

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has been a janitor for a defense contractor for over 38 years. He has delinquent debts, judgments, and repossessions that he refuses to inquire about or take any action concerning them. He did not include on his security clearance application the judgments, repossessions, or debts past due more than 90 days or 180 days because he did not know he had the debts. He has not mitigated security concerns for his finances, but he has mitigated security concerns for his personal conduct. Clearance is denied.

CASENO: 06-11660.h1

DATE: 06/21/2007

DATE: June 21, 2007

In Re:	)	
	)	
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SSN: -----	)	ISCR Case No. 06-11660
	)	
Applicant for Security Clearance	)	

**DECISION OF ADMINISTRATIVE JUDGE  
THOMAS M. CREAN**

**APPEARANCES**

**FOR GOVERNMENT**

Eric H. Borgstrom, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has been a janitor for a defense contractor for over 38 years. He has delinquent debts, judgments, and repossessions that he refuses to inquire about or take any action concerning them. He did not include on his security clearance application the judgments, repossessions, or debts past due more than 90 days or 180 days because he did not know he had the debts. He has not mitigated security concerns for his finances, but he has mitigated security concerns for his personal conduct. Clearance is denied.

### **STATEMENT OF THE CASE**

On June 26, 2006, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). Applicant acknowledged receipt of the SOR on July 12, 2006. The SOR alleges security concerns under Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on July 18, 2006. He admitted one and denied nine allegations under Guideline F, and denied the four allegations under Guideline E. He provided no explanations for his delinquent debts or personal conduct. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on February 26, 2007. Applicant received a complete file of relevant material (FORM) on March 13, 2007, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. His response was due April 12, 2007. As of May 21, 2007, he had not responded. The case was assigned to me on May 24, 2007.

### **FINDINGS OF FACT**

Applicant is a 64-year-old janitor employed by a defense contractor for over 38 years. He has been married for 39 years, and has four children. He previously served on active duty in the Marines. He submitted a security clearance application on November 7, 2003.<sup>1</sup>

Credit reports of February 26, 2007,<sup>2</sup> June 12, 2006,<sup>3</sup> and March 4, 2004,<sup>4</sup> reveal delinquent debts for Applicant. The debts are for \$907 in a charged off account to Capital One Bank; for a collection account of \$12,803 to Midland Credit/Bank of America; for \$2,052 in a charged off

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<sup>1</sup>Item 3.

<sup>2</sup>Item 5.

<sup>3</sup>Item 6.

<sup>4</sup>Item 7.

account to Eastern Bank; for \$3,749 for Credit Acceptance for a vehicle repossession; for \$17,488 on a charged off account to Bank of America; for \$1,225 for a collection account for BankNorth; and for \$2,431 to BankNorth for a charged off account. Applicant denies these debts.<sup>5</sup> Applicant states he knows nothing about these debts and does care about them. The creditors have never contacted

him. He has never inquired about the accounts and does not intend to do so. It is not embarrassing to him that he owes on these accounts.<sup>6</sup>

Judgments have been entered against Applicant for \$3,034 for Saratoga Inc.;<sup>7</sup> and for \$1,254 for Colonial Gas.<sup>8</sup> Applicant denied he owes these debts.<sup>9</sup>

Applicant admits his car was repossessed, but denies owing any amount on the car after the repossession.<sup>10</sup> A judgment for \$10,469 has been entered against Applicant in favor of the car repossession creditor.<sup>11</sup>

Applicant states that he is not embarrassed about owing creditors. The fact he owes creditors cannot be used to coerce, compromise or pressure him. He further stated he never gambled, or had bad credit because of use of alcohol, illegal drugs, or prescription drugs. He has no intentions to inquire about the debts. If contacted by the creditors, he is unsure how he would handle the matter. His net monthly income is about \$2,400 with expenses of about \$675. He has no credit cards, medical bills, loans, cell phone bills, or transportation expenses. He has no savings or investment properties. He has a 401K account but does not know how much is in the account.<sup>12</sup>

Applicant answered “NO” to all financial questions on his November 7, 2003, security clearance application.<sup>13</sup> He answered “NO” to question 35 asking if he had any repossessions in the last seven years. Credit reports show and Applicant admits his car was repossessed in 2002 and a judgment entered in September 2003. Credit reports show, but Applicant denies, another repossession in March 2001. He answered “NO” to question 37 asking about unpaid judgments in the last seven years. A judgment was entered against him on May 17, 1999, was within the seven year time line, and is unpaid. The other judgment was entered against him on February 26, 1996,

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<sup>5</sup>Item 2.

<sup>6</sup>Item 11.

<sup>7</sup>Item 9.

<sup>8</sup>Item 8.

<sup>9</sup>Item 2.

<sup>10</sup>Item 2, Item 11.

<sup>11</sup>Item 10.

<sup>12</sup>Item 11.

<sup>13</sup>Item 3.

and was outside the time line. He should have responded “YES” to the question because of the 2003 judgment. He responded “NO” to question 38 asking if he had in the last seven years any debts more than 180 days past due, and question 39 asking if he currently had any debts over 90 days past due. At the time he completed his security clearance application, all of the debts listed above were more

than 180 days past due. Applicant stated he answered “NO” because he did not know he had any debt and he was not trying to deceive anyone.<sup>14</sup>

## POLICIES

The President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.”<sup>15</sup> Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.<sup>16</sup>

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

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. An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.<sup>17</sup> An administrative judge should consider: (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 applicant’s age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of recurrence.<sup>18</sup>

A person granted access to classified information enters into a special relationship with the government. 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. The decision to deny an individual a

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<sup>14</sup>Item 11.

<sup>15</sup>*Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>16</sup>Directive ¶ E2.2.1.

<sup>17</sup>*Id.*

<sup>18</sup>Directive ¶¶ E2.2.1.1 through E2.2.1.9.

security clearance is not necessarily a determination as to the loyalty of the applicant.<sup>19</sup> 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 clearance.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.<sup>20</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.<sup>21</sup> An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”<sup>22</sup> The government is under no duty to present evidence to disprove any Adjudicative Guideline mitigating condition, and an Administrative Judge cannot assume or infer that any particular mitigating condition is applicable merely because the government does not present evidence to disprove that particular mitigating condition.<sup>23</sup> “[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.”<sup>24</sup> “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.”<sup>25</sup>

Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline F - 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.

Guideline E - 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 clearance process or any other failure to cooperate with the security clearance process.

Conditions that could raise eligibility concerns and may be disqualifying, as well as those which would mitigate eligibility concerns, pertaining to the adjudicative guidelines are set forth and

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<sup>19</sup>See Exec. Or. 10865 § 7.

<sup>20</sup>Directive ¶ E3.1.14.

<sup>21</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); see Directive ¶ E3.1.15.

<sup>22</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>23</sup>ISCR Case No. 99-0597 (App. Bd. Dec 13, 2000).

<sup>24</sup>ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

<sup>25</sup>*Egan*, 484 U.S. at 531; see Directive ¶ E2.2.2.

discussed in the conclusions section below.

## CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Applicant's delinquent debts reported by credit reports brings the matter within Financial Considerations Disqualifying Conditions (FC DC) ¶ 19(a) *Inability or unwillingness to satisfy debts*, and FC DC ¶ 19(c) *a history of not meeting financial obligations*. There is not sufficient information in the file to determine if FC DC ¶ 19(e) *consistent spending beyond one's means which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis* applies. Applicant provided no explanation how or why each delinquent debt was accumulated, except for a car repossession. He admits the repossession but denies he owes the debt. I conclude the above disqualifying conditions have been established.

Once the government has established disqualifying conditions, Applicant has the burden to refute, explain, or mitigate the security concern. Appellant was, at best, indifferent to his financial situation. He did not know about the debts, and did not even care to inquire. His response merely denying the debts has not raised Financial Consideration Mitigating Conditions (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 judgement*, or FC MC 20(b) *the conditions that resulted in the financial problem 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*. He did not present any information on financial counseling so FC MC ¶ 20(c) *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. Applicant presented no information concerning any attempt to repay any of the debts so FC MC ¶ 20(d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*, does not apply. Applicant took no action to inquire about his finances and to either pay or resolve his obligations. Applicant presented no information raising any other mitigating condition, so he has failed to carry his burden. I conclude Applicant has not mitigated the security concerns for financial considerations.

The allegations under Guideline E (Personal Conduct) are unfounded. The Government has shown Applicant's answers to questions 35, 37, 38, and 39 were incorrect, but this does not prove the Applicant deliberately failed to disclose information about his finances. Applicant denied intentional falsification. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. An omission concerning unpaid judgments and delinquencies is not deliberate if the person did not know of their existence. Applicant did not know he had the debts. His attitude towards his finances are such that it is conceivable he lacked knowledge of the debts. His incorrect answers to the questions were not deliberate because of his cavalier attitude towards his finances leading to his lack of knowledge. I find Applicant did not

deliberately fail to provide correct information in response to financial questions on his security clearance application.

I carefully considered all of the circumstances in light of the “whole person” concept. Under financial considerations, 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 irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. Applicant shows total irresponsibility towards his finances. He does not care if he has delinquent debts and refuses to make inquiries concerning his debts or how to pay them. He has no assets except for a 401K and he does not even know how much is in that account. His indifference to his finances shows he would be indifferent to protecting classified information. His financial irresponsibility shows he may be irresponsible, unconcerned, or careless in his obligation to protect classified information. I conclude Applicant is not eligible for access to classified information.

**FORMAL FINDINGS**

Formal findings for or against Applicant on the allegations in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a. thru 1.j.:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a. thru 2.d.::	For Applicant

**DECISION**

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

Thomas M. Crean  
Administrative Judge