

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 41-year-old security officer employed by a federal contractor. He has a history of unpaid debt. Even though he has made some effort at debt resolution, over \$40,000 of delinquent debt remains unpaid. He gave false answers on a security clearance questionnaire. He failed to mitigate the security concerns about financial considerations and personal conduct. Clearance is denied.

CASENO: 06-18683.h1

DATE: 06/27/2007

DATE: June 27, 2007

_____)	
In re:)	
)	
-----)	ISCR Case No. 06-18683
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
CHRISTOPHER GRAHAM**

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 41-year-old security officer employed by a federal contractor. He has a history of unpaid debt. Even though he has made some effort at debt resolution, over \$40,000 of delinquent debt remains unpaid. He gave false answers 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 July 8, 2004, Applicant submitted a Security Clearance Application (SF 86).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 November 27, 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 after September 1, 2006, DOHA policy requires that this case proceed under the new guidelines.

Applicant answered the SOR in writing on January 11, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on February 1, 2007, and a Notice of Hearing was dated on February 16, 2007. I convened a hearing on March 1, 2007, to consider whether it is clearly consistent with the national interest to grant or continue Applicant's security clearance. The government offered ten exhibits, marked as exhibits 1-10. Applicant offered four exhibits, marked as exhibits A-D. I kept the record open until March 20, 2007, and without objection, extended it to March 30, 2007, to allow Applicant the time to file additional documents. He filed no documents. DOHA received the transcript (Tr.) on March 12, 2007.

FINDINGS OF FACT

Applicant admitted the allegations contained in SOR subparagraphs 1.a., 1.b., 1.c., 1.e., 1.i., 1.k., and 1.n. 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 41-year-old security officer employed by a federal contractor.² He was divorced in 2001, and has four children³ He is a high school graduate⁴ He served in the United States Army Reserve from 1984 to 2004. He served in Kosova, and left active duty with the rank of sergeant (E-4).⁵ Because of his mother's illness leading to her death in 2004, he did not complete 20 years credible service to be eligible for military retirement. He has been in touch with his unit

¹Government Exhibit 1, Standard Form (SF) 86, Security Clearance Application, dated July 8, 2004.

²Tr. at 18, 27.

³*Id.* at 18-19.

⁴*Id.* at 21.

⁵*Id.* at 24-25.

and was told if he reenlists for an additional four years, he will then be eligible for his army retirement.⁶ He has held a security clearance since 1984.⁷

Financial Considerations

The SOR detailed Applicant's financial history:

SOR ¶	Year	Debt	Amount	Current Status
1.a.	2002	Chapter 13 bankruptcy 5/22/02		Dismissed 7/23/02
1.b.	2004	Chapter 13 bankruptcy 7/23/04		Dismissed 8/11/04
1.c.	2004	Chapter 13 bankruptcy 9/22/04		Dismissed 9/24/04
1.d.	2000	Collection account	\$673	Paid
1.e.	2000	Judgment	\$6,990	Paid
1.f.	2000	Collection account	\$189	Paid
1.g.	2001	Collection account	\$254	Paid
1.h.	2001	Homeowners association	\$672	Paid
1.i.	2002	Judgment	\$1,340	Paid
1.j.	2003	Collection account	\$61	Paid
1.k.	2004	Repossession	\$14,964	Unpaid
1.l	2004	Judgment	\$2,045	Paid
1.m	2004	Judgment	\$1,705	Paid
1.n	2005	Charged off account	\$24,478	Unpaid
1.o	2006	Collection account	\$239	Paid
1.p.	2006	Charged off account	\$410	Unpaid

Applicant's total indebtedness alleged in the SOR was \$54,283. He filed his first chapter 13 bankruptcy petition in May 2002. The court dismissed his case in July 2002, because he had been deployed to Kosova, and under the Soldiers and Sailors Relief Act, he could defer payments during his deployment. When he returned in 2004, and upon his release from active duty, the mortgagor attempted to foreclose on his house.⁸ He filed two Chapter 13 petitions in July and September 2004, in an effort to stall the foreclosure, as he had the house listed for sale. In September 2004, he sold

⁶*Id.* at 22-23.

⁷*Id.* at 26.

⁸Tr. at 28-30.

the house. The closing agent used the sale proceeds to pay some of his debts.⁹ Applicant was asked to provide the government with a copy of the closing agreement, which he said was in storage. He did not do so.¹⁰

In comparing the credit report of September 26, 2006,¹¹ and the credit report dated March 1, 2007,¹² remaining unpaid are those debts listed in SOR subparagraphs 1.i., 1.k., 1.n., and 1.p. The first involves a state tax deficiency, the second concerns a repossession for which he owes approximately \$15,000, the third is a note in default which he co-signed, with a balance due of about \$24,500, and the fourth is \$365, to replace a bad check he gave an to an automobile dealer.¹³ Applicant stated he had made arrangements to pay the two large debts, a debt consolidation plan, to pay \$621 per month. He was asked to provide the government a copy of the agreement but did not do so.¹⁴

Personal Conduct

When Applicant executed his questionnaire for national security positions (Standard Form 86), on July 8, 2004, he answered “No” to the following question: “**Question 33. Your Financial Record - Bankruptcy** In the last 7 years, have you filed a petition under any chapter of the bankruptcy code (to include Chapter 13)?” He also answered “No” on the same SF 86, when he answered the following question: “**37. Your Financial Record - Unpaid Judgments** In the last 7 years, have you had any judgments against you that have not been paid? On that same SF 86, he answered “No” 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(s)?”¹⁵ He failed to list information about his delinquent debts and bankruptcy filings as detailed in SOR subparagraph 1, and as discussed in the previous section.

Applicant thought he had answered the questions correctly. He believed that because he availed himself of the benefits of the Soldiers and Sailors Relief Act, he didn’t know that he should list these debts on the SF 86. He asked no questions about the form or about the questions on it. He stated that he didn’t recall what he answered. “I didn’t mean to put “no” on there when I answered them, and I told him that. If I put no, that was a mistake on my part.”¹⁶

⁹*Id.* at 30.

¹⁰*Id.* at 79-81.

¹¹Applicant’s Exhibit D (Credit Report, dated September 26, 2006) at 1-9.

¹²Government Exhibit 10 (Credit Report, dated March 1, 2007) at 1-2.

¹³*Id.*

¹⁴*Id.* at 51-52.

¹⁵Government Exhibit 1, *supra*, note 1, at 8.

¹⁶*Id.* at 47-49.

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. Guidelines ¶ 2. An administrative judge's over-arching 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.¹⁷

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."¹⁸ 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."¹⁹ 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

¹⁷Guidelines ¶ 2(c).

¹⁸Guidelines ¶ 2(b).

¹⁹"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).

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.²⁰

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.²¹

CONCLUSIONS

Guideline F—Financial Considerations

Guidelines ¶ 18. The Concern. 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.

Guidelines ¶ 19. Conditions that could raise a security concern and may be disqualifying include:

- (a) inability or unwillingness to satisfy debts; and

- (c) a history of not meeting financial obligations.

Applicant has a history of delinquent debts since at least 1999. He adequately explained that the Chapter 13 bankruptcy petitions were used to stop the foreclosure of his home until he could get it sold. He has made progress on either paying debts or getting the credit reporting agencies to

²⁰See 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).

²¹Executive Order 10865, § 7.

remove other debts that were not his. However, he still owes about \$40,000. He did not provide a copy of his consolidation agreement to substantiate his efforts to pay down these debts.

Guidelines ¶20. Conditions that could mitigate security concerns include:

(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 judgment;

(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;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debts are continuing. While he was deployed, payments he made to his wife to pay bills were instead used by her to build her own home. They divorced after he returned from that deployment. While the divorce itself did not create any unusual financial problem for him, the deployment did because his wife did not pay his bills. There is no evidence that he sought counseling. He did initiate a good-faith effort to pay his bills, as evidenced by the bankruptcy petition, and payment of some debts from his house sale. What is troubling is the \$40,000 still unpaid. His lack of documentation showing any effort to arrange terms with creditors, after telling the government he would provide it, and after being given nearly a month after the hearing to do so, is problematic. It casts doubt about the veracity of his testimony. I conclude Guideline F against Applicant.

Guideline E—Personal Conduct

Guidelines ¶ 15. The Concern. 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.

Guidelines ¶16. Conditions that could raise a security concern and may be disqualifying include:

(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;

Guidelines ¶ 17. Conditions that could mitigate security concerns include:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully.

Applicant denies that he deliberately falsified his answers to the questions on his SF 86, arguing that because he availed himself of the benefits of the Soldiers and Sailors Relief Act, he didn't know that he should list these debts on the SF 86. When a falsification allegation is controverted, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred.²² The government must establish that Applicant's omission, concealment, or falsification in his answers was deliberate. Applicant thought he had answered the questions correctly, yet he asked no questions about the form or about the questions on it. He stated that he didn't recall what he answered. Applicant has held a security clearance for over 20 years, he has nearly 20 years service in the Army Reserve, and he has a history of bad debt. I do not believe his explanations. 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.”²³ “Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”²⁴ In evaluating Applicant's case, 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.²⁵ I considered his age (48), his education, his employment, his military service, and what might motivate him to be less than truthful. Applicant supplied false answers on a security clearance application. This is problematic

²²See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun 9, 2004).

²³Directive ¶ E.2.2.1.

²⁴*Id.*

²⁵*Id.*

because candor with the government about a person's negatives is the crux of a trustworthiness 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 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:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	Against Applicant

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

Christopher Graham
Administrative Judge