

KEYWORD: Financial; Personal Conduct; Criminal Conduct

DIGEST: Between approximately 1998 and 2004, Applicant accrued \$15,000 of delinquent bills. Nearly all remain outstanding, and he has yet to make a serious, concerted effort to begin satisfying them. Clearance is denied.

CASENO: 06-17793.h1

DATE: 07/18/2007

DATE: July 18, 2007

In re:	)	
	)	
	)	
-----	)	ISCR Case No. 06-17793
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**DECISION OF ADMINISTRATIVE JUDGE  
MARC E. CURRY**

**APPEARANCES**

**FOR GOVERNMENT**

Richard A. Stevens, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

\_\_\_\_ Between approximately 1998 and 2004, Applicant accrued \$15,000 of delinquent bills. Nearly all remain outstanding, and he has yet to make a serious, concerted effort to begin satisfying them. Clearance is denied.

## STATEMENT OF THE CASE

On January 27, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) stating it was unable to find it clearly consistent with the national interest to grant or continue a security clearance.<sup>1</sup> This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive). Applicant answered it on February 27, 2007, and requested a hearing.

The case was assigned to me on April 2, 2007. DOHA issued a Notice of Hearing on April 6, 2007 for April 26, 2007. The hearing was held as scheduled, and I received six government exhibits, one Applicant exhibits, and Applicant's testimony. At the hearing's conclusion, I left the record open through May 7, 2007 for Applicant to submit additional exhibits. That day, he submitted two additional exhibits. Department Counsel did not object to their admissibility. I admitted them as Applicant's Exhibits B and C. DOHA received the transcript on May 14, 2007.

## FINDINGS OF FACT

\_\_\_\_\_Applicant admitted all of the allegations contained in Paragraph 1 of the SOR. They are incorporated as findings of fact.

Applicant is a 38-year-old married man with two children, ages 16 and 14 from a prior marriage. He has a high school diploma, and has earned one year of college credits. He served in the U.S. Marines from 1988 to 1993. Because his performance in the Marines was unsatisfactory, he received a general discharge under honorable conditions.<sup>2</sup>

Since 1998, Applicant has worked in the contract mapping field. He has worked for the same employer since 1998. According to his employer's facility security officer, he is "a trustworthy employee who can be counted on to uphold the rules and guidelines that come with holding a security clearance."<sup>3</sup>

In the late 1990's, Applicant's first marriage began deteriorating, resulting in a divorce in 2000. He has remained in protracted litigation with his ex-wife since then over visitation and custody issues. Over the years, Applicant has spent more than \$4,000 in attorney fees. Currently, he has physical custody of one of his children.

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<sup>1</sup>The SOR is erroneously dated January 27, 2006. Department Counsel disclosed the mistake to Applicant. Also, Applicant confirmed that he received the revised guidelines (Tr. 4).

<sup>2</sup>Exhibit 3, Memo from Site Commander to Commanding General, Regarding Applicant's Discharge, dated October 18, 1993.

<sup>3</sup>Exhibit A, Reference Letter, dated April 20, 2007.

Applicant remarried in 2001. In the fall of 2003, his wife injured herself, and was unable to work for seven months.<sup>4</sup> Approximately five months later, Applicant was laid off for two months.<sup>5</sup> They were dependent on both incomes to make ends meet.

By June 2005, Applicant had accrued \$15,000 in delinquent debt. He met with a Defense Security Service (DSS) agent in February 2006 to discuss, among other things, his financial delinquencies. Approximately nine months later, the government propounded interrogatories specifically listing each delinquency, and requesting him to provide proof of any efforts toward resolving them.<sup>6</sup> At that time, his progress toward resolving them was minimal.

Currently, the amount of Applicant's delinquent debt remains unchanged. Of the 25 bills that he owes, 14 are for less than \$150. With the exception of the delinquency listed in subparagraph 1.m, he has neither satisfied nor made plans to satisfy any of them.

At the hearing, Applicant attributed his failure to make "an organized effort"<sup>7</sup> to resolve his debts to ongoing problems with his ex-wife. He pays the creditors to whom he owes delinquent debts "when they get a hold of [him]."<sup>8</sup>

Applicant did not list any of his debts in response to Question 38 (*Your Financial Delinquencies - 180 Days - In the last 7 years, have you been over 180 days delinquent on any debt?*), and Question 39 (*Your Financial Delinquencies - 90 days - Are you currently over 90 days past due on any debt(s)*) of his security clearance application (SF 86). He thought he was only supposed to list any recurrent monthly bills that were delinquent.<sup>9</sup> He disclosed a wage garnishment, a repossession, and two unpaid judgments, as required in response to other SF 86 questions. Also, in response to Question 43 (*General Remarks Do you have any additional remarks to enter in your application?*), he discussed his financial problems at length.

## POLICIES

Enclosure 2 of the Directive, sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (disqualifying conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (mitigating conditions). These guidelines were revised on December 29,

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<sup>4</sup>Tr. 24.

<sup>5</sup>Tr. 25.

<sup>6</sup>Exhibit 2, Interrogatories, dated November 16, 2006.

<sup>7</sup>Tr. 26.

<sup>8</sup>Tr. 23.

<sup>9</sup>Answer at 2.

2005, and the revisions were implemented for all statement of reasons issued after September 1, 2006.

Because the entire process is a scrutiny of a number of variables known as the “whole person concept,” all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future.

The following adjudicative guidelines are raised:

Guideline F - 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.

Guideline E - Personal Conduct: 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.

Guideline J - Criminal Conduct: Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.

Conditions pertaining to these adjudicative guidelines that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, are set forth and discussed in the conclusions below.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is “clearly consistent with the national interest.”<sup>10</sup> In reaching this decision, I have drawn only those conclusions that are based on the evidence contained in the record.

The government is responsible for presenting evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

## CONCLUSIONS

### **Financial Considerations**

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<sup>10</sup>See generally, Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

Applicant's longstanding financial difficulties trigger the application of Financial Considerations Disqualifying Condition (FC DC) 19 (a): *inability or unwillingness to satisfy debts*, FC DC c (*a history of not meeting financial obligations*), and 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 other financial analysis*. I have considered all of the mitigating conditions and conclude none apply. Applicant has been aware his delinquencies posed a security concern since meeting with a DSS agent in June 2005; however, he has made no plans to satisfy them.

Applicant's contention that he lacks the income to satisfy the delinquencies has limited probative value. Many of these debts have been delinquent for more than six years. Moreover, many are small bills less than \$150.

Applicant's contention that circumstances beyond his control are responsible for his continued financial indebtedness has similarly limited probative value. The 2000 divorce, his current wife's 2003 disability, and his 2004 unemployment substantially contributed to the accrual of his financial delinquencies. However, he has neither made plans to pay the remaining debts, nor demonstrated the inclination to begin paying them. Applicant has failed to mitigate the financial considerations security concern.

### **Personal Conduct**

Applicant's responses to Questions 38, and 39 of his 2005 SF 86 raise the issue of whether Personal Conduct Disqualifying Condition 16 (a): *deliberate omission, concealment, or falsification of relevant 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 was fully forthcoming about his financial problems in response to other financial questions on the SF 86. He elaborated further about his troubled finances in the "general remarks" section of the SF 86. Under these circumstances, his contention that he did not intentionally omit financial information from Questions 38 and 39 was credible. PC DC 16 (a) does not apply, and there are no personal conduct security concerns.

### **Criminal Conduct**

For the reasons set forth above, Applicant's responses to Questions 38 and 39 do not constitute falsifications under 18 U.S.C. § 1001.

### **Whole Person Concept**

Applicant has made minimal effort to satisfy his delinquencies. Under these circumstances the likelihood that his financial problems will continue remains unacceptably high. Evaluating these facts in the context of the whole person concept, I conclude he has not mitigated the security concern.

**FORMAL FINDINGS**

Paragraph 1 – Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a - 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n -1.y:	Against Applicant
Paragraph 2 - Guideline E:	FOR APPLICANT
Subparagraph2.a.:	For Applicant
Subparagraph 2.b:	For Applicant
Paragraph 3 - Guideline J:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

**DECISION**

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

Marc E. Curry  
Administrative Judge