

Applicant has mitigated security concerns over financial problems by his decision to begin to address his long-standing debts even before he was formally given notice of the government's security concern by a Statement of Reasons. Overall, he has reformed and demonstrated positive changes in behavior to mitigate financial concerns. He also established he had no intent to falsify his security submission by his failure to detail all of his debts as he did not know about the judgment and did not understand the questions on late payments. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on May 2, 2007. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.¹ The SOR alleged specific concerns over Financial Considerations (Guideline F) in paragraph 1 and over Personal Conduct (Guideline E) in paragraph 2 based on the revised Adjudicative Guidelines² issued on December 29, 2005, and implemented by the Department of Defense to be effective September 1, 2006.

Applicant responded to these SOR allegations in a notarized Answer dated June 6, 2007, and requested a hearing. On June 25, 2007, Department Counsel indicated the case was ready to proceed, and the matter was assigned to me on June 27, 2007. After a mutually convenient date for hearing was agreed to, a Notice of Hearing, issued on July 12, 2007, set the matter for August 1, 2007, at a location near where Applicant works and lives.

At the hearing the Government offered seven exhibits (Exhibit 1-7), which were admitted into evidence. The Government noted that the allegation in SOR ¶ 1.i. used the wrong figure; his monthly net remainder was not \$2,403 but \$1,586; a technical amendment was made to amend and correct this error. (TR 10; 132-133)

Applicant was represented by a personal representative, a certified financial planner. Applicant testified, called one witness and offered five exhibits into evidence which were admitted as Exhibits A - E. I granted Applicant one week until August 8, 2007, to submit additional evidence; and the government one day to review it. (TR 56-57, 104-105, 126, 134) Applicant's representative submitted the additional evidence on August 8, 2007. (Exhibit F) After Department Counsel responded on August 9, 2007, that he had no objection, the exhibit was admitted into evidence. The record closed on August 9, 2007. The transcript (TR) was received on August 15, 2007.

FINDINGS OF FACT

¹ This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), as amended.

² Applicant did receive a copy of the DoD Directive 5220.6 sent with the Statement of Reasons (SOR).

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, 26 years old, began working for a defense contractor (Company #1) in State #1 in July 2007. While now operating under a new name, it is the same company where he worked when he provided his initial Electronic Questionnaire for Investigations Processing (e-QIP) (SF 86) to obtain a security clearance in October 2005. Company #1 is again sponsoring him for a security clearance. He worked for another company (Company #2) for eighteen months from 2005 to 2007. He had an interim clearance from 2005 to April 2007 when it was terminated for jurisdictional reasons. Before that he worked from October 2002 to 2005 as a senior network engineer for Company #1, which then operated under a different name. He previously worked as a sales representative in 2002 for a few months; earlier in 2002 he had a temporary position. He worked as an assistant manager in a store from 1999 to 2002. He grew up on a farm and still helps his parents with the farm work. A high school graduate, he attended a trade school for one month in 2002. (Exhibits 1; TR 19-24; 37-38, 73-74) Applicant married in September 2006. (TR 29; 44; 46-47)

Finances and Personal Conduct

In response to questions on his financial record in Section 27 of the e-QIP, he failed to disclose an unpaid judgment entered against him in 2002. (SOR ¶ 2.a.) He denied any intent to falsify as he stated he did not know of this judgment as he was not given notice and had not reviewed a credit report before completing this form. (Answer; Exhibit 1; TR 87-91) He first learned of the judgment when his mortgage broker showed him the credit report in November 2005. (TR 91)

In response to questions on his financial delinquencies in Section 27 of the e-QIP, he did disclose one delinquency (SOR ¶ 1.f.), but he failed to disclose delinquencies to other creditors who were over 180 days delinquent. (SOR ¶ 2.b.) or over 90 days delinquent. (SOR ¶ 2.c.) He denied any intent to falsify as he stated he did not fully understand the question. He did the application on line and did not know anyone who could answer any of his questions and clarify the question. (Answer, Exhibit 1; TR 87-88, 91-94)

Applicant maintained that he answered the questions to the best of his ability as he did not know about the judgment and did not understand what 90 and 180 days late meant and had no one to ask for a clarification. (TR 35-36) He certified that his answers were true, complete and correct to the best of his knowledge and belief. (Exhibit 1)

Investigation revealed a substantial number of debts. (Exhibits 4, 5, 6, 7) In response to an Interrogatory that questioned him about his debts and other matters, Applicant replied in March 2007 that he had paid or was making payment arrangements for a majority of these overdue debts. (See chart below.) He indicated he and his wife had net monthly income of approximately \$5,000, expenses of approximately \$2,400 with a net remainder of approximately \$1,500 each month (SOR ¶ 1.i.). (Exhibit 3; TR 85-87)

The SOR alleged seven³ debts which totaled approximately \$22,000. (Two were duplicate listings.) He admitted in the past he lived beyond his means and was “living paycheck to paycheck without much thought of the future.” (Answer) Applicant denied he remains indebted to any of the creditors except for ¶ 1.b., which is the same debt alleged in ¶ 1.c., where he has made arrangements to make monthly payments. (Answer; TR 30; Exhibit F)

SOR ¶	TYPE OF DEBT (date)	AMOUNT	CURRENT STATUS
1.a.	Credit Card debt from a corporate account placed for collection in March 2006	\$7,472	Applicant satisfied this debt in March 2007. (Answer; Exhibits 3, 4, 5, 6; Exhibit E; TR 30, 32; 47-52)
1.b. and 1.c.	Two debts for a car loan for a 2003 car where the car was re-possessed in 2004.	\$20,124 for original car loan; \$10,495 is the current debt after the car was sold at auction.	Applicant made arrangements to satisfy this debt by making \$100 monthly payments beginning in July 2007. (Answer; Exhibits 3, 4, 5, 6; TR 30; TR 52-59; Exhibit F)
1.d.	Judgment for a consumer debt from a small department store that he incurred when he was 18 years old.	\$ 788	Applicant did not receive notice of this collection action; he satisfied this debt in March 2007. (Answer; Exhibits 3, 4, 5, 6, and 7; Exhibits A, D; TR 30; 59-62)
1.e.	Consumer debt placed for collection in 2002 for cable TV, etc.	\$ 606	Applicant satisfied this debt in March 2007. (Answer; Exhibits 3, 4, 5, 6; Exhibit A, D; TR 30; TR 62-63)
1.f.	Consumer debt placed for collection in 2001.	\$ 2,276	His mother satisfied this debt in March 2007 by paying \$5,273 including past due interest and late fees. He believed she considered this payment a gift to him that he repays by working at the farm. (Answer; Exhibits 3, 4, 5, 6; Exhibit A; TR 30; 64-66)

³ The government conceded that SOR ¶ 1.b and ¶ 1.c. were the same debt. (TR 116)

1.g.	Consumer debt for a phone when he was 18 years old, placed for collection in 1999.	\$ 553.	Applicant satisfied this debt in January 2007. (Answer; Exhibits 3, 4, 5, 6; Exhibit A; TR 30, 44-45; 66-67)
1.h.	Consumer debt.	\$ 162.	He disputed this debt as the company has no record and it no longer shows on his current credit report. (Answer; Exhibits 3, 4, 5, 6; TR 29-30; 67-69)

Steps Taken To Improve His Financial Practices

Applicant first became aware of the need to improve his financial practices when he began to look for a house to purchase in 2005. After examining his credit report for the first time, he realized he could not get a mortgage in his name.

Applicant then consulted a certified financial planner for advice and assistance in December 2005 and had several counseling sessions with him; he still consults with him. Ultimately, he and his wife were able to buy a home worth \$231,000, but the mortgage is in her name; they settled on this property in January 2006. (TR 26-28; 34; 43, 76, 81-82) This home-buying experience in 2006 was a catalyst for him to begin to change his financial practices. (TR 76-81)

However, he could not get a debt consolidation loan in his own name because of his bad credit rating. (TR 102-103) Finally, in March 2007 his mother was able to get a home equity loan and agreed to make a personal loan to him of \$12,000 to try to help him consolidate his debts. He is making monthly payments of \$400 to pay back the principle with no interest; his mother documented that he has consistently made these payments in May, June, and July 2007. (TR 29, 69-70, 73, 102-103; Exhibit F)

Applicant's wife manages the family finances as she is "tons better" with money. (TR 30) He now invests more money in his 401k where he has \$4,000 invested. (TR 31) He has a passion for cars and spent \$9,000 on a car in 2006, which he paid off in 2007; he also just purchased a 2000 truck in November 2006 and is making payments on that vehicle of \$273 per month. (TR 34, 82-83) He has changed his ways and has learned better how to manage his money and to budget; he has made timely payments on his truck and on his student loan. (TR 75-76) In August 2007 the budget reflected monthly income of approximately \$5,300, monthly expenses of approximately \$3,600, and a net remainder of approximately \$1,500. The expenses include a \$400 monthly payment to Applicant's mother to repay the debt consolidation loan she gave him. (Exhibit F)

References

Applicant's former supervisor, friend, and his roommate in 2002 and from 2003 to December 2005 testified on his behalf. He supervised Applicant from March 2003 to March 2005

as they worked at the same organization. As a roommate, Applicant paid all of his bills on time. The supervisor assessed Applicant as one of the top five employees out of 55 he supervised. (TR 107-111, 112)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility which are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns. In deciding whether to grant or continue an individual's access to classified information, the administrative judge considers the evidence as a whole in evaluating this case and weighs relevant revised Adjudication Guidelines: the mere presence or absence of any adjudication condition is not decisive.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended and revised, and the Directive, as amended and revised, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a security clearance.

CONCLUSIONS

Guideline F: Financial Considerations

¶ **18. *The Concern.*** 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The government established Applicant's financial problems, which were reflected by his accumulating over \$20,000 in debts, including a car repossession. His financial problems began in 1999 and continued to 2007. Consequently, Financial Considerations Disqualifying Condition (DC), AG ¶ 19(a), (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c), (*a history of not meeting financial obligations*) apply.

With the government's case initially established, the burden shifted to Applicant to present evidence of refutation, extenuation, or mitigation⁴ to overcome the case against him. In large part, Applicant's debts grew out of his immaturity, overspending on expensive vehicles and other items, and lack of understanding of finances, and his delay in finding a path to resolve his debts. He learned the significance of his bad credit when he was looking for a house to purchase and learned that he could not get a mortgage in his name. At that point he started looking for a certified financial planner and found one to help him understand how to get control of his finances. Applicant and his wife were able to buy a home worth \$231,000, with the mortgage in her name, in January 2006.

To his credit, after he received the Interrogatories in March 2007 and understood the security significance of the delinquent debts, but before receiving the SOR in May 2007, Applicant took positive and effective action. Unable to get a commercial loan with his bad credit, he concluded that he needed to get a personal loan from his mother in order to begin to resolve the debts which she was willing to do in March 2007. While his actions in then resolving a majority of his debts are recent, he was made consistent payments of \$200 per month to his mother to repay the interest-free \$12,000 loan.

While he initially showed unsound judgment in his delay in addressing these issues, he now has initiated a conscientious plan. He has already demonstrated an effective and consistent approach to resolving these debts. He also has a plan to make monthly payments for his repossessed vehicle which shows his good faith⁵ efforts to resolve this debt and set aside his claims

⁴ Five Financial Considerations Mitigating Conditions under Guidelines ¶ 20(a)-(e) potentially apply:

- (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.

⁵ The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some

against the dealer. Thus, he merits consideration under AG ¶ 20(d), (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) because he took these steps to use legally available means to resolve his delinquent debt.

Further, Applicant provided evidence under AG ¶ 20 (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*). Even before he received the SOR, he initiated efforts to obtain counseling for these financial problems with a certified financial planner who represented him at the hearing. Applicant has made substantial steps to turn around his financial issues with the assistance of this financial planner, his mother's loan, and his wife financial management skills. Thus, he has shown there are clear indications that the problem is being resolved or is under control. He has only one debt he did not resolve: that was a small debt where he investigated and found the company had no record; this debt (SOR 1.h.) he disputes as it no longer appears on his credit report. Also, AG ¶ 20(a) also applies as the circumstances seem unlikely to recur given his marriage and increased maternity. He also has established a responsible work record per his former supervisor.

Whole Person Analysis

Evaluating Applicant in light of the "whole person" concept, I conclude he is an earnest person who demonstrated his initiative in developing a solution to his delinquent debt once he understood the security significance of his debts. He has been consistent in making three payments to his mother for the debt consolidation loan and has another monthly payment plan to resolve another large debt for a repossessed vehicle. Significantly, with his wife's help, he has changed his financial practices and developed a budget. The potential for pressure, coercion, exploitation, or duress is slight as he has a stable and impressive employment history with the confidence of the past supervisor who testified for him. Based on all of these positive steps, I conclude favorably for him based on a whole person assessment. He is earnestly working to resolve his financial problems, so the likelihood of new debts and related problems is low.

Overall, Applicant has established a substantial case in mitigation under AG ¶ 20 , but since his reform and repayment efforts are so recent, I also assess him as a whole person and conclude that the security concerns are mitigated under that analysis. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has mitigated the security concerns pertaining to financial considerations. I rule for Applicant on subparagraphs 1.a. through 1.i. under SOR Paragraph 1.

other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

Guideline E: Personal Conduct

¶ **15. *The Concern.*** 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 a candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant denies he had any intent to falsify by not including all of his debts on the security form. He did not review a credit report that would have listed all his debts and was not given notice of his adverse judgment. I found his explanation that he did not understand 90 to 180 days late in making payments was credible as he did list one overdue \$2,200 debt from 2001 (SOR 1.f.). While he admits he was rushed in completing the form, he did reveal one debt; thus he did not try to hide his financial problems. Also, he had no easy resource to ask for clarification as he completed the form on line. Given his candor and willingness to supply adverse information to other questions, I conclude that it was not his intent to falsify by omitting his other debts. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.⁶ Based on Applicant's credible testimony and review of him as a whole person, I conclude Guideline E in favor of Applicant.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person as discussed above, I conclude he has refuted the security concerns pertaining to personal conduct. I rule for Applicant on subparagraphs 2.a. through 2.c. under SOR Paragraph 2.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline F:	FOR APPLICANT
Subparagraph 1.a through 1.i.	For Applicant
Paragraph 2. Guideline E:	FOR APPLICANT
Subparagraph 2.a. through 2.c.	For Applicant

DECISION

⁶ See ISCR Case No. 03-09483 at 4 (App. Bd. Nov.17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. Clearance is granted.

Kathryn Moen Braeman
Administrative Judge