

November 27, 2007. The government offered 12 exhibits (Exh.), which were received without objection. Applicant and three witnesses testified on his behalf and offered 13 exhibits which were admitted without objection. DOHA received the transcript of the hearing (Tr.I) on December 5, 2007. The record was kept open at Applicant's request until January 9, 2007, to submit additional matters. On January 3, 2007, he submitted three additional documents which were admitted without objection.

The record remained open at the request of the government for submission of additional evidence which occurred on February 13, 2007, by video teleconference (VTC). The transcript of that hearing was received on February 22, 2008 (Tr.II). An period of 30 days was given to Applicant to submit additional information. Five documents were received on March 18, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Motion to Amend Answer

During the hearing, Applicant's documentary evidence indicated that he was contesting one allegation concerning a 1997 conviction (SOR ¶ 1.b.) that he had denied to investigators but admitted in his answer. I advised him of the inconsistency, and asked him if he wanted to amend his answer. He answered in the affirmative. The government objected on the grounds that to do so would prejudice it's case as it was not prepared to offer evidence on the allegation and wanted to do further research to produce testimony and records (Tr.I 90-93 and 127). I granted Applicant's request to amend with the condition that the government could move to re-open the case to offer evidence on the allegation if they chose to do so. A request to do so was timely made by the government and the matter was re-convened by VTC on January 13, 2008, to hear further testimony on that allegation. No additional testimony or records were offered by the government, but Applicant was cross-examined further on the allegation as well as other issues in the SOR.

Findings of Fact

In his Answer to the SOR, dated June 25, 2007, Applicant admitted the facts alleged in the three criminal conduct allegations relating to Guideline J (SOR ¶ ¶ 1.a., b., and c.). He denied the criminal conduct allegations relating to deliberate falsification of his SF 86 answers (SOR ¶ ¶ 1.d.,e.,and f.). He admitted all of the 11 financial allegations involving debts under Guideline F (SOR ¶ ¶ 2.a.-l.) with explanations. He did not respond to the four personal conduct allegations under Guideline E (SOR ¶ ¶ 3.a.-d.) relating to falsification of material facts on his SF 86, to an investigator, and on an interrogatory. At the hearing his attention was directed to the omission of a response to this allegation in his Answer. He then denied them all (Tr.I 13).

Applicant is a 33-year-old employee of a major defense contractor who has worked for the company since 1999 as a multi-disciplinary engineer. He has held a

security clearance since he was hired. He holds a bachelor's degree in electrical engineering and a masters degree in computer information systems. He is highly regarded in his work by corporate supervisors and military clients who applaud his work ethic and teamwork (Exhs. E-J). He has received several corporate awards for his service on behalf of the company's military clients (Exhs. K and L). He worked in Kuwait and Iraq for five months in 2003 during Operation Iraqi Enduring Freedom for which some of his awards were given. He finished his master's degree by correspondence during his deployment.

In addition to his employment in the defense industry, Applicant has been a lay associate minister in his church for the past four years. He heads a young adult program for which he is responsible for budgeting and management. He also works with the youth of the church. He is well-regarded for his character and reputation by his pastor who testified for him and formerly worked for the same defense contractor (Tr. I 110-118). He counseled Applicant concerning relations with his former girlfriend and before his marriage.

Applicant is also highly regarded by his pastor in his home city where he is still an associate minister and participates in services when he travels there. The pastor has known Applicant and his family since his youth. He applauds him particularly for his work with the youth in the community helping on various service projects for the church (Exh. B). He attempts to tithe 10% of his income to his church but does not achieve this every month. He contributes between \$100 and \$300 each month.

Applicant was married in September 2006 to a chief master sergeant in the Army. They have responsibility for his child from a former relationship and his wife's 16-year-old daughter. He and his wife each have gross incomes of over \$5,000 per month and maintain separate accounts. His net income after deductions is approximately half that amount, which includes a deduction of \$255 for student loans. In addition he pays approximately \$600 for child care for his daughter. They own their own home and he drives an older automobile on which he makes small monthly payments.

Criminal Conduct

The criminal allegations against Applicant in the SOR relate to two matters. The most recent one (SOR ¶ 1.a.) occurred in the city where he now lives on May 5, 2000, when he had a dispute with his girl friend at his home and was driving her home when the argument continued. He parked the car, they got out and the argument continued and was a physical confrontation was observed by the police and a witness. He was arrested and charged with an assault. He neglected to find out the date of the hearing was cited for failure to appear (Exhs. 2 and 4). He was found guilty and at the sentencing was sentenced to 12 months probation and fined \$50. He disputes some of the underlying facts of the allegation but he was convicted and placed on probation which he fulfilled. He reported the matter at Question 26 of the SF 86. Applicant and his girlfriend continued to live together for several years thereafter. They had one child in 2004 for whom he paid child support until August 2006 when he obtained full custody of the child who is now three years old.

The second criminal conduct allegation (SOR ¶ 1.b.) is that he was arrested on April 25, 1997, in the capital city of another state where he grew up, was given a criminal trespass warning, taken into custody for outstanding warrants, and admitted membership in the Crips criminal gang. The police record (Exh. 5) indicates that the case involved three men who had taken possession of an apartment where two women complainants lived. The men were selling drugs from the apartment and the complainants wanted the police to remove them from the premises. This is the allegation he denied to investigators but admitted in his answer to the SOR. He submitted exculpatory evidence at the hearing after he amended his answer to deny the allegation. The case was cleared administratively.

Applicant consistently denied this allegation at every opportunity in the security clearance investigation but without any of the evidence he produced at the hearing. The first denial was on September 12 and 13, 2005, when he was interviewed by an investigator from the Office of Personnel Management (Exh. 9). The second was in his answer to an interrogatory on August 2, 2007 (Exh. 10). However, his denial of participation in this 1997 conduct was then alleged in cross-pleadings in two personal conduct allegations and two criminal conduct allegations as making false statements to an investigator (SOR ¶ ¶ 1.e. and 3.c.), and in an interrogatory response (SOR ¶ ¶ 1. f. and 3.d.). His admission of the conduct in his answer was totally inconsistent with every statement he had made concerning the 1997 incident up until that time.

The exculpatory evidence offered at the hearing consisted of two affidavits. The first (Exh. D) is from Applicant's brother who admitted that he was one of the three persons arrested in 1997. He had used the Applicant's identity when arrested since he had a long criminal record and was fearful of the consequences of another conviction. Thus, the police record indicated Applicant's name and not his brother's name. The second affidavit (Exh. C) is from a cousin of both brothers who was in the group arrested who supported the statement in the brother's affidavit that it was he and not Applicant was involved in the criminal conduct. Applicant was in engineering school on the date of the arrest in a different city 150 miles from the place of the arrest. He was in the third year of his electrical engineering studies and was taking final examinations in the Spring of 1997.

Applicant did not learn of the 1997 incident until the documents relating to his case were given to him during his background investigation (Exh. 5). When he learned of it, he thought the matter might involve a cousin who has the same first and last names as Applicant with a middle name which phonetically is almost the same. Only two of the four letters in the middle name are different from his own (Tr.I 37). Confusion in identity between the two had occurred since they were children involving neighborhood offenses such as bicycle thefts.

Applicant attempted to reach his cousin which was difficult because the cousin was in and out of jail during the time he was attempting to find him. However, Applicant eventually learned he was mistaken in his assumption as to who was involved in the incident when he learned from another family member that the person involved in the

incident might be his own brother. He noted on the police report that one of the other two arrested in 1997 was yet another cousin. That cousin told Applicant that the person listed with Applicant's name in the criminal report was Applicant's brother. When Applicant confronted his brother about the matter, he agreed to submit an affidavit to straighten out the matter. Applicant has helped his brother over the years financially just as he has with other family members. He helped his brother once within the last six months. A second affidavit was submitted from the cousin who participated in the offense which confirmed that it was not Applicant who was involved but his brother.

A statement was admitted in evidence from a retired assistant chief of police and the present assistant city manager for public safety of the capital city of the state where the 1997 offense occurred. He has known Applicant and his family for many years. He praises Applicant and his parents, and describes Applicant as a very respectful person with "highest integrity." In addition, he describes applicant as a "model citizen who is "hard working and honorable", and a "role model to family and community" (Exh. A).

Financial

The financial issues involve 11 alleged delinquent debts of Applicant totaling over \$11,000. Of this amount \$5,000 is for some of his student loans (SOR ¶ 2. f. and g.). His pay was garnished for a default on one student loan in November 2005 (Exh. M) after his SF 86 was submitted. The total amount he owed in student loans for his two degree programs was approximately \$45,000. They were in multiple accounts including several on credit cards. He made monthly payments from June 2006 until January 2007 when a report was made on the payments (Exh. 12, Item 4). He applied to consolidate these loans on March 1, 2007 (Tr. I 68). They were consolidated in August 2007 and are being paid in the amount of \$255 per month with a voluntary assignment of funds from his pay.

The other large debt is for an assessment of \$3,800 by a former landlord (SOR ¶ 2.a.). It has been owed since August 2007 when Applicant moved from the apartment complex where he was a tenant. The manager claimed he had moved before his lease expired but Applicant disputed the claim and the amount of the assessment. He settled this debt for \$2,500 which he paid by check on March 14, 2008 (Exh. P 4).

Other debts of Applicant are as follows:

1. A telephone bill for \$559 (SOR ¶ 2.h.) was disputed and deleted from his account (Exh. N 2 and Tr. I 56).
2. Two debts to a local government office for \$589 and \$170 (SOR ¶ ¶ 2.j. and k.) relating to child support were canceled as shown by a letter from the collection agency (Exh. P 2).
3. He settled a credit card debt of \$915 (SOR ¶ 2. e.) by payment of \$631 on March 10, 2008 (Tr. I 59).

4. He paid a hospital bill (SOR ¶ 2.d.) for \$570 that became delinquent in August 2007 and was acknowledged as paid in full by the creditor on December 17, 2007 (Exh. N 3).

5. He has written to a credit agency for information about two other small medical bills totaling \$68 (SOR ¶ ¶ 2.b. and c.) that he cannot identify (Exhs. O and P 1).

6. He voluntarily supplied information about payment of two bills not listed on the SOR (Exh. P 1).

7. He submitted evidence in response to the security investigation interrogatory (Exh. 11) of payment and explanation as requested by a DOHA security specialist of several debts which were not cited in the SOR since they were paid in February and March 2007.

The payment and consolidation of these debts have reduced the amounts still owed by Applicant to only a few hundred dollars. He tried to refinance his home to be able to pay all the debts but his credit rating was too low. The actions taken to investigate, pay, or reduce these debts were not as timely as they might have been, but the debts were confusing particularly the number and amounts of the student loan debts.

Personal Conduct

Applicant did not acknowledge seven of the eleven alleged delinquent debts (SOR ¶¶ 2.a. and f.-k.) in response to Question 38 on his SF 86 relating to delinquent debts of over 180 days for the past seven years (SOR ¶ 3.a.). These concerned four categories of debts, i.e. student loans, rental claim, a telephone bill, and to a county government. He did not report the garnishment for student loan debt at Question 34 (SOR ¶ 3.b.) since the garnishment was made in November 2005 six months after the SF 86 was filed. He denied the alleged 1997 criminal conduct to an investigator and in response to a DOHA interrogatory (SOR ¶¶ 3.c. and d.).

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The Administrative Judge must consider all available,

reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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. . . .” The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the 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.

Section 7 of Executive Order 10865 provides that 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline J, Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 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.

The guideline notes several conditions that could raise security concerns for an applicant. One of them that may be a disqualifying condition (DC) is a single serious crime or multiple lesser offenses (AG ¶ 31 (a)).

Possible mitigating factors under the guideline that could be applicable are that so much time has elapsed since the criminal behavior happened that it does not cast doubt on the individual's reliability, trustworthiness, or good judgment (AG ¶ 32 (a)), or there is evidence of successful rehabilitation including but not limited to passage of time without recurrence of criminal activity, remorse, and a good employment record (AG ¶ 32 (d)). The second mitigating factor raises the issue of rehabilitation. The domestic incident for which he was fined and placed on probation is the only offense that he has committed. He reconciled with the person, fathered her child, and now has full custody of the child. Applicant's conduct during the past seven years since 2000 has been without fault. This allegation is mitigated by the passage of time and evidence of rehabilitation.

Applicant has established to my satisfaction his lack of any involvement in the 1997 incident. The government has implied (Tr.II 17) that his financial assistance to his brother might have caused his brother to submit a false affidavit but there is nothing to establish such a fact. He has helped other members of his family as well. The evidence introduced at the hearing particularly from the senior public safety official and the family minister (Exhs. A and B), indicates strongly that the allegation of criminal activity in 1997 is clearly out of character with the life, behavior, reputation, and conduct of Applicant. He was a university engineering student at the time in school 150 miles from the place of the incident. The affidavits of the two culprits in the crime, both members of his family, establish that he was not a participant in that criminal activity. I conclude that the allegation has been refuted.

Guideline F, Financial

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant accumulated some delinquent debt and was unable to pay some obligations for a period of time. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." I find the behavior occurred under such unusual circumstances that it is unlikely to recur, and it does not raise concerns about his current reliability, trustworthiness, or good judgment. The evidence raises this potentially mitigating condition.

Evidence that "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" is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant has resolved most of the delinquent debts, either by payment or settlement. He is now on financially sound footing and prepared for future contingencies. Despite delays in resolving some of the debts, he has made substantial progress in doing so beginning with those he resolved in early 2007 while in discussion with DOHA in his response to the interrogatory. I conclude that the mitigating conditions apply.

Guideline E Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, and unwillingness to comply with rules and regulations can raise questions about and an individual's reliability, trustworthiness and ability to protect classified information (AG ¶ 15).

Conditions that could raise a security concern and be disqualifying include the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire (AG ¶ 16 (a)). Applicant's failure to report certain financial matters at Question 38 (Delinquent debts of over 180 days), and at Question 34 (Wage Garnishments) on his SF 86, prompted security concerns under Guideline E (Personal Conduct). The evidence produced at the hearing showed that the wage garnishment occurred November 17, 2005 (Exh. P 5) after the SF 86 was filed. Since I have concluded that Applicant did not participate in the 1997 criminal conduct, I conclude in his favor on the allegations of false statements to a government investigator and in answers to an interrogatory denying the conduct.

The failure to report seven of the delinquent debts (SOR ¶¶ 2.a. and f.-k.) which relate to three categories of debts, student loans, rental damages claim, telephone bill, and county government, was explained by Applicant as because he was in the process of consolidating the extensive student loans (Tr. I 74), was disputing the rental bill (Tr. I 59 and 70), had a current account with the same phone company and had paid the debt in 200 (Tr. II 40, 41 and Exh. N-2), and that the county debts were related to child support payments which had been resolved (Tr. I 59 and Exh. P-5).

The requirement of the guideline is that the omissions be deliberately false. I conclude that they were not.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. He has taken affirmative action to pay or resolve most of the delinquent debts raising security concerns. (See AG ¶ 2(a)(6)). While some debts remain unpaid, they are insufficient to raise security concerns (AG ¶ 2(a)(1)). The 1997 criminal allegation has been shown to my satisfaction to be in error. The 2000 offense has not recurred nor has any other criminal conduct and it is unlikely to happen again. He has show responsibility toward the victim of the 2000 offense and taken full responsibility for their child.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns.

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 J: FOR APPLICANT

Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

Subparagraph 1.e: For Applicant
Subparagraph 1.f: For Applicant

Paragraph 2, Guideline F: For APPLICANT

Subparagraph 2.a: For Applicant
Subparagraph 2.b: For Applicant
Subparagraph 2.c: For Applicant
Subparagraph 2.d: For Applicant
Subparagraph 2.e: For Applicant
Subparagraph 2.f: For Applicant
Subparagraph 2.g: For Applicant
Subparagraph 2.h: For Applicant
Subparagraph 2.i: For Applicant
Subparagraph 2.j: For Applicant
Subparagraph 2.k: For Applicant
Subparagraph 2.l: For Applicant

Paragraph 3, Guideline E: FOR APPLICANT

Subparagraph 3.a: For Applicant
Subparagraph 3.b: For Applicant
Subparagraph 3.c: For Applicant
Subparagraph 3.d: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

CHARLES D. ABLARD
Administrative Judge