

KEYWORD: Financial

DIGEST: Applicant is a 31-year-old supervisor employed by a federal contractor. He waited until a month before the hearing to file bankruptcy as a means of resolving indebtedness. He has a substantial non-dischargeable student loan debt and his plan is to continue going to school as long as he can, to avoid repayment. He did not successfully mitigate security concerns about financial considerations. Clearance is denied.

CASENO: 05-11824.h1

DATE: 04/30/2007

DATE: April 30, 2007

In re:)	
)	
-----)	
SSN: -----)	ISCR Case No. 05-11824
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
CHRISTOPHER GRAHAM**

APPEARANCES

FOR GOVERNMENT

Francisco Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 31-year-old supervisor employed by a federal contractor. He waited until a month before the hearing to file bankruptcy as a means of resolving indebtedness. He has a substantial non-dischargeable student loan debt and his plan is to continue going to school as long as he can, to avoid repayment. He did not successfully mitigate security concerns about financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On November 13, 2003, Applicant submitted a Security Clearance Application (SF 86).¹ On August 7, 2006, 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*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5206, *Defense Industrial Personnel Security Clearance Review Program (Directive)*, dated January 2, 1992, as amended, modified, and revised. The SOR alleged security concerns under Guideline F (Financial Considerations) of the Directive. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Applicant answered the SOR in writing on September 14, 2006, and elected to have a hearing. The case was assigned to me on December 15, 2006. The Notice of Hearing was issued on December 20, 2006. I convened a hearing on January 23, 2007. The government offered thirteen exhibits, marked as exhibits 1-13. Applicant offered one exhibit, marked as Exhibit A. DOHA received the hearing transcript (Tr.) on January 31, 2007.

FINDINGS OF FACT

Applicant admitted all of the allegations contained in the SOR, subparagraphs 1.a. through 1.g. These admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence, and upon due consideration of same, I make the following findings of fact:

Applicant is a 31-year-old supervisor employed by a federal contractor.² He is single and has his two-year-old child living with him.³ He is a high school graduate with three years of college credits.⁴ He is an eight-year veteran of the United States Marine Corps, having served from August 1993 to August 2001.⁵ He was honorably discharged with the rank of Lance Corporal (pay grade E-3), and he held a secret security clearance during his Marine Corps service.⁶

As of July 25, 2006, Applicant owed the following debts:⁷

1.a. \$347 collection account placed February 2001;⁸

1.b. \$4,596 credit union charged off in April 2003;⁹

¹Government Exhibit 1, Standard Form (SF) 86, Security Clearance Application, dated November 13, 2003.

²Tr. at 12, 14.

³*Id.* at 11.

⁴*Id.*

⁵*Id.* at 12.

⁶*Id.* at 12-13.

⁷Numbering coincides with SOR subparagraphs.

⁸Government Exhibit 10 (Credit Bureau Report, dated July 25, 2006) at 1-4.

⁹*Id.*

- 1.c. \$395 collection account placed in June 2003;¹⁰
- 1.d. \$463 credit union charged off in January 2005;¹¹
- 1.e. \$6,412 credit union charged off in November 2004;¹²
- 1.f. \$153 collection account placed in March 2001;¹³ and
- 1.g. \$372 collection account placed in June 1999.¹⁴

Applicant accumulated seven unpaid debts totaling about \$12,638. Two debts totaling \$11,000 were charged off in April 2003 and November 2004. The remaining five debts, all less than \$500, were placed for collection between June 1999 and January 2005.¹⁵

After his discharge from the Marine Corps, Applicant had inconsistent employment. He did contract work as an electrical helper working for an uncle. He also was attending college. In April 2002, he was employed by a federal credit union. He left that employment in August 2003, and commenced employment with his present employer in March 2004.¹⁶

While in college, Applicant took out approximately \$56,000 in student loans, with repayment deferred while in school. He intends to attend school indefinitely to postpone repayment as long as possible.¹⁷ in the meantime, he purchased a used car requiring payments of \$600 per month for the next six years.¹⁸

On December 5, 2006, Applicant filed a Chapter 7 petition in bankruptcy.¹⁹ At the time of this hearing, the bankruptcy discharge hearing had not been scheduled. Assuming that the

¹⁰*Id.*

¹¹*Id.*

¹²*Id.*

¹³*Id.*

¹⁴*Id.*

¹⁵ Statement of Reasons at 1-2.

¹⁶Tr. at 17-20.

¹⁷Tr. at 40; Government Exhibit 4 (Interrogatory Response, dated January 24, 2006) at 2-3.

¹⁸*Id.* at 40.

¹⁹Applicant's Exhibit A (Bankruptcy Court Records, dated December 7, 2006) at 1-11.

bankruptcy petition is upheld, the debts listed in the SOR would be discharged. The student loan debts are not dischargeable in bankruptcy.²⁰

Prior to filing bankruptcy, Applicant had not sought any financial counseling. The bankruptcy court required him to attend two financial management courses, which he completed. He had not prepared a budget.²¹

POLICIES

In an evaluation of an applicant's security suitability, an administrative judge must consider the "Adjudicative Guidelines for Determining Eligibility For Access to Classified Information" (Guidelines). In addition to brief introductory explanations for each Guidelines, the Guidelines are divided into Disqualifying Conditions and Mitigating Conditions, which are used to determine an applicant's eligibility for access to classified information.

These Guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these Guidelines in conjunction with the factors listed in the adjudicative process.²² An administrative judge's overarching adjudicative goal is a fair, impartial and common sense decision. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.²³

Specifically, an administrative judge should consider the nine adjudicative process factors listed at Guidelines ¶ 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."

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."²⁴ In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based

²⁰11 U.S.C. § 523 (8).

²¹Tr. at 54.

²²Guidelines ¶ 2.

²³Guidelines ¶ 2(c).

²⁴Guidelines ¶ 2(b).

on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, facts must be established by “substantial evidence.”²⁵ The Government initially has the burden of producing evidence to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence and prove a mitigating condition. Directive ¶ E3.1.15 provides, “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, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” The burden of disproving a mitigating condition never shifts to the Government.²⁶

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive and the Guidelines include, by necessity, consideration of the possible risk that an 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.

The scope of an administrative judge’s decision is limited. Nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism.²⁷

CONCLUSIONS

The government established its case under Guideline F. Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. arises where there is (*A history of not meeting financial obligations.*) Similarly, FC DC E2.A6.1.2.3. applies where the information shows an

²⁵“Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “Substantial evidence” is “more than a scintilla but less than a preponderance.” *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

²⁶*See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

²⁷Executive Order 10865, § 7.

(Inability or unwillingness to satisfy debts.) The available information demonstrates Applicant has a history of not meeting his financial obligations. He has been delinquent in payments on numerous accounts, and he has made no payments on his student loans.

Various conditions can mitigate the security concerns arising from financial difficulties. The Directive sets out Financial Considerations Mitigating Condition (FC MC) E2.A6.1.3.3. *(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).* Applicant's delinquent debts started accumulating after his discharge from the Marine Corps, due to spotty employment. He had periods of unemployment in 2001-2002, and 2003-2004. These events were beyond his control. But he did work for an uncle's construction company so he was not destitute. However, several of these debts were only a few hundred dollars, and he made no effort to pay on any of them. He gave no cogent reason why he paid nothing. He was not required to repay his student loans and he has not made any payments. Thus mitigating condition E2.A6.1.3.3. does not apply.

FC MC E2.A6.1.3.4. *(The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control)* does not apply. Even though he has recently attended two financial management courses as directed by the bankruptcy court, Applicant did not seek counseling in the past, and even after attending these two courses, he has not prepared a budget. As discussed below, he does not have his financial affairs under control.

FC MC E2.A6.1.3.6. *(The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve bad debts)* is not applicable. There is no evidence as to why he could pay nothing on the smaller debts, notwithstanding periods of unemployment. He was not totally unemployed as he worked for an uncle's construction business. Filing bankruptcy a month before the hearing might be evidence of debt resolution, but not in this instance. Three collection accounts preceded his discharge from the Marine Corps, so his financial problems were not caused by unemployment, but exacerbated by it. In addition, he took on substantial new debt with his educational loans, with no plan for repayment. They are not dischargeable in bankruptcy. He has continued to defer the loan repayments by staying in school, and stated he intended to stay in school until such time he could afford a monthly payment. He is operating at a deficit now. He recently committed to a \$600 per month car payment, payable over six years. He waited until after the SOR was filed to make any effort at debt resolution. His student loans are problematic as at some point he must commence payment. He can't afford to make payments now, and by continuing in school and borrowing more money, he is only compounding his financial problems. I conclude Guideline F against Applicant.

Whole Person Analysis

“The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance.”²⁸ “Available, reliable information about the person, past and present, favorable and unfavorable, should be

²⁸Directive ¶ E.2.2.1.

considered in reaching a determination.”²⁹ In addition to the disqualifying and mitigating conditions, I also considered the “whole person” concept in evaluating Applicant’s risk and vulnerability in protecting our national interests.³⁰ I considered his age (31), his education, his marine corps service, the causes of his financial problems, and the reasons he gave for not making progress on debt repayment. Applicant made no progress in reducing his debt. He waited until one month before the hearing to file bankruptcy. He has a sizable student loan, has made no payments on it, is continuing to attend school, and thus will increase his borrowing and indebtedness. His income is insufficient to pay his monthly expenses. The totality of the record raises continuing doubts about Applicant’s ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. I conclude it is not clearly consistent with the national interest to grant or continue Applicant’s security clearance.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

²⁹*Id.*

³⁰*Id.*

Christopher Graham
Administrative Judge