

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 47-year-old communications analyst employed by a defense contractor. He had over \$36,000 in unpaid debts listed in the Statement of Reasons (SOR). He only provided proof of payment of an \$81 debt. Despite being given an additional three weeks to submit documentary evidence to corroborate his testimony, he provided nothing. He falsified two questions on a security clearance questionnaire. He failed to mitigate the security concerns about financial considerations and personal conduct. Clearance is denied.

CASENO: 06-11004.h1

DATE: 04/30/2007

DATE: April 30, 2007

_____)	
In re:)	
)	
-----,)	ISCR Case No. 06-11004
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
CHRISTOPHER GRAHAM**

APPEARANCES

FOR GOVERNMENT

Caroline Jeffreys, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 47-year-old communications analyst employed by a defense contractor. He had over \$36,000 in unpaid debts listed in the Statement of Reasons (SOR). He only provided proof of payment of an \$81 debt. Despite being given an additional three weeks to submit documentary evidence to corroborate his testimony, he provided nothing. He falsified two questions on a security clearance questionnaire. He failed to mitigate the security concerns about financial considerations and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On March 30, 2005, Applicant submitted a Security Clearance Application (SF 86).¹ 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 5200.6, *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) and Guideline E (Personal Conduct) 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 15, 2006, and elected to have a hearing. The case was assigned to me on October 16, 2006. The Notice of Hearing was issued on November 9, 2006. I convened a hearing on December 21, 2006. The government offered three exhibits, marked as exhibits 1-3. Applicant offered no exhibits. I kept the record open until January 12, 2007, to allow Applicant the time to file additional documents. He filed nothing. DOHA received the hearing transcript (Tr.) on January 4, 2007.

FINDINGS OF FACT

Applicant admitted the allegations contained in the SOR subparagraphs 1.a., 1.b., 1.c., 1.f., 1.g., 1.m., 1.o., 1.p., 2.a., and 2.b. He denied the allegations in subparagraphs 1.d., 1.e., 1.h., 1.i., 1.j., 1.k., and 1.l. Through a scrivener's error, the SOR contained no subparagraph 1.n. The 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 47-year-old communications analyst employed by a defense contractor.² He is divorced and has two children, both of whom are emancipated.³ He is a high school graduate with almost enough college credits for an associate's degree.⁴ He is a retired veteran of the United States Navy, serving from March 1980 to March 2003.⁵ He retired with the rank of Chief Petty Officer, and he has held a security clearance since 1980.⁶

Financial Considerations

As of May 3, 2006, Applicant owed the following:

¹Government Exhibit 1, Standard Form (SF) 86, Security Clearance Application, dated March 30, 2005.

²Tr. at 12, 14.

³*Id.* at 10.

⁴*Id.*

⁵*Id.* at 11.

⁶*Id.* at 11-14.

SOR ¶	Debt	Amount	Current Status
1.a.	Credit card	\$1,146	Unpaid ⁷
1.b.	Utilities	\$258	Unpaid⁸
1.c.	Credit card	\$1,015	Unpaid ⁹
1.d.	Credit card	\$7,742	Unpaid¹⁰
1.e.	Charged off; repossession	\$18,000	Unpaid¹¹
1.f.	Credit card	\$639	Unpaid¹²
1.g.	Credit card	\$718	Unpaid¹³
1.h.	Unknown	\$1,009	Unpaid¹⁴
1.i.	Duplicate of 1.b.	\$258	Unpaid¹⁵
1.j.	Credit card	\$2,158	Unpaid¹⁶
1.k.	Credit card	\$1,942	Unpaid¹⁷
1.l.	Cable TV	\$81	Paid ¹⁸
1.m.	Credit card	\$829	Unpaid¹⁹

⁷*Id.* at 16.

⁸*Id.*; Applicant provided no proof of payment.

⁹*Id.* at 17.

¹⁰*Id.* at 18; Applicant claimed it was his wife's debt, but failed to provide copies of his divorce papers to confirm.

¹¹*Id.* at 23; Applicant claimed he was current with his payments, but provided no proof.

¹²*Id.*; Applicant claimed he made payment arrangements, but provided no evidence thereof.

¹³*Id.*; Applicant claimed he made payment arrangements, but provided no evidence thereof.

¹⁴*Id.* at 24; Applicant thought it might be his ex-wife's debt, but was unsure, and he provided no further evidence.

¹⁵*Id.* at 26; Applicant claimed this was a duplicate of SOR 1.b., but provided no evidence.

¹⁶*Id.*; Applicant claimed it was his wife's debt, but failed to provide copies of his divorce papers to confirm.

¹⁷*Id.* at 27; Applicant claimed it was his wife's debt, but failed to provide copies of his divorce papers to confirm.

¹⁸*Id.*; Copy of money order payment attached to Applicant's Answer to the SOR.

¹⁹*Id.* at 28; Applicant claimed he made payment arrangements, but provided no evidence thereof.

1.o.	Credit card	\$405	Unpaid²⁰
1.p.	Telephone	\$521	Unpaid²¹

These debts total \$36,721. The current status notes in the above table that are in bold indicate that Applicant either claimed they were paid, were his ex-wife's debts, or that he had made payment arrangements. The only debt for which he provided proof of payment was for an \$81 cable TV bill.

In 19998, Applicant deployed overseas. Shortly thereafter, he and his wife separated, and she returned to the U.S. His financial problems commenced during this time with the added costs of maintaining two households until they were divorced in March 2002.²² He paid \$1,271 per month in temporary maintenance and child support until May 2000, then \$800 per month until the divorce. He paid \$400 per month child support from September 2002 until October 2003, when his son turned 18.²³ His wife returned to court and he was ordered to pay an additional year of child support, because the state law required support until the child turned 19.²⁴ He pays no support now as his child is emancipated,²⁵ but he pays tuition for his son's college expenses.²⁶ His son has had student loans available that helped keep his costs down.²⁷ He helps his daughter with her finances as he is able, because she was diagnosed with multiple sclerosis in 2003.²⁸ She draws disability payments.²⁹

Personal Conduct

Applicant falsified material facts on a security clearance application, dated March 30, 2005.³⁰ In response to the following, **Question 38. Your financial delinquencies - 180 days** In the last 7

²⁰*Id.* Applicant claimed he made payment arrangements, but provided no evidence thereof.

²¹*Id.* Applicant claimed he made payment arrangements, but provided no evidence thereof.

²²Tr.at 34-35.

²³*Id.* at 38.

²⁴*Id.* at 38-39.

²⁵*Id.* at 35-36.

²⁶*Id.* at 40.

²⁷*Id.* at 39.

²⁸*Id.* at 39.

²⁹*Id.* at 41.

³⁰Government Exhibit 1 (Security Clearance Application (SF 86), dated March 30, 2005) at 9.

years, have you been over 180 days delinquent on any debt(s)?, he answered “No.” He did not specify the debts listed in the above table.³¹

In response to the following, **Question 39. Your financial delinquencies - 90 days** Are you currently over 90 days delinquent on any debt(s)?, he answered “No,” knowing that he had the debts listed in the above table.³²

Applicant stated that he did not answer affirmatively because he was told that unless he could list the company name, amount of the original debt, and what was due, he should not list it on the SF 86.³³ When asked who had told him that, he replied:

I was at the naval base filling out my SF 86, and so I went to the HR people there and that’s what they advised me to do. After I prepared my SF 86, then I mailed it to my security manager, and I had informed him at that time about the debt portion of it and not putting in dates and creditors because I didn’t have all that information with me. And my intention was not to falsify that document or be misleading on it, because I know that during the background investigation, I know the one thing that they’re going to do is pull a credit bureau report.³⁴

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.³⁵ 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.³⁶

³¹*Id.*

³²*Id.*

³³Tr. at 29.

³⁴*Id.* at 29, 32.

³⁵Guidelines ¶ 2.

³⁶Guidelines ¶ 2(c).

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.”³⁷ 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.

In the decision-making process, facts must be established by “substantial evidence.”³⁸ 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.³⁹

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 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.

³⁷Guidelines ¶ 2(b).

³⁸“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).

³⁹*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).

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.⁴⁰

CONCLUSIONS

Financial Considerations

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 *(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.

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 during his overseas assignment and separation from his wife. He was divorced in March 2002. These events were beyond his control. This mitigating condition applies.

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 as there is no evidence that Applicant sought financial counseling.

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. Applicant claimed he had paid a few debts and had made arrangement with other creditors to make payments. He also alleged that several debts were his ex-wife's. He was given three weeks after the hearing to provide evidence of payments, arrangements, divorce papers, cancelled checks, or other evidence of efforts to resolve debts. He filed nothing. Almost five years have passed since his divorce, and the only debt for which he had proof of payment was one for \$81. There is no evidence as to why he could pay nothing since his divorce. Supporting his son is not an unforeseen event. While I empathize with his daughter's medical disability, he does not have a legal obligation to support her. He does have legal obligations to pay his debts. There is virtually no evidence to corroborate his testimony about the payments he made or the debts that may have been set apart to his former spouse. Absent this evidence I cannot find that this mitigating condition applies. He has shown no genuine effort to reduce his delinquent debts. I conclude Guideline F against Applicant.

Personal Conduct

⁴⁰Executive Order 10865, § 7.

The government established its case under Guideline E. Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2. (*The deliberate omission, concealment, or falsification of relevant and material 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 did not list any of his delinquent debts on two questions on his SF 86. He claimed he was told not to list anything if he could not list the name of the creditor company, amount of the debt, and the amount remaining to be paid. Applicant was a Chief Petty Officer in the Navy. He knew or should have known what was required on an SF 86. He was given an opportunity to provide evidence of the claims of debts resolution that he testified that he had made. He provided nothing. Applicant's reasons for the falsification were not credible. His testimony was not credible because when asked and given the opportunity to clarify the record, he produced nothing.

Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.2. (*The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*) does not apply. The SF 86 was signed on March 30, 2005. It was recent, he did not provide correct information when given an opportunity to clarify the record, and his testimony's credibility was undermined by his failure to provide evidence.

Also inapplicable is PC MC E2.A5.1.3.4. (*Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided.*) Applicant was a Chief Petty Officer in the Navy. He knew what was right. I do not believe his excuses for lying on his security clearance. I find his omissions were deliberate. I base my conclusion on the fact that his testimony lacks credibility. I conclude Guideline E 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."⁴¹ "Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination."⁴² 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.⁴³ I considered his age (47), his education, his naval career, the causes of his financial problems, and the reasons he gave for making false answers on his security clearance application. Applicant made no progress in reducing his debt. His proof of paying only .0022 (11/5000) of the debts listed in the SOR is not a good-faith effort at debt resolution. Applicant's two false answers on his security clearance application are problematic because candor with the government about a person's negatives is the crux of a security suitability determination. If a person discloses the adverse information about himself, then he may be trusted with classified information. Here, Applicant listed no debts. Further, even though he testified about making payment arrangements, or making payments, or claiming that some debts were his ex-wife's, when

⁴¹Directive ¶ E.2.2.1.

⁴²*Id.*

⁴³*Id.*

given the time to corroborate his testimony with written evidence, he produced nothing. 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
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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
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.o: ⁴⁴	Against Applicant
Subparagraph 1.p:	Against Applicant

Paragraph 2. Guideline E:	AGAINST APPLICANT
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Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	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.

⁴⁴Through a scrivener's error, there is no subparagraph 1.n.

Christopher Graham
Administrative Judge