notarized answer, dated February 2, 2007, Applicant responded to the SOR allegations and elected to have his case decided on the written record. On March 29, 2007, Department Counsel prepared a File of Relevant Material (FORM), containing ten Items, and mailed it to Applicant. On April 12, 2007, Applicant received the FORM and had 30 days from its receipt to file objections and submit material in refutation, extenuation, or mitigation. He chose not to submit any additional information. The case was assigned to me on June 14, 2007.

FINDINGS OF FACT

After a complete and thorough review of the evidence of record, I make the following findings of fact:

Applicant is 29 years old and single. Since June 2005, he has worked as a shipping/receiving clerk for a federal contractor. After graduating from high school in June 1995, he held various jobs and was unemployed for extended periods of time. (Item 3). In June 2005, he submitted a SF-86 security questionnaire and subsequently submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on November 8, 2006,

¹On August 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guidelines to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987, as amended, in which the SOR was issued on or after September 1, 2006.

Guideline F (Financial Considerations)

Applicant admitted that the following judgment and debts listed in the SOR, totaling \$6,319, remain unpaid: ¶ 1.a for \$1,852.29 (judgment); ¶ 1.c for \$1,692; ¶ 1.d for \$1,076; and ¶ 1.e for \$888. He denied that he owed the tax lien listed in ¶ 1.b for \$100. According to Item 9, that debt was paid in December 2000. In his answer, he indicated that he paid off a \$3,000 debt and is in the process of paying others. (Item 2). He attributed his financial problems to the use of credit cards and immaturity from the age of 17 to 22. (*Id.*; Item 5). The judgment was entered in 1999.

Guideline E (Personal Conduct)

SOR ¶ 2.a alleges that Applicant failed to disclose, under question 38 of his SF 86, the debts listed in ¶ 1.a through ¶ 1.e that were more than 180 days delinquent. SOR ¶ 2.b alleges that he failed to disclose, under question 39, the same debts that were 90 days delinquent. In his answer he admitted that he falsified the application “because of the embarrassing nature of this matter.” (Item 2). He accepts full responsibility for his conduct. (*Id.*). In his June 2006 meeting with an investigator about his answers to the SF 86, he explained that he did not report the financial problems because he completed the SF 86 the first day of his employment and was “afraid the employer would see the information and not hire him.” (Item 3 at 5). When he completed the e-QIP in November 2006, he again failed to list his delinquent debts. (Item 5 at 24).

POLICIES

In an evaluation of an applicant’s security suitability, an administrative judge must consider the “Adjudicative Guidelines for Determining Eligibility for Access to Classified Information” (Guidelines), which sets forth adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into Disqualifying Conditions (DC) and Mitigating Conditions (MC), which are used to determine an applicant’s eligibility for access to classified information.

These Guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these Guidelines in conjunction with the factors listed in the adjudicative process. Guideline ¶ 2. An administrative judge’s over-arching adjudicative goal is a fair, impartial and common sense decision. Because the entire process is a conscientious scrutiny of a number of variables known as the “whole person concept,” an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. Guideline ¶ 2(c).

Specifically, an administrative judge should consider the nine adjudicative process factors listed at Guideline ¶ 2(a): “(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) extent to which 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.”

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” Guideline ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, facts must be established by “substantial evidence.”² The Government initially has the burden of producing evidence to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence and prove a mitigating condition. Directive ¶ E3.1.15 provides, “The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” The burden of disproving a mitigating condition never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).³

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship 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. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

² “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.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “Substantial evidence” is “more than a scintilla but less than a preponderance.” *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

³ “The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

The scope of an administrative judge's decision is limited. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. Executive Order 10865, § 7.

CONCLUSIONS

Upon consideration of all facts in evidence and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

Guideline F (Financial Considerations)

Guideline ¶ 18 articulates the Government's concern concerning financial problems. "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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds."

Two Financial Considerations Disqualifying Conditions (FC DC) could raise a security concern and may be disqualifying in this case: "inability or unwillingness to satisfy debts," and "a history of not meeting financial obligations." Guideline ¶ 19(a) and (c).

Applicant essentially admitted he was responsible for a judgment and four delinquent debts listed in the SOR. He claimed he paid an old debt (not listed in the SOR) and intends to resolve the remaining unpaid ones. The debts span an eight year period of time, some being delinquent for several years.

The Government produced substantial evidence of these two FC DCs, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. Five Financial Considerations Mitigating Conditions (FC MC) under Guideline ¶ 20(a)-(e) are potentially applicable:

- (a) 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;
- (b) 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;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Based on my evaluation of the record evidence as a whole, I conclude none of the mitigating conditions apply. Because the debts are not isolated, are ongoing and current, they cast doubt on Applicant's reliability and good judgment and are not mitigated under Guideline ¶ 20(a). Applicant attributed the financial problems to his immaturity and not conditions beyond his control, which eliminates the application of Guideline ¶ 20(b). There is no evidence that he obtained credit counseling, which is required under Guideline ¶ 20(c). Other than resolving the \$100 state lien, Applicant did not produce any evidence that he has taken actions to address the remaining debts, which would support the application of Guideline ¶ 20(d). Guideline ¶ 20(e) is not applicable because he did not provide "documented proof to substantiate the basis of the dispute or [provide] evidence of actions to resolve the issue" with respect to any of the unpaid debts listed in the SOR.

Guideline E (Personal Conduct)

Under Guideline ¶ 15, "[c]onduct involving . . . lack of candor [or] dishonesty . . . 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" One Personal Conduct Disqualifying Condition is particularly relevant and may be disqualifying in this case. Guideline ¶ 16(a) provides a disqualification when there is 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."

Applicant's SF 86 had incorrect answers to questions 38 and 39; his e-QIP had incorrect answers to question 28. Applicant admitted that he intentionally falsified the answers by not including the judgment and debts. He claimed he did not disclose them because he was embarrassed. Based on that admission, the Government established a Personal Conduct Disqualifying Condition under Guideline ¶ 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."

After reviewing all of the Personal Conduct Mitigating Conditions, in particular Guideline ¶ 17(a), I conclude it does not apply. Under that Guideline, a disqualification can be mitigated if there is evidence that "the individual made prompt, good-faith efforts to correct the omission,

concealment, or falsification before being confronted with the facts.” In this instance, Applicant did not correct the omission until he was confronted with the problem during an interview with an investigator in June 2006, and again failed to list them on the e-QIP he completed subsequently. None of the other conditions are applicable based on the evidence.

Guideline J (Criminal Conduct)

Under Guideline ¶ 30 “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.”

Based on Applicant’s admissions that he knowingly falsified two answers on his security clearance application, the Government established the Criminal Conduct Disqualifying Condition under Guideline ¶ 31(c): “allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.” Those admissions constitute a violation of 18 U.S.C. § 1001, which makes a false statement on a security clearance application a crime under federal law, punishable by imprisonment, a fine or both.

Under Guideline ¶ 32, three Criminal Conduct Mitigating Conditions are potentially applicable:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment;
- (b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person’s life; and
- (c) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

After evaluating the record evidence as a whole, I conclude none of the above three apply. Guideline ¶ 32(a) does not apply because the falsification initially occurred in June 2005 when Applicant completed his first SF 86 and then again in November 2006 when he submitted the e-QIP. Less than one year has elapsed since the November 2006 incident, which is not enough time. He voluntarily falsified the answers, such that Guideline ¶ 32(b) is not applicable. Although he takes full responsibility for his actions, that acknowledgement alone is insufficient to establish rehabilitation under Guideline ¶ 32(c).

“Whole Person” Analysis

In addition to the enumerated disqualifying and mitigating conditions, I have considered the general adjudicative guidelines related to the whole person concept under Guideline ¶ 2(a). Although Applicant resolved one small SOR debt and indicated that he intends to pay the others, all of the other debts remain outstanding and unresolved, which is serious enough to raise a security concern. His financial decisions to incur debt that he has been unable to repay were voluntary acts, albeit immature at the time. He is now 29 years old, sufficiently mature to be fully

responsible for his obligations. Without an established budget for repayment and track record of consistent financial management and discipline, demonstrating reliability and good judgment, I am concerned that these financial problems will continue, despite his assertions that he intends to pay all of his debts.

While one can appreciate the embarrassment Applicant may have felt over his debts when he completed the SF 86 on his first day of work, it was not an excuse for failing to truthfully disclose his debts in the November 2006 e-QIP, which he completed after his interview with the investigator.

After weighing the disqualifying and mitigating conditions and all facts and circumstances, in the context of the whole person, I conclude he has not mitigated the security concerns pertaining to financial considerations, personal conduct and criminal conduct. For the reasons stated, I conclude he is not eligible for access to classified information at this time.

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:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-f:	Against Applicant
 Paragraph 2, Guideline E:	 AGAINST APPLICANT
Subparagraphs 2.a and b:	Against Applicant
 Paragraph 3, Guideline J:	 AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

DECISION

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

Shari Dam
Administrative Judge

