

KEYWORD: Financial; Personal Conduct; Criminal Conduct

DIGEST: This 49-year-employee has a history of financial problems that continue to exist. He also has a history of criminal violations (mostly minor) lasting from 1987 to 1999. He falsified answers to three questions on his May 2006 security clearance application. Mitigation has not been adequately established. Clearance is denied.

CASENO: 06-26601

DATE: 06/14/2007

DATE: June 14, 2007

In Re:)	
)	
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SSN: -----)	ISCR Case No. 06-26601
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
BARRY M. SAX**

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 49-year-employee has a history of financial problems that continue to exist. He also has

a history of criminal violations (mostly minor) lasting from 1987 to 1999. He falsified answers to three questions on his May 2006 security clearance application. Mitigation has not been adequately established. Clearance is denied.

STATEMENT OF THE CASE

On February 26, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On March 23, 2007, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge on the basis of the written record. A File of Relevant Material (FORM) was issued on May 8, 2007. Applicant was informed that any response to the FORM had to be submitted within 30 days of receipt. A timely response to the FORM (RFORM) was received at DOHA on or about May 18, 2007, to which Department Counsel did not object.

FINDINGS OF FACT

Applicant is a 49-year-old painter for a defense contractor. The December 9, 2005 SOR contains eight (8) allegations under Guideline F (Financial), three (3) allegations under Guideline E (Personal Conduct), and five allegations under Guideline J (Criminal Conduct). Applicant admitted allegations 1.a. - 1.g, and failed to answer allegation 1.h., under Guideline F. He failed to respond to all three allegations under Guideline E; he admitted allegations 3.a - 3.d., and he failed to answer allegation 3.e., under Guideline J. The FORM indicates that Applicant was notified of his omissions and was given a second opportunity and to respond. In his response to the FORM (RFORM), he corrected his earlier omissions and admitted all the previously unanswered allegations, 1.h., 2.a-2.c., and 3.e. All admissions are accepted and incorporated herein as Findings of Fact. His responses to the SOR and to the FORM do not contain any explanations or evidence in mitigation of any of the SOR allegations.

After considering the totality of the evidence, I make the following FINDINGS OF FACT as to the status of each SOR allegation.

Guideline F (Financial)

Applicant has a history of past due debts (delinquent, charged off, referred for collection, or reduced to judgment) to the following creditors in the amounts cited:

1.a. Bank A-----	\$1219.00
1.b. Creditor B -----	\$888.00
1.c. Tax Agency C -----	\$12,280.00
1.d. Creditor D -----	\$1,170.86
1.e. Child Support Agency E -----	\$3,327.00
1.f. Medical Creditor F -----	\$217.00
1.g. Medical Creditor G -----	\$147.00

All of the delinquent debts, totaling about \$19,248.86, are established as still valid and owing by Applicant’s admissions and by the other evidence of record. None of the cited debts have been demonstrated to have subsequently been paid off or otherwise resolved.

1.h. The debt-related information found in allegations 3.a., 3.b., 3.c., and 3.d., below (Items 2, 5, and 6).

Guideline E (Personal Conduct)

2.a. Applicant falsified material facts on a security clearance application, dated May 6, 2005, when he responded to Question **26 Your Police Record - Other Offenses** [in the past seven years] by stating “No,” and intentionally omitting any mention of the criminal conduct alleged in 3.b., 3.c., and 3.d., below.¹

2.b. Applicant falsified material facts on a security clearance application, dated August 22, 2003, when he responded to Question **38 Your Financial Delinquencies - 180 Days** [in the past seven years] by stating “No,” and intentionally omitting any mention of the debts alleged in allegations 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., and 1.g., above.

2.c. Applicant falsified material facts on a security clearance application, dated August 22, 2003, when he responded to Question **39 Your Financial Delinquencies - 90 Days** [currently] by stating “No,” and intentionally omitting any mention of the debts alleged in allegations 1.a., 1.b., 1.c., 1.d., and 1.e., above.

Guideline J (Criminal Activity)

¹ The debt cited in allegation 3.a. is reported as being referred for collection in about 1979, and is therefore outside the seven year period during which the debt had to be reported in the SF 86.

3.a. Applicant was charged with Concealment of Merchandise on about June 21, 1979. He was found guilty of Alter Price Tag, fined \$265.00 and sentenced to 30 days in jail, suspended (Items 2, 5, and 6). Applicant admitted the debt and there is no evidence of record that the debt was ever paid.

3.b. Applicant was charged with Make False Statement for Unemployment Benefit on June 18, 1998, found guilty of Unemployment Fraud, fined \$25.00, and required to pay back \$4,000.00 (Items 2, 5, and 6). Applicant admitted the debt and there is no evidence of record that it was ever paid.

3.c. Applicant was charged with Failure to Appear on Misdemeanor Charge on about September 3, 2000, when he failed to appear or make the ordered payments. The charge was dismissed when he subsequently made the required payments. Applicant admitted this allegation, but it does not allege the size of the fine or that it ever became delinquent. Consequently, this allegation is found in favor of Applicant.

3.d. - Applicant was charged on June 19, 2003 with (1) Contempt of Court and (2) Obtaining Utility Service without Payment under \$200.00. He was found guilty of Count (2) and sentenced to 60 days in jail, 55 days suspended. There is no record the debt was ever paid.

POLICIES

In evaluating the relevance of an individual's conduct, the adjudicator should consider the following nine generic 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., “any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation’s security.”

CONCLUSIONS

Applicant is a 49 year old male.

Guideline F (Financial) -The record establishes, without rebuttal, that Applicant incurred Federal Income tax debts in 1987, 1997, and 1998. He also incurred numerous commercial delinquent debts between 2000 and 2006. Applicant has not demonstrated that any of these debts have been paid off or otherwise resolved.

Disqualifying Conditions (DC) 19.(a) inability or unwillingness to satisfy debts, and 19.(c) history of not meeting financial obligations, have been established by the Government’s evidence of record. No mitigating conditions have been are shown.

Guideline E (Personal Conduct) - The record establishes, without rebuttal, that Applicant deliberately falsified his answers to Questions 26, 38, and 39 of the SF 86, all of which were relevant and material to establishing his security clearance eligibility.

Disqualifying Condition 16.(a). the deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . has been shown, but no mitigating conditions have been demonstrated.

Guideline J (Criminal Conduct) - Applicant has admitted his history of criminal conduct in 1979, 1998, 2000, 2003 and, lastly, in June 2005, when he falsified his SF 86 in violation of 18 U.S.C. 1001, a felony.

Disqualifying Conditions 31.(a) a single serious crime or multiple lesser offenses and 31.(c) an allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted.

This is a case wherein an Applicant has chosen not to adequately respond to the Government’s stated concerns by presenting any evidence in mitigation or extenuation. Considering the findings of fact under all three specific Guidelines and the Directive’s whole person concept, the Government has established a *prima facie* case of ineligibility and Applicant has not come anywhere near mitigating the Government’s stated concerns.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

<i>Guideline F (Financial Considerations)</i>	Against the Applicant
Subparagraph 1.a.	Against the Applicant
Subparagraph 1.b.	Against the Applicant
Subparagraph 1.c.	Against the Applicant
Subparagraph 1.d.	Against the Applicant
Subparagraph 1.e.	Against the Applicant
Subparagraph 1.f.	Against the Applicant
Subparagraph 1.g.	Against the Applicant
Subparagraph 1.h.	Against the Applicant
Guideline E (Personal Conduct)	Against the Applicant t
Subparagraph 2.a.	Against the Applicant
Subparagraph 2.b.	Against the Applicant
Subparagraph 2.c.	Against the Applicant
Guideline J (Criminal Conduct)	Against the Applicant
Subparagraph 3.a.	Against the Applicant
Subparagraph 3.b.	Against the Applicant
Subparagraph 3.c.	For the Applicant
Subparagraph 3.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 Applicant.

**BARRY M. SAX
ADMINISTRATIVE JUDGE**

