

The case was assigned to me on July 23, 2007. On August 13, 2007, DOHA issued a notice of hearing scheduling it for September 11, 2007. During the hearing, I received three government exhibits, one Applicant exhibit, and Applicant's testimony. At Applicant's request, I left the record open for him to submit additional exhibits. Within the time allotted, he submitted seven additional exhibits. DOHA received the transcript on September 20, 2007.

FINDINGS OF FACT

_____The SOR admission is incorporated into the findings of fact. In addition, I make the following findings of fact.

Applicant is a 49-year-old married man with four adult children. He is a United States Air Force veteran who served from 1978 through his retirement in 1998. He is a Gulf War veteran.¹ Currently, he works as a technical support engineer. His duties are to provide training to military clients regarding the operation of missile systems that his employer develops.²

Applicant was unemployed approximately six months after retiring from the Air Force. Subsequently, he began to fall behind on his credit card bills. By 2003, he had credit card debt in excess of \$45,000.³ Later that year, he retained a credit counselor to help him develop a payment plan.⁴ To date, he has satisfied \$43,112 of debt through the plan.⁵

The SOR lists six delinquent debts in the approximate amount of \$18,141. It includes two phone bills (SOR subparagraphs 1.a and 1.b), and four credit card bills. Subparagraph 1.c is the only SOR delinquency included in the payment plan. Applicant either had not incurred the debts listed in the other SOR subparagraphs when he entered the payment plan, or they were not then delinquent.

Applicant satisfied SOR subparagraph 1.a.⁶ Although he disputes SOR subparagraph 1.b, he provided no evidence of having notified the creditor.⁷ He is current on SOR subparagraph 1.d.⁸

¹Tr.47.

²Tr. 16.

³Exhibit C, Credit Counseling Statement, dated August 28, 2007.

⁴Tr. 56.

⁵See note 3.

⁶Tr. 19; Exhibit F.

⁷Tr. 20.

⁸Exhibit H.

Applicant opened the account listed in subparagraph 1.e in 1994. It grew delinquent after he retired from the military in 1998.⁹ The creditor contacted him in 1999 and proposed a settlement. Applicant was unable to settle it then, and it was delinquent in 2003 when he entered the payment plan.¹⁰ Currently, the credit counseling agency is negotiating a settlement.¹¹ He did not attempt to resolve this debt any sooner because he has spent much of the past eight years working overseas. When he periodically talked to his wife, he never asked about it because he did not consider it to be “of any importance.”¹²

Applicant alleges he satisfied SOR subparagraph 1.f. He provided no documentation.

In March 2006, Applicant completed a security clearance application. He was required to disclose whether he had ever been more than 180 days delinquent on any debts, and whether any debts were currently more than 90 days delinquent.¹³ He did not disclose SOR subparagraphs 1.b and 1.e. Applicant was unaware that the debt listed in SOR subparagraph 1.b was on his credit report at the time he completed the application. He disputes it. He alleges that subparagraph 1.e had been “behind” since 1999, but never delinquent.¹⁴

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.

⁹Tr. 30.

¹⁰Tr. 22.

¹¹Answer at 3.

¹²Tr. 35.

¹³Electronic Questionnaire for Investigations Processing, Questions 28a, and 28b.

¹⁴Tr. 39.

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.”¹⁵ 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

“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.”¹⁶ Here, 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*.

Applicant’s financial problems started with his six-month unemployment experienced after retiring from the Air Force in 1998. However, he has been working steadily for the past nine years, and his debts remain outstanding. Also, although he has been receiving counseling for his financial problems since 2004, and has satisfied \$43,000 of debt since that time, the only SOR debt included in the payment plan was subparagraph 1.c. The largest and oldest delinquency (subparagraph 1.e) remains unresolved. Moreover, although Applicant satisfied SOR subparagraph 1.a, and is now current on SOR subparagraph 1.d, he failed to provide documentation of his dispute with the creditor listed in subparagraph 1.b, and did not provide documentation that he satisfied subparagraph 1.f, as alleged. Financial Considerations Mitigating Condition (FC MC) 20(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*, FC MC 20(c): *the person has received or is receiving counseling for the problem*, and FC MC 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*, apply, but have limited probative value. I conclude subparagraphs 1.a, 1.c, and 1.d are mitigated, while the remainder continue to present a security concern.

Personal Conduct

¹⁵See generally, Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

¹⁶Adjudicative Guideline (AG) ¶18.

“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.”¹⁷ Here, Applicant’s failure to disclose the delinquencies listed in subparagraph 1.b and 1.e, as required on the security clearance application 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.*

Applicant was unaware the debt listed in SOR subparagraph 1.b was on his credit report when he completed the security clearance application, therefore, I conclude he did not intentionally omit it. Conversely, given the age and amount of SOR subparagraph 1.e, I did not find his explanation for its omission credible. PC DC 16(a) does not apply to the omission of subparagraph 1.a, but applies to the omission of subparagraph 1.e without mitigation.

Whole Person Concept

Applicant deserves credit for initiating and adhering to a debt repayment plan. However, only one of the SOR debts is included in the plan. Moreover, his explanation for not having begun to initiate payments toward the satisfaction of SOR subparagraph 1.e was not persuasive in light of the length of time it has been delinquent. This problem was compounded by his unconvincing explanation for failing to list it on the security clearance application. The lack of credibility displayed in omitting this delinquency undermined the persuasiveness of his unsupported contention that he had either satisfied the remaining SOR debts or disputed them. Evaluating this case in the context of the whole person concept, I conclude Applicant has made commendable progress in debt reduction, but it is not sufficient enough to overcome the financial considerations security concern given the age and amount of the remaining debts, and the personal conduct security concern generated by his security clearance application falsification.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under the Applicant’s current circumstances, a clearance is not recommended, but should he be afforded an opportunity to reapply in the future, having paid delinquent obligations and continued to comply with the payment plan, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

FORMAL FINDINGS

Paragraph 1 – Guideline F:

AGAINST APPLICANT

¹⁷AG ¶ 15.

Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Paragraph 2 - Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	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