

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 30-year-old engineering technician (explosives operator) employed by a federal contractor. He allowed debt to accumulate for seven years, and only commenced efforts at debt resolution after the Statement of Reasons (SOR) was issued. He is financially disorganized. He also falsified two questions on security clearance applications in 2003 and 2005. He failed to mitigate the security concerns about financial considerations and personal conduct. Clearance is denied.

CASENO: 06-13971.h1

DATE: 06/29/2007

DATE: June 29, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-13971
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
CHRISTOPHER GRAHAM**

APPEARANCES

FOR GOVERNMENT

Gina Marine, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 30-year-old engineering technician (explosives operator) employed by a federal

contractor. He allowed debt to accumulate for seven years, and only commenced efforts at debt resolution after the Statement of Reasons (SOR) was issued. He is financially disorganized. He also falsified two questions on security clearance applications in 2003 and 2005. He failed to mitigate the security concerns about financial considerations and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On November 13, 2003, Applicant submitted a Security Clearance Application (SF86).¹ The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6 ¶ E3.1.2 *Defense Industrial Personnel Security Clearance Review Program (Directive)*, dated January 2, 1992, as amended, modified, and revised, DOHA issued a Statement of Reasons (SOR) on August 23, 2006, detailing the basis for its decision – security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. The President issued revised adjudicative guidelines (AG) on December 30, 2005. DoD implemented them effective September 1, 2006. Pending official amendment/reissue of DoD Directive 5220.6, the AG are to be used in all cases when the SOR is issued on or after September 1, 2006. Because the SOR was issued prior to September 1, 2006, DOHA policy requires that this case proceed under the old guidelines.

Applicant answered the SOR in writing on October 11, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on January 3, 2007. The Notice of Hearing was dated on January 23, 2007, to convene a hearing on February 15, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The government offered six exhibits, marked as Exhibits 1-6, with Exhibit 6 being a rebuttal exhibit. Applicant offered eleven exhibits, marked as exhibits A-K. I kept the record open until March 1, 2007, to allow Applicant the time to file additional documents. He filed three documents that were marked as Applicant's Exhibits L, M, and N. The government had no objection and Exhibits L, M, and N were admitted. The government filed one exhibit marked as Exhibit 7, and without objection it was admitted. DOHA received the hearing transcript (Tr.) on February 26, 2007.

FINDINGS OF FACT

Applicant admitted the allegations contained in SOR subparagraphs 1.a., 1.i., and 1.j. He denied all other allegations in the SOR. The admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 30-year-old engineering technician (explosives operator) employed by a federal contractor.² He was divorced in 2004 and has one child.³ He is a high school graduate and has one and half years' credit towards a college degree.⁴ He served in the United States Army from August 1994 to August 2002. He earned five Army commendation medals, seven Army achievement

¹Government Exhibit 5, Standard Form (SF) 86, Security Clearance Application, dated September 10, 2003.

²Tr. at 10, 17.

³*Id.* at 11.

⁴*Id.* at 13.

medals, as well as campaign ribbons for Haiti and Kuwait. He left active duty with the rank of sergeant(E-5), receiving an honorable discharge.⁵ He held two prior security clearances.⁶

Financial Considerations

Applicant owed the following debts:

SOR ¶	Year	Debt	Amount	Current Status
1.a.	1999	collection account	\$876	to be paid by 4/30/07 ⁷
1.b.	1999	home mortgage	\$31,091	disputed ⁸
1.c.	1999	charged off	\$702	paid ⁹
1.d.	2000	telephone	\$263	paid ¹⁰
1.e.	2000	collection account	\$3,990	unpaid ¹¹
1.f.	2000	collection account	\$422	paid ¹²
1.g.	2002	credit union account	\$502	unpaid ¹³
1.h.	2003	foreclosed real estate deficiency	\$9,996	disputed ¹⁴
1.i.	2004	telephone	\$78	paid ¹⁵
1.j.	2005	collection account	\$56	paid ¹⁶

⁵*Id.* at 13-15.

⁶*Id.* at 15.

⁷Tr. at 18; Applicant's Exhibit K, Postal Money Order Receipt, dated February 5, 2007.

⁸Applicant's Exhibit A, Letter, dated September 27, 2006; Government Exhibit 7, Credit Report, dated February 8, 2007, at 1; Tr. at 63-68; Applicant thought it might be his ex-wife's debt, but was unsure, and he provided no further evidence.

⁹Applicant's Exhibit B, Letter, dated September 25, 2006;

¹⁰Applicant's Exhibit C, Letter, dated September 13, 2006.

¹¹Government Exhibit 6, Validation of Debt, dated September 22, 2006, at 1

¹²Applicant's Exhibit M, Bank Account Activity, dated February 6, 2007; Government Exhibit 7, *supra*, note 9, at 1.

¹³Government Exhibit 7, *supra*, note 9, at 2.

¹⁴Tr. at 80; Applicant thought it might be his ex-wife's debt, but was unsure, and he provided no further evidence.

¹⁵Applicant's Exhibit H, Bank Account Activity, dated October 2, 2006 and Paid Receipt, dated September 29, 2006.

¹⁶Applicant's Exhibit J, Bank Account Activity, dated September 15, 2006.

1.k.	2005	satellite TV	\$179	disputed ¹⁷
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Applicant's total indebtedness alleged in the SOR was \$48,155. Of that amount, he disputed three debts that totaled \$41,266, he paid six debts totaling \$2,397, and two debts for \$3,990 and \$502 remained unpaid. On September 22, 2006, he was provided a validation of the \$3,990 debt from a collection agency.¹⁸ The \$502 debt is on the latest credit report.¹⁹ He claimed that the debt listed in SOR subparagraph 1.b. was for a mobile home that he and his ex-wife purchased jointly, but his ex-wife kept after they separated and divorced.²⁰ Although the debt did not appear on the most recent credit report²¹, he provided no information about whether or not the debt is paid or unpaid. The real estate foreclosure debt listed in SOR subparagraph 1.h. does not appear on the latest credit report.²² There was correspondence between Applicant and the debtor listed in SOR subparagraph 1.k., but it did not clarify whether or not the debt was owed. This debt is not listed in the latest credit report.²³ He did not provide corroboration or documentation showing how he disputed the debts.

Applicant stated that he depended upon his wife to pay bills during several deployments. He mentioned one bill that she had not paid in 1997²⁴, and the next time he became aware of his bad debts and financial issues involving his ex-wife was during an interview with a Defense Security Service (DSS) agent in February 2006.²⁵ He told the agent he would obtain a copy of his credit report and look into the matters.²⁶ He took care of his own finances after they separated in 1999.²⁷ They were divorced May 6, 2004, but the decree is silent about division of marital property.²⁸ His monthly surplus of income over expenses was \$1,000 in February 2006, and \$1,600 in February 2007.²⁹

Personal Conduct

¹⁷Applicant's Exhibits F and G, E-mail Correspondence, dated September 13, 2006.

¹⁸Government Exhibit 6, *supra*, note 11, at 1-2.

¹⁹Government Exhibit 7, *supra*, note 9, at 1-2.

²⁰Tr. at 63-68.

²¹Government Exhibit 7, *supra*, note 9, at 1-2.

²²*Id.*

²³Applicant's Exhibits F and G, *supra*, note 17.

²⁴Tr. at 87.

²⁵Tr. at 48.

²⁶*Id.* at 49.

²⁷*Id.* at 90.

²⁸Applicant's Exhibit N (Divorce Decree, dated May 6, 2004).

²⁹Tr. at 55-56.

Applicant falsified material facts on his security clearance application, which he caused to be electronically transmitted on or about September 11, 2003, on which he was required to reply to the following question: “**38. Your financial delinquencies-180 days.** In the last 7 years, have you ever been over 180 days delinquent on any debt(s)?”; to which he answered “No.” He also falsified material facts on that same SF-86, on which he was required to reply to the following question: “**39. Your financial delinquencies-90 days.** Are you currently over 90 days delinquent on any debt(s)?”; to which he answered “No.” He deliberately failed to list the information about his delinquent debts as discussed in the previous section.³⁰

Applicant falsified material facts on an Electronic Questionnaire for Investigations Processing (e-QIP), executed by him on October 25, 2005, on which he was required to reply to the following question: “**28.a. Your financial delinquencies-180 days.** In the last 7 years, have you ever been over 180 days delinquent on any debt(s)?”; to which he answered “No.” He also falsified material facts on that same e-QIP, on which he was required to reply to the following question: “**28.b. Your financial delinquencies-90 days.** Are you currently over 90 days delinquent on any debt(s)?”; to which he answered “No.” He deliberately failed to list the information about his delinquent debts as discussed in the previous section.³¹

Applicant was asked why he listed no debts on his security clearance applications:

Q. And why did you answer, “No?”

A. Because at the time when I was filling this out, I did not know I had any financial delinquencies because nothing had changed between, financially nothing had changed from 2003 to 2005. And in 2003 I was granted a security clearance. So I thought that everything was good. I fill the questionnaire out. I got a security clearance. And I didn’t work there anymore. I went to college. Got out of college. Went to get work at a different company that required a security clearance. And fill this out. And nothing had changed financially.

Q. But you had divorced in 2004.

A. Right.

Q. That changed.

A. Right. Just the marital status. But I mean, as far as financial obligations within that time period, I had no reason to think that I had past due accounts because in 2003 when I filled it out and said, “No,” and I got it, I mean, to the best of my knowledge it was, no. I got a security clearance so I thought I had no reason to think any different. 2005 came around. I applied for another security clearance. Same questionnaire. Nothing had changed from 2003 2005.³²

³⁰SOR.

³¹*Id.*

³²Tr. at 91-93.

POLICIES

In an evaluation of an applicant's security suitability, an administrative judge must consider Enclosure 2 of the Directive, which sets forth adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into Disqualifying Conditions (DC) and Mitigating Conditions (MC), which are used to determine an applicant's eligibility for access to classified information.

These adjudicative 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 below. 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 meaningful decision.

Specifically, an administrative judge should consider the nine adjudicative process factors listed at Directive ¶ E2.2.1: (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) 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 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 the issuance of the clearance is "clearly consistent with the interests of national security." 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." The government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive. Once the government has produced substantial evidence of a disqualifying condition, the burden shifts to the applicant to produce evidence and prove a mitigating condition.³³ 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

³³"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).

favorable clearance decision.” The burden of disproving a mitigating condition never shifts to the government.³⁴

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 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.

The scope of an administrative judge’s decision is limited. Applicant’s allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. 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.

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 paying his debts, since at least 1999.

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 and his ex-wife separated in 1999. He stated he did not know where she was living when he returned from an overseas deployment. They divorced in 2004. The divorce decree made no division of property. He took care of his own finances from 1999 to 2006. His monthly cash flow showed a surplus. He claimed he did not know about these delinquent debts until February 2006. What all of this demonstrates is that there is severe financial disorganization in his life. And this may indicate how organized or disorganized he might be in handling classified information.

³⁴See 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, [evaluates] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and [decides] whether Applicant [has] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

Applicant claimed that many of these debts belonged to his ex-wife, even though they were jointly established. He co-signed for the purchase of a mobile home, but provided no documents that the loan had been paid or unpaid. To claim no knowledge of his delinquent debts from 1999 until 2006 is not believable. He knew in 1997 that his former spouse had not paid at least one debt, so he was on notice that there could be a potential problem. And he took no action about these debts until the SOR was filed, about seven months after his DSS interview.

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. There is no evidence of financial counseling, and his debts are neither resolved nor 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 inapplicable. Applicant made little effort at payment until after the SOR was filed. He has not resolved his indebtedness. No other mitigating conditions apply. I conclude Guideline F against Applicant.

Personal Conduct

Conduct involving questionable judgment, unreliability, lack of candor, or dishonesty could indicate that the person may not properly safeguard classified information.

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*) is the standard. The operative word is “deliberate.” Applicant had delinquent debts since at least 1999. His explanation for the omissions is not credible. No mitigating conditions apply. 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.”³⁵ “Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”³⁶ In evaluating Applicant’s case, in addition to the disqualifying and mitigating conditions, I also considered the “whole person concept” in evaluating

³⁵Directive ¶ E.2.2.1.

³⁶*Id.*

Applicant's risk and vulnerability in protecting our national interests.³⁷ Applicant ignored his debts until the SOR was issued, six months after he claimed he first learned of past due debts.. He has not adequately addressed the status of the unpaid and disputed debts.

Applicant falsified two security clearance applications. This is problematic because candor with the government about a person's embarrassing information is the crux of a trustworthiness and security determination. If a person discloses their personal adverse information, then he or she is more likely to be trustworthy with confidential or classified information. The totality of the record raises reasonable and persistent 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 and secrets. I conclude it is not clearly consistent with the national interest to grant Applicant a 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:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	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.

³⁷*Id.*

Christopher Graham
Administrative Judge