

KEYWORD: Financial

DIGEST: Applicant is a 43-year-old network administrator employed by a federal government contractor. He amassed about \$12,792 in delinquent debts, many being charged off or placed for collection between 2003 and 2005. He provided no reasons for his financial problems, and no evidence of resolving his indebtedness. He failed to mitigate the security concerns about financial considerations. Clearance is denied.

CASENO: 06-23298.h1

DATE: 08/06/2007

DATE: August 6, 2007

In re:)	
)	
-----)	
SSN: -----)	ISCR Case No. 06-23298
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
CHRISTOPHER GRAHAM**

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 43-year-old network administrator employed by a federal government contractor. He amassed about \$12,792 in delinquent debts, many being charged off or placed for collection between 2003 and 2005. He provided no reasons for his financial problems, and no evidence of resolving his indebtedness. He failed to mitigate the security concerns about financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On March 23, 2005, 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 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 March 14, 2007, detailing the basis for its decision – security concerns raised under Guideline F (Financial Considerations) of the Directive. The President issued revised adjudicative guidelines (Guidelines) on December 30, 2005. DoD implemented them on September 1, 2006. Pending official amendment/reissue of DoD Directive 5220.6, the Guidelines 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 April 5, 2007, and requested a decision without a hearing. Department Counsel submitted a file of relevant material (FORM) in support of the government's case, a copy of which was received by Applicant on May 4, 2007. Applicant was afforded the opportunity to file objections and submit material in refutation, extenuation, or mitigation by June 3, 2007. He filed no response. The case was assigned to me on July 19, 2007.

FINDINGS OF FACT

Applicant admitted the allegations contained 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 43-year-old network administrator employed by a federal government contractor. He is married and has no children.² He has an associate degree and is continuing his work towards a bachelor's degree.³ He has no prior military service.⁴ This is his first application for a security clearance.⁵

Applicant has a history of financial problems dating back several years, including a number of accounts charged off or placed for collection between 2003 and 2005. The delinquent debts listed in the SOR totaled approximately \$12,792. In answers to interrogatories, he noted he had contacted the listed creditors and made inquiries with them to resolve his debts. He contacted a debt consolidation counseling service, but as he did not receive responses from creditors, he was not able

¹Item 4 (Security Clearance Application (SF 86), dated March 23, 2005).

²*Id.* at 1.

³*Id.* at 2.

⁴*Id.* at 5.

⁵*Id.* at 8.

to enter into a counseling program. He indicated he received several responses from creditors, and that he needed additional information from other creditors.⁶ In his Answer, he stated he had started making payments on one account, and that he intended to pay his delinquent bills, but he was unable to do so because he could not send payments until he was sure payments would be posted to the proper accounts.⁷ As of November 30, 2006, none of these debts were paid.⁸ His monthly budget attached to his interrogatory answers showed a surplus of \$473 per month, after all expenses.⁹

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 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.¹⁰

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

⁶Item 5 (Answers to Interrogatories, dated November 30, 2006) at 4-5.

⁷Item 2 (Applicant's Answer, dated March 14, 2007) at 1-2

⁸Item 7 (Credit Report, dated October 19, 2006) at 1-4; Item 8 (Credit Report, dated March 6, 2007) at 1-4; Item 5, *supra*, note 6, at 1-9.

⁹Item 5, *supra*, note 6, at 6.

¹⁰Guidelines ¶ 2(c).

considered for access to classified information will be resolved in favor of national security.”¹¹ In reaching this decision, I have drawn conclusions that are reasonable, logical and based on the record evidence, and have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, facts must be established by “substantial evidence.”¹² 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.¹³

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.¹⁴

CONCLUSIONS

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,

¹¹Guidelines ¶ 2(b).

¹²“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).

¹³*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).

¹⁴Executive Order 10865, § 7.

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts

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.

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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(f) the affluence resulted from a legal source of income.

The government established its case under Guideline F. Financial Considerations Disqualifying Conditions (FC DC) Guidelines ¶19 (a) (*Inability or unwillingness to satisfy debts*) and FC DC Guidelines ¶19 (c) (*A history of not meeting financial obligations*) are applicable. The available information demonstrates Applicant has a history of not meeting his financial obligations from 2003 to the present. He has been delinquent in payments on numerous accounts, had multiple accounts charged off or placed for collection. He provided no evidence that anything more than one payment had been made. The disqualifying conditions are applicable.

Various conditions can mitigate the security concerns arising from financial difficulties. Applicant provided no evidence as to the cause or causes of his delinquent debts, nor a reason why he has made no effort to resolve indebtedness. There is no evidence of Applicant establishing a plan for repayment. He was given an opportunity to provide documentation of efforts to resolve his financial difficulties. He chose not to respond. Absent sufficient evidence to prove a mitigating

condition, I find none of the mitigating conditions are applicable, and I conclude Guideline F 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.”¹⁵ “Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”¹⁶ 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.¹⁷ I considered his age (43), his employment, and what might cause him to be in continual financial distress. He has had a history of financial delinquencies, including charge-offs and collections, and he failed to present any evidence showing why he incurred delinquent debts between 2030 and 2005 that remain unpaid. The record contains insufficient evidence to make a determination of why he is indebted and to find any mitigating condition applicable. The underlying reasons for his delinquent obligations can only be conjecture. Therefore, the totality of the record leads me to conclude that Applicant does not have the ability nor the reliability to protect classified information, and cannot 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:

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant

DECISION

¹⁵Directive ¶ E.2.2.1.

¹⁶*Id.*

¹⁷*Id.*

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