

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 70-year-old police security officer working for a defense contractor. He had twenty alleged debts listed in the statement of reasons (SOR) totaling approximately \$19,228. His medical bills resulted from a 2005 heart attack and subsequent open heart surgery. His primary medical insurance did not pay all the health care providers and he is working with Medicare to resolve the remainder of the medical bills. Three credit card debts from his deceased wife's account are collection barred because of Colorado's 3-year statute of limitations for such debts. Moreover, Applicant paid insurance premiums to cover these accounts. Applicant has mitigated security concerns arising under financial considerations. He did not falsify his security clearance application. He has therefore, mitigated security concerns under personal conduct. Clearance is granted.

CASENO: 06-25395.h1

DATE: 07/30/2007

DATE: July 30, 2007

In re:)	
)	
-----)	
SSN: -----)	ISCR Case No. 06-25395
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
NOREEN A. LYNCH**

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is a 70-year-old police security officer working for a defense contractor. He had twenty alleged debts listed in the statement of reasons (SOR) totaling approximately \$19,228. His medical bills resulted from a 2005 heart attack and subsequent open heart surgery. His primary medical insurance did not pay all the health care providers and he is working with Medicare to resolve the remainder of the medical bills. Three credit card debts from his deceased wife's account are collection barred because of Colorado's 3-year statute of limitations for such debts. Moreover, Applicant paid insurance premiums to cover these accounts. Applicant has mitigated security concerns arising under financial considerations. He did not falsify his security clearance application. He has therefore, mitigated security concerns under personal conduct. Clearance is granted.

STATEMENT OF THE CASE

On February 23, 2004, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86). On April 6, 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*, 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. The SOR detailed reasons why, under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the revised Adjudicative Guidelines issued on December 29, 2005, and implemented by the Department of Defense, effective September 1, 2006, DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to continue a security clearance for Applicant. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR on April 9, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on June 21, 2007. I scheduled a hearing for July 9, 2007.

The hearing was convened as scheduled on July 9, 2007 to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Five Government exhibits (GE 1-5) were admitted. Applicant's exhibits (AE A-L) were admitted into the record without objection. Testimony was taken from Applicant and one witness (a union representative at the company where Applicant works) on Applicant's behalf, as reflected in the hearing transcript (Tr.) received on July 18, 2007.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, ¶¶ 1.k, and 1.r, are incorporated herein. He denied all other allegations under paragraph 1 and paragraph 2 because he disputed the accounts.¹ In addition, after a thorough and careful review of the evidence and exhibits, I make the following findings of fact:

Applicant is 70-years old and works for a defense contractor. His first marriage ended in divorce in 1977. He remarried and was widowed twice. His second wife died in 1983 and his third wife died of cancer in 1998. He is currently remarried. He is the father of seven children.² He held a security clearance for many years without incident in the military, law enforcement, and government. Applicant earned a high school diploma and graduated from a community college in 1969.³

¹Applicant's response to the SOR, dated April 9, 2007.

²GE. 1 (Security Clearance Application, dated February 23, 2004).

³*Id.* at 2.

While in high school, Applicant joined the United States Army National Guard. He served in the United States Navy as a combat medic for four years, and was honorably discharged in 1963. He has been employed in his current position since February 23, 2004.⁴

Applicant worked his entire life and takes pride in his achievements despite various challenges. His father died when he was seven years of age and he helped his mother take care of the family. He worked in construction and police services. After serving as a patrol man for many years, he became a Jail Administrator, and ultimately, a Chief Deputy. After 25 years in that department, he retired in 2001.⁵

During that time he supported his family and children. As noted above, his third wife died of cancer. When she was ill, she opened several credit accounts in her name. Near the end of her life, she used them for fun things.⁶ Applicant bought and paid for insurance premiums to cover the credit accounts. When his wife died in 1998, he presented the cancelled check to the three creditors. However, the insurance company did not honor the coverage. The creditors did not obtain a judgment against Applicant.⁷ These debts are not legally enforceable because of the applicability of the 3-year Colorado statute of limitations to such debts.⁸

When Applicant retired from his law enforcement work in 2001, his financial status was sound and he had no outstanding indebtedness. He was 64 years old. He was unemployed for a period of time in 2000 and then decided to return to work part time. In 2002, he worked part-time at the base where he is currently employed full time. He was also unemployed for a period of time in 2003.⁹

Applicant completed a security clearance application on February 23, 2004. He received an interim clearance. At that time he had no financial issues or medical debt. He answered "no" to question 38: **Your Financial Delinquencies - 180 Days**. In the last 7 years, have you been over 180 days delinquent on any debt(s)?

At the time of the February 2004 application, Applicant's medical bills did not exist. When he subsequently reviewed, signed and dated his SF 86 in 2005, his answer to the question did not change. He answered the question "no" because he either did not owe the medical debts or had no knowledge of the debts. He did not deceive the government in any updated security applications. He did not list his deceased wife's 1998 credit card debt for three reasons. First, Applicant paid insurance premiums on those accounts so that they would be paid if his wife died. The insurance company did not honor the policy. Applicant provided the cancelled check to the insurance company

⁴ *Id.*

⁵Tr. 73, 74.

⁶Tr. 85.

⁷AE C (Personal Statement, dated May 3, 2007).

⁸At that time, Applicant and his wife resided in Colorado. *See* C.R.S. 13-80-101.

⁹GE 1 *supra* at note 2.

to the credit companies. They did not take Applicant to court to obtain a judgment. It was almost ten years ago and he did not consider them debts. Second, he had forgotten about them by this time.¹⁰

In September 2005, at the age of 68, Applicant had a major heart attack. He was life-flighted to a hospital and three stints were inserted. He returned home about three weeks later to recover. In October 2005, he had open heart surgery. He had a relapse while recovering at home and returned to the hospital. He incurred many medical and hospital bills. His health insurance from his employer did not cover all the medical bills.¹¹ However, he also had Social Security/Medicare coverage from the age of 64.¹²

In 2007, during his security clearance investigation, Applicant learned about the medical debts that had not yet been paid. Since he had not received notices from any of the providers, he did not know the status of the medical debts. He responded to the investigation by researching the debts. He obtained a credit report and he made numerous calls to locate the unknown medical accounts. He called his insurance company and learned that a portion of the medical bills had not been sent to Medicare. Repeatedly, he called Medicare to learn why the medical bills have not been paid. He asked for documentation (an amortization sheet) for the hearing but he did not receive any from Medicare. In fact, he reported that after holding for more than one hour, at some point, the customer service representative hung up on him in frustration.¹³ He called a hospital that was on the SOR to learn that he had never been in that hospital. However, he called another hospital by the same name in another state and found out that he did not owe \$4,563 but instead owed \$270.¹⁴ He also found other errors in the SOR allegations when he researched his credit history.¹⁵ When Applicant learned he was responsible for a debt, he paid it.

The current status of Applicant's alleged debts listed in the SOR is as follows:

SOR ¶	Type of Account/Amount	Status	Evidence
1.a	CBR Group/medical \$294	Awaiting medicare response	Tr. 53; AE K
1.b	Public Works \$63	No balance due	Tr. 61; AE K
1.c	Physician's Service/NCO *\$4563 (\$270)	Awaiting medicare response	TR. 72

¹⁰Applicant's response to SOR, dated May 3, 2007.

¹¹Tr. 56-58.

¹²Personal Statement, dated May 3, 2007.

¹³Tr.78.

¹⁴*Id.*

¹⁵Tr. 36.

1.d	Unknown medical account \$118		Awaiting medicare response	Tr. 60; AE K
1.e	Unknown medical account \$355		Awaiting medicare response	Tr. 61; AE K
1.f	Unknown medical account \$229		Awaiting medicare response	Tr. 62; AE K
1.g	Physician's Bill	\$50	Paid	AE D Receipt dated 2006
1.h	Unknown medical \$395		Paid \$300/ awaiting medicare	Tr. 63; AE K
1.i	Unknown medical	\$295	Awaiting medicare response	Tr. 63; AE K
1.j	Unknown medical	\$200	Awaiting medicare response	Tr. 63; AE K
1.k	Physician's Bill	\$90	Paid	AE G Receipt dated 4-20-07
1.l	Unknown medical	\$346	Awaiting medicare response	Tr. 65; AE K
1.m	Unknown medical	\$504	Awaiting medicare response	Tr. 64; AE K
1.n	Unknown medical	\$158	Awaiting medicare response	AE K
1.o	Credit card	\$2475	Deceased wife's account/ paid credit insurance	Tr. 57; AE K; (1998) Statute of Limitations
1.p	Credit card	\$3732	Deceased wife's account/paid credit insurance	Tr. 57; AE K; (1998) Statute of Limitations
1.q	Credit card	\$2826	Deceased wife's account/paid credit insurance	Tr. 57; AE K; (1998) Statute of Limitations
1.r	Hospital bill	\$1091	Incorrect amount	Paid \$117.69 May4, 2007
1.s	Medical account	\$318	Awaiting medicare response	Tr. 68; AE K
1.t	Medical account	\$102	Paid	AE E Receipt

Applicant is highly recommended by his employer. He is described as having an excellent demeanor and work ethic which allows him to be a role model for less experienced co-workers and

motivator. He is rated as a professional and highly respected member of his work team.¹⁶ He has the full support of his police chief. His supervisor regards him as a man of the highest caliber and character.¹⁷ He is considered a valuable asset to the Air Force Base and has an excellent reputation among his colleagues.

Applicant's congressman (a member of the Appropriations Subcommittee on Defense) has known him for 22 years. He recommends him without hesitation for his continued security clearance.¹⁸ Applicant has volunteered in his community during his lifetime. He was involved in Search and Rescue. He also worked with young people in his community.

Applicant earns approximately \$4, 170 net a month.¹⁹ After monthly expenses, Applicant has approximately \$900 to \$1,000 net remainder. He did receive a raise, but his gas, food and medical insurance bills have increased. He does not have a mortgage. He is now current on his car loan. His credit rating is steadily improving.²⁰ He is financially stable. His only debts are the medical bills. He accepts responsibility for incurring those debts, but is awaiting a response from Medicare. His wife's credit card bills are ten years old, the statute of limitations has run, he did not incur these debts, and they are no longer legally enforceable.

POLICIES

The revised Adjudicative Guidelines (AG) set forth set forth both disqualifying conditions and mitigating conditions applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature, extent and seriousness of the conduct and surrounding circumstances; (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 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. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

¹⁶AE I (Letter from Supervisor, dated May 3, 2007).

¹⁷Testimony of witness at Tr. 39-45.

¹⁸AE H (Letter to Facility Security Officer, dated April 30, 2007).

¹⁹Government Ex. 4 (Personal Financial Statement, dated February 28, 2007).

²⁰AE L (Credit Report, dated June 2007).

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.²¹ The government has the burden of proving controverted facts.²² The burden of proof is something less than a preponderance of evidence.²³ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.²⁴ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁵

No one has a right to a security clearance²⁶ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²⁷ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting such classified information.²⁸ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.²⁹ 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

I have carefully considered all the facts in evidence and the legal standards. Based upon consideration of the evidence, I find Guideline F of the revised adjudicative guidelines (AG) most pertinent to the evaluation of the facts in this case. That guideline reads in pertinent part:

Guideline F - Financial Considerations. *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.*³⁰

²¹ ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).

²² ISCR Case No. 97-0016 at 3 (App. Bd. Dec 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

²³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

²⁴ ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

²⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

²⁶ *Egan*, 484 U.S. 518, at 531.

²⁷ *Id.*

²⁸ *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

²⁹ Executive Order 10865 § 7.

³⁰ AG ¶ 18.

In this matter, the government provided substantial evidence that Applicant accrued medical debts from 2005 that are still outstanding debts. Consequently, Financial Considerations Disqualifying Condition (FC DC), AG ¶ 19(a), (*inability or unwillingness to satisfy debts*) and FC DC, ¶ 19(c), (*a history of not meeting financial obligations*) apply.

With the government's case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. Several incidents occurred in Applicant's life over which he had no control. Such incidents contributed to Applicant's acquisition of delinquent debt. His wife's credit card debts were insured but the insurance company refused to pay. His 2005 heart attack and subsequent surgery resulted in medical bills. His primary insurance company paid and he awaits a response from Medicare. He paid his debts after he learned about them and researched all options. Therefore, FC MC, AG ¶ 20(b), (*the conditions that resulted in the behavior 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*) partially applies.

The medical bills stem from the 2005 heart attack. The bills are still not resolved. Therefore, Financial Considerations Mitigating Condition (FC MC), ¶ AG 20(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*) partially applies.

Applicant has not received financial counseling. However, he never ignored his creditors. He did not know that the medical bills were not paid. He had not received notices before the 2007 security investigation. There are clear indications that the problem is being resolved or is under control. He is working diligently to discover whether Medicare will pay. FC MC, 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*) does apply to some extent.³¹

In his entire life Applicant had no financial difficulties. Since his 2005 medical emergency, he incurred medical debt. His employer's insurance paid and thereafter Applicant paid any bill that he was aware of. He has diligently called Medicare and is trying to resolve his medical debt. He has since paid the bills that Medicare declined to pay. While the statute of limitations unequivocally resolves his debts, he does not receive full credit under this mitigating condition. Therefore, FC MC, ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies in part.³²

³¹Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his or her control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)).

³²The 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 other good-faith action aimed at resolving the applicant's debts. The

FC MC, AG ¶ 20(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*) does not apply. Applicant has no documentation concerning his communication with medicare. However, he is credible in his testimony concerning his oral communications. Nor does he have the cancelled check he presented to creditors in 1998.

The issue is whether Applicant is still legally liable for any or all of his outstanding debts, and whether he has presented sufficient evidence of extenuation, mitigation or changed circumstances to warrant a favorable security clearance decision. His remaining unpaid medical debt does not constitute a security risk. His wife's credit card debt is more than ten years old. The statute of limitations applies. He is not in a vulnerable position due to those accounts that were in her name. Moreover, he paid insurance premiums for the credit accounts but the company did not honor the plan. He has a professional position with a good income and has no other delinquent debt.

Personal Conduct. 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 candid answers during the security process or any other failure to cooperate with the security clearance process.*³³

On February 23, 2004, Applicant, in response to **Question 38: Your Financial Delinquencies - 180 Days answered "no"**. When he responded to the question on his security application in 2004 he answered truthfully. He had no medical bills as his heart attack had not yet occurred. When he signed subsequent security documentation, he had no knowledge of the unpaid medical bills. Some of the bills listed on the SOR were in fact incorrect and Applicant did not owe them. As for his wife's credit card accounts, he believed they were not valid debts because he had paid insurance premiums and the creditors did not take him to court to pursue a judgment. He was honest and credible in his account. Moreover, the accounts were so old that the Statute of Limitations applied. I find that he did not intend to deceive the Government, but answered truthfully to the best of his knowledge. The Government did not prove that he intentionally falsified his security clearance application. I find in favor of Applicant.

Whole Person

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)).

³³AG ¶ 15.

I have considered both the record and Applicant in light of the “whole person” concept. He is an earnest, mature man who served his country. He maintained a security clearance for many years without adverse incident. He is currently in a professional position in the defense contractor industry. He persevered to complete his education and support his family through the hard times of medical emergencies and death. During his entire working life, he had no financial difficulties until his medical emergency in 2005. He provided information to his health care providers about his medical insurance. His testimony at the hearing was candid and straightforward. At the hearing he acknowledged his deceased wife's credit card debt could be considered a negative. He is open, honest and has not hidden his situation. He is handling his medical debt properly. This is a reasonable way to resolve the debts. He has not incurred any other delinquent debt. His financial circumstances have improved. He has worked diligently to research his credit history and repair the damage that occurred from his medical situation. The potential for pressure, coercion, exploitation, or duress is low. He is current on his financial obligations, and has a very positive employment history.

In sum, the likelihood of new debt problems is low. Applicant continues to contact Medicare and is awaiting a response. He is not legally required to pay his wife's creditors because of the state statute of limitations. 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.

The South Carolina Court of Appeals succinctly explained the societal and judicial value of application of the statute of limitations:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence and promote repose by giving security and stability to human affairs. The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, statutes of limitations provide potential defendants with certainty that after a set period of time, they will not be ha[iled] into court to defend time-barred claims. Moreover, limitations periods discourage plaintiffs from sitting on their rights. Statutes of limitations are, indeed, fundamental to our judicial system.

Carolina Marine Handling, Inc. v. Lasch, 363 S.C. 169, 175-76, 609 S.E.2d 548, 552 (S.C. Ct. App. 2005) (internal quotation marks and citations omitted).

Substantial evidence supports Applicant's trustworthiness eligibility and suitability. I take this position based on the law, my "careful consideration of the whole person factors"³⁴ and supporting evidence, as well as my application of the pertinent factors under the Adjudicative Process and my interpretation of my responsibilities. For the reasons stated, I conclude Applicant is eligible for his security clearance. Clearance is granted.

FORMAL FINDINGS

³⁴See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

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 (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a.- 1.u: For Applicant

Paragraph 2. Guideline E (Personal Conduct) FOR APPLICANT

Subparagraph 2.a: For Applicant

DECISION

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

Noreen A. Lynch.
Administrative Judge