

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant's history of financial problems began when he did not pay his federal tax for 2003 and 2004. The financial difficulties continued with Applicant's abuse of five credit cards in 2003, 2004, and 2005. In addition, he deliberately falsified his security form in September 2005 when he certified he had no overdue debts. Though he had to be confronted with the debt information before he admitted the listed debts, the unambiguous acceptance of his falsehoods and actions he took to rectify the debt problems gives me sufficient grounds to find the financial and personal conduct guidelines in his favor. Clearance is granted.

CASENO: 06-23641.h1

DATE: 07/19/2007

DATE: July 19, 2007

In Re:	)	
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	)	
-----	)	ISCR Case No. 06-23641
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**DECISION OF ADMINISTRATIVE JUDGE  
PAUL J. MASON**

**APPEARANCES**

**FOR GOVERNMENT**

Caroline H. Jeffreys, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

## SYNOPSIS

\_\_\_\_ Applicant's history of financial problems began when he did not pay his federal tax for 2003 and 2004. The financial difficulties continued with Applicant's abuse of five credit cards in 2003 and 2004, and 2005. In addition, he deliberately falsified his security form in September 2005 when he certified he had no overdue debts. Though he had to be confronted with the debt information before he admitted the listed debts, the unambiguous acceptance of his falsehoods and actions he took to rectify the debt problems gives me sufficient grounds to find the financial and the personal conduct guidelines in his favor. Clearance is granted.

## STATEMENT OF CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a trustworthiness position for Applicant. On January 19, 2007, under Executive Order 10865 and Department of Defense Directive 5200.6, with revised Adjudicative Guidelines, effective September 1, 2006, DOHA issued a Statement of Reasons (SOR) detailing the reasons for its security concerns raised under the financial considerations guideline (Guideline F), and the personal conduct guideline (Guideline E) of the Directive. In his answer dated February 20, 2007, Applicant requested a decision be made on the record in lieu of a hearing.

A copy of the Government's File of Relevant Material (FORM, the Government's evidence in support of the SOR) was sent to Applicant on May 9, 2007. After receiving the FORM on May 16, 2007, Applicant provided his response on June 13, 2007, the same day the case was assigned to me for decision.

## FINDINGS OF FACT

The SOR contains seven allegations under the financial considerations guideline, and one allegation under the personal conduct guideline. Applicant admitted all the financial and personal conduct allegations. He provided documentation indicating he enrolled in a debt consolidation plan on March 27, 2006 and placed all listed debts in the plan. In response to the personal conduct allegation, Applicant stated, "I admit I did lack in judgment in providing false answer(s) to the question(s) of any delinquent [debt] over 90 to 180 days. I would ask that you look at my last Performance Review, I'm a hard worker, who has provide(ed) service for this Government for 25 years (.) Performance review Exhibit 2(.)"

Applicant is 42 years old, and since September 2005, has been employed as a supply technician by a defense contractor. He seeks a security clearance.

## **Financial Considerations**

SOR 1.a. identifies a credit card account for \$874.00 that became delinquent in July 2005. SOR 1.b. refers to a past due, utility debt in the amount of \$419.00. The debt was transferred for collection in October 2005. Regarding SOR 1.c., the collection agency took over a credit card account (\$4,605.00) in September 2005. A credit card account (SOR 1.d.) in the amount of \$1,641.00 was transferred to a collection agency in July 2005. SOR 1.e. represents a credit card account that was charged off at an unidentified time. Another credit card was charged off in July 2004. The last financial allegation is a delinquent federal tax debt amounting to \$2,984.99 for tax years 2003 and 2004.

Though applicants generally provide reasons for their financial problems, Applicant provided no explanation in his answers to interrogatories (Item 6), or his SCA (Item 5), or his answers to the SOR (Item 4). His only explanation (reply to FORM) he furnished was for the federal tax arrearage where he explained he did not make the suitable adjustments in his pay when he transitioned from his military to his civilian job. The CBR (Item 7) dated January 16, 2007, supports a factual finding all his delinquent debts (except SOR 1.b.) are credit card accounts. I find Applicant abused five credit cards, and these cards became delinquent (Applicant stopped making payments on the cards) by September 2005. Item 7 also reflects that as of the publication of the SOR (January 16, 2007), Applicant's past due debt totaled \$16,652.99. (SOR 1.a. through 1.g.) Applicant also noted in his reply to the FORM that he had counseling. The documentation shows very little evidence of structured, financial counseling. Applicant's primary reason for joining the debt plan was to consolidate his debt payments in a plan. Though he may have received written material in the debt resolution kit, he did not include that information with the materials he supplied to the government. Financial counseling usually includes detailed instruction in understanding and implementing financial tools that help a person manage his finances.

While there is insufficient evidence to support a factual finding about whether Applicant's son is a direct cause of his financial indebtedness, there are few findings I can make about the son. First, Applicant's son is 21 years old. *See*, Item 5. Second, the utility company and Applicant's son are located in the same state. According to Applicant's expense sheet, Item 6), he pays \$700.00 (about 18% of the monthly expenses) a month for his son's apartment and car installment loan.

On December 20, 2006 (Item 6), Applicant indicated he placed all the overdue debts in the consolidation plan on March 27, 2006. He also included a portion of the explanatory paperwork that plan officials provided him with a limited power of attorney (attorney-in-fact) giving them the power to settle or resolve the past due debts. Plan officials also sent Applicant a debt solutions kit that outlined the objectives of the plan. The details of the solutions kit were not provided. In Item 6, Applicant also furnished a copy of his check in December 2006 indicating he earned about \$1,491.00 every two weeks, and his wife earned about \$367.00 a week.

In response to the FORM, Applicant provided a printout of payments from his debt plan. According to plan objectives (Item 8), all payments goals have been met. Applicant has funded 14 payments under the plan between April 2006 and May 2007. The first three payments were \$212.01, and the last 11 were \$103.25.

## **Personal Conduct**

On September 14, 2005, Applicant certified his SCA. In response to questions 28.a. (in the last seven years have you been over 180 days delinquent on any debts?) and 28.b. (are you currently over 90 days delinquent on any debt), Applicant answered “NO.” As noted earlier in Findings of Fact, Applicant admitted he lied, but asked that his job performance and his 25-year record with the federal government be taken into consideration. In viewing his job performance report for five months of 2006, I read his overall assessment is “exceeds expectations.”<sup>1</sup> Applicant received good ratings on quality of work, quantity of work, initiative, cooperation, safety job knowledge. No rating was entered for the leadership category. The only information about Applicant’s 25 year record in the federal government is located in Item 5 (SCA). That information shows he was in the United States Army from 1982 to March 2003, and he received an Honorable Discharge. Also, he was employed as a supply technician at the Veterans Administration Hospital from 2002 to 2005.

## **POLICIES**

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

## **Burden of Proof**

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) “[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant’s security suitability.” ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *See Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

## **Financial Considerations**

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<sup>1</sup>“Consistently meets and sometimes exceeds all relevant performance standards. Makes contributions, hs strong technical and interpersonal skills or has achieved significant improvement in these areas.” (Item 4)

The focus of this guideline is handling money matters in a financially responsible manner.

### **Personal Conduct (Guideline E)**

This guideline addresses conduct during the security investigation that involves questionable judgment, untrustworthiness or dishonesty.

## **CONCLUSIONS**

### **Financial Considerations (FC)**

The safeguarding of classified information is an-around-the-clock responsibility requiring the exercise of good judgment. Hence, a person should be as vigilant in his own affairs as he is in complying with all security regulations and policies. Not paying bills on time demonstrates poor judgment while placing the individual in a risk-filled position of potentially committing acts of poor judgment to generate funds. The government's evidence calls for the application of FC disqualifying condition (DC) 19. a. (*inability or unwillingness to satisfy debts*), and 19. c. (*a history of not meeting financial obligations*) The fact that the listed debts have not been paid establishes FC DC 19. a. The age of the tax debt establishes FC DC 19. c., verifying a history of indebtedness dating to 2003. I conclude FC DC 19 g. (*failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same*) does not apply since there is no allegation Applicant did not file returns. The surrounding circumstances lead me to conclude he simply did not pay his taxes.

FC mitigating condition (MC) 20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) is the most appropriate condition to apply in this case. FC MC 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*) must be removed from consideration since most of Applicant's past due debt became delinquent less than three years ago. FC MC 20 c. (*the person has received or is receiving counseling for the problem and /or there are clear indications that the problem is under control*) has limited application because Applicant had only been in the debt plan for about eight months before the publication of the SOR. The plan documentation indicates that Applicant has been given very little financial counseling. Though more documentation was provided by plan officials, specifically in the debt solutions kit, Applicant did not furnish that information. Even though I do not know whether all listed creditors are included in the plan, I find in Applicant's favor under the FC guideline. My conclusion is based on the action he took to remedy his indebtedness even before he received the SOR. My conclusion is buttressed by the June 2007 evidence indicating he has faithfully made all payments since the inception of the plan in March 2006.

## Personal Conduct (PC)

In September 2005, Applicant demonstrated dishonesty during the course of the security investigation. He did not reveal he had been dishonest until he received the SOR in January 2007. Applicant's conduct falls within the scope of PC DC 16. b. (*deliberately providing false or misleading information concerning relevant facts to an employer or an investigator*)

Though there is no mitigating condition that clearly "fills the bill" for Applicant's deliberate falsification of material information from his SCA in September 2005, I am satisfied that PC MC 17. d. (*the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur*) successfully assists Applicant overcome his dishonest behavior. First, he credibly acknowledged his dishonesty without couching that acknowledgment in language that casts a pall over the sincerity of the admission. Though Applicant has not received the type of counseling contemplated by the condition, he has taken positive steps to eliminate the stressors (debt burden) through enrollment in a debt plan, and has not missed a payment. While candor lapses are rarely tolerated or excused, Applicant has mitigated his dishonesty by accepting his isolated, dishonorable conduct, and taking the necessary action to eliminate his debt problems.

Viewing the circumstances of this case through the general factors of the whole person, Applicant has a history of not meeting his financial obligations that dates to 2003 when he did not pay federal taxes. More recently, the CBRs show Applicant's abuse of credit cards. His four year history of failing to meet his financial obligations and inability or unwillingness to satisfy his debts raises serious trustworthiness concerns. However, Applicant made a critical decision in March 2006 that justifies my decision to find in his favor under the FC guideline. Even before he received the SOR, and before he received the interrogatories, Applicant began his debt consolidation plan. He has made 14 successive payments under the plan between March 2006 and June 2007. I am confident Applicant will continue with the plan until his debts are paid. I am confident that Applicant and his wife will pursue counseling in the plan to determine how they can stay on top of their financial obligations in the future.

Under the whole person concept, I conclude Applicant's falsification has been mitigated as well. While he did not come forward with the dishonesty before being confronted with the delinquent debts, he clearly accepted his lack of forthrightness. The documented steps Applicant has taken to eliminate the debts and the taxes persuade me to believe Applicant will not engage in this type of negative behavior in the future.

## FORMAL FINDINGS

Paragraph 1 (Financial Considerations, Guideline F): FOR THE APPLICANT

Subparagraph a. For the Applicant.

