

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 36-year-old switchboard operator employed by a defense contractor. He has a history of unpaid debt since at least 1996. After finally getting serious about debt resolution, he has paid about 50% of his past due debts. He also deliberately falsified two answers on his security clearance application. His evasive and unresponsive answers to questions during the hearing impacted negatively on his credibility. He successfully mitigated security concerns about financial considerations, but failed to mitigate security concerns about personal conduct. Clearance is denied..

CASENO: 06-19412/h1

DATE: 07/19/2007

DATE: July 19, 2007

In re:)	
)	
)	
-----)	ISCR Case No. 06-19412
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 36-year-old switchboard operator employed by a defense contractor. He has a history of unpaid debt since at least 1996. After finally getting serious about debt resolution, he has paid about 50% of his past due debts. He also deliberately falsified two answers on his security clearance application. His evasive and unresponsive answers to questions during the hearing impacted negatively on his credibility. He successfully mitigated security concerns about financial considerations, but failed to mitigate security concerns about personal conduct. Clearance is denied..

STATEMENT OF THE CASE

On May 6, 2004, 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 Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program (Directive)*, dated January 2, 1992, as amended, DOHA issued a Statement of Reasons (SOR) on January 30, 2007, 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 on 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 dated on or after September 1, 2006. Because the SOR was issued after September 1, 2006, DoD policy requires that this case proceed under the revised guidelines.

Applicant answered the SOR in writing on February 21, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on March 7, 2007, and a Notice of Hearing was dated on March 20, 2007. I convened a hearing on March 30, 2007, to consider whether it is clearly consistent with the national interest to grant or continue Applicant's security clearance. The government offered seven exhibits, marked as Exhibits 1-7, and four rebuttal exhibits marked as rebuttal exhibits 1-4. Applicant objected to Exhibit 5 which was overruled. Applicant offered eighteen exhibits, marked as Exhibits A-R. All other exhibits were admitted without objection. I kept the record open until April 27, 2007, to allow Applicant the time to file additional documents. He filed eleven documents that were marked as Applicant's Exhibits S through CC. Although Exhibits BB and CC were received after the date the record closed, the government had no objection, and the exhibits were admitted. On May 14, 2007, Applicant filed Exhibits DD and EE. The government objected as they were sent after the date the record closed. The objections are overruled and the exhibits admitted. DOHA received the transcript (Tr.) on April 24, 2007.

FINDINGS OF FACT

Applicant admitted the allegations contained in SOR subparagraphs 1.c., 1.e., 1.i., 1.j., 1.m., 2.a., and 2.b. 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 36-year-old switchboard operator employed by a defense contractor. He is single and has no children. He is a high school graduate and has one year's credit towards a college degree. He has no prior military service, and he has held a security clearance since 1996.²

Financial Considerations

¹Government Exhibit 1 (Security Clearance Application, dated May 6, 2004).

²Tr. at 35-40.

Applicant has had financial problems since at least 1996. When seeking his initial a security clearance, he was given a summary of disqualifying information (SDI) listing the government's concerns about his finances.³

As of December 5, 2005, Applicant had the following debts:

SOR ¶	Debt	Amount	Balance	Applicant's Exhibit No.
1.a.	Cell phone	\$223	\$33	K
1.b.	Judgment	\$1,362	-0-	Gov't Ex 3, pp.14-17
1.c.	Tax lien	\$3,276	\$68	EE
1.d.	Collection account	\$1,114	\$964	Y, Z
1.e.	Charged off	\$1,458	\$1,130	
1.f.	Charged off	\$2,992	\$2,992	
1.g.	Collection account	\$574	\$557	E, W, CC
1.h.	Collection account	\$1,707	\$1,707	
1.i.	Charged off	\$757	\$607	I
1.j.	Collection account	\$2,128	-0-	C, O, T
1.k.	Charged off	\$663	\$663	
1.l.	Charged off	\$315	-0-	X, BB
1.m.	Garnishment	Same as 1.b.		

The total amount of delinquent debt listed in the SOR was \$16,569. Based upon the evidence produced by Applicant, he still owes approximately \$8,721. The most recent credit report shows a total past due of \$7,675.⁴ Some, but not all, of the payments he has made toward debt retirement were made after October 2006.

Applicant was put on notice about the debt listed in SOR subparagraph 1.a. He was sent interrogatories in December of 2006, that listed the debt. A statement of reasons was issued in January 2007. He waited until March 2007 and made a \$31 payment on March 28, 2007.⁵ When asked why he waited so long to contact them, he said he didn't have enough time, and gave an unresponsive answer.⁶

³ Government Rebuttal Exhibit 2 (Summary of Disqualifying Information, dated December 29, 1995) at 1, 3-4.

⁴Government Exhibit 5 (Credit Report, dated April 6, 2007) at 1-3.

⁵*Id.* at 77-78.

⁶*Id.* at 78.

Applicant became unemployed for about 18 months between 2002 and March 2004, when his employer's government contract expired, and the company laid off employees.⁷

Personal Conduct

Applicant falsified material facts on a security clearance application (SF 86), dated May 6, 2004. In response to the following, **Question 38. Your financial delinquencies - 180 days** In the last 7 years, have you been over 180 days delinquent on any debt(s)?, he answered "No." He did not specify the debts listed in the SOR subparagraphs 1.a., 1.d. through 1.f., and 1.h. through 1.l., listed in the above table.

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 SOR subparagraphs 1.a., 1.d. through 1.f., and 1.h. through 1.l., listed in the above table.⁸

An example of Applicant's evasive response at the hearing is shown by the following exchange with Department Counsel:

- Q. If you look at questions 38 and 39, 'in the last seven years, have you been over 180 days delinquent on any debt.' That's been answered no. And 'are you currently over 90 days on any debt?' You answered no. Where on this document would the government be put on notice that you have been unemployed and had some financial problems?⁹
- A. Well, that didn't happen until--well, it's like when this EPSQ was basically done here, you notice a calendar date of May 6, 2004. Okay, when I left--when I came back to the unemployment, it's like that wasn't mentioned. It's like when I sat down with the supervisor and they did this stuff again, I didn't mention that because I was working.¹⁰

Applicant was asked about a 2001 income tax return that he filed, but did not include payment with the return. He said he did. He was then asked if he knew that when he filled out his security clearance application in 2004. His response:

Well, it's like when I filled out a security clearance application, because there was so many discrepancies and so many problems with the EPSQ, I had problems saying a lot of stuff to send out to the headquarters for my company. So I had to go back,

⁷*Id.* at 39, 58.

⁸Government Exhibit 1 (Security Clearance Application (SF 86), dated May 6, 2004) at 6..

⁹*Id.* at 112.

¹⁰*Id.* at 113.

fill in additional information, save this by account, have my supervisor sit down because it didn't work right.¹¹

In another exchange:

Q. So when you filled out your security clearance application, your EPSQ, in 2004, you were aware that the government had concerns in the past regarding your financial history, and that you had to be completely accurate and up-front about your financial history on your EPSQ.

A. Okay.

Q. Would you agree with that?

A. Well, it's like--like I said, it was discrepancies within the EPSQ. But yes, I acknowledged it, and I was taking care of the staff. It wasn't like--I guess you were trying to pose your question like I just sat there and I did nothing. That's not a true statement.

Q. No, that's not what I'm asking. What I'm asking you is you were put on notice based on what happened in 1994 to 1996, that the government had concerns about you, your financial history, in the past.

A. Yes.

Q. Would you agree with that?

A. Well, they had a question about a few. It wasn't like a financial--because it wasn't a financial history then. What you had made before, that's--

Q. Wait.

A. --not an accurate statement.¹²

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 guideline, 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

¹¹*Id.* at 87-88.

¹²*Id.* at 108-109.

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.¹³

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."¹⁴ 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."¹⁵ 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.¹⁶

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

¹³Guidelines ¶ 2(c).

¹⁴Guidelines ¶ 2(b).

¹⁵"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).

¹⁶*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).

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.¹⁷

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 1996. The government established its case under Guideline F. He has a lengthy history of inattention to delinquent debt.

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

(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.

¹⁷Executive Order 10865, § 7.

Because his answers to questions were evasive and unresponsive, it was difficult to determine the current status of his debts. However, after examining all exhibits, it appears that he has reduced his debts by about 50%. The table I used indicates about \$8,700 due, and the most recent credit report indicates about \$7,700 of delinquent debt. The problem is being resolved and he has made a good-faith effort to repay creditors, even though he only became serious about repaying his creditors in recent months. Mitigating conditions ¶ 20 (b), (c), and (d) apply. He also should have consideration for the time he was unemployed between 2002 and 2004. Losing a job is an unforeseen event and qualifies mitigating condition ¶ 20 (b). Based upon these conditions, I conclude Guideline F for 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.

Applicant falsified two questions on his security clearance application. The government established its case under Guideline E.

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;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability;

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

In reviewing the mitigating conditions, I do not find any that apply. Applicant's continual evasive and unresponsive answers to questions during the hearing weigh heavily against his credibility. He had filled out a security clearance application before. He knew he had delinquent debts over 180 days. I find he deliberately gave false answers on his EPSQ. 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."¹⁸ "Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination."¹⁹ 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.²⁰ I considered his age (36), his education, his employment, his unemployment, and what might motivate him to be less than truthful. Applicant supplied false answers on a security clearance application. This is problematic because candor with the government about a person's negatives is the crux of a security clearance determination. If a person fails to disclose the adverse information about himself, then he may not be trusted with confidential or classified information. Even though he is getting his finances under control, his overall track record with finances shows a marked indifference to his creditors. This, combined with his lack of truthfulness, raises questions about his reliability and judgment. 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. 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:

¹⁸Directive ¶ E.2.2.1.

¹⁹*Id.*

²⁰*Id.*

Paragraph 1. Guideline F:	FOR 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:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant

Paragraph 2. Guideline E:	AGAINST APPLICANT
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.

Christopher Graham
Administrative Judge