

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 31-year-old electrician working for a defense contractor. From approximately 1996 through 2000, he accrued a number of debts. Nearly half of those debts have been paid and repayment agreements have been negotiated on all but the largest remaining obligation, which is over twice as large as his other debts combined. He also wrote about nine bad checks over a brief period of time, which he redeemed shortly thereafter. Applicant has mitigated concerns about his personal conduct. He has failed to mitigate concerns arising from financial considerations by failing to act on his largest debt. Clearance is denied.

CASENO: 02-31625.h1

DATE: 06/06/2006

DATE: June 6, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31625

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Juan J. Rivera, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is a 31-year-old electrician working for a defense contractor. From approximately 1996 through 2000, he accrued a number of debts. Nearly half of those debts have been paid and repayment agreements have been negotiated on all but the largest remaining obligation, which is over twice as large as his other debts combined. He also wrote about nine bad checks over a brief period of time, which he redeemed shortly thereafter. Applicant has mitigated concerns about his personal conduct. He has failed to mitigate concerns arising from financial considerations by failing to act on his largest debt. Clearance is denied.

STATEMENT OF THE CASE

On April 22, 2003, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statements of Reasons (SOR) concluding it was unable to find that it is clearly consistent with the national interest to grant him a security clearance. [\(U\)](#) The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). In a four-page answer, dated May 20, 2003, Applicant responded to the SOR allegations. He admitted seven of the 14 allegations raised under Guideline F and denied the two allegations raised under Guideline E. Additionally, he waived his right to an administrative hearing in favor of a decision based on the written record.

Department Counsel prepared a File of Relevant Material (FORM), dated December 22, 2003. Applicant was provided a complete copy of the FORM, which was received on January 11, 2004. On February 26, 2004, Applicant responded to the FORM through a 7-page letter with 11 attachments. Department Counsel did not object to the Applicant's submitted materials. The case was assigned to another administrative judge, then transferred to me on February 18, 2005.

FINDINGS OF FACT

Applicant's answers to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 31-year-old electrician who has worked for the same defense contractor since August 2002. He has worked as an electrician in various capacities since 1993. In 1996, he received an associate of science and arts degree. Applicant was married in April 2002.

Since 1993, Applicant has been continuously employed as an electrician, with the exception of a period of unemployment lasting from approximately January 1995 through February 1996.⁽²⁾ In the summer of 1996, Applicant moved out of the family home and finished college. In November 1997, he deposited an out-of-town check, then wrote approximately nine checks on his account. Those checks were presented before the deposit had cleared his bank, and were returned for non-sufficient funds. He settled his debt with seven of the payees. Before the final two were paid, however, two Criminal Summons' for a Simple Worthless Check were issued against him on February 10, 1998, in his state's local general court.⁽³⁾ No arrests were made.⁽⁴⁾ He appeared in court on March 9, 1998, and paid restitution on the checks, fines, and court costs.⁽⁵⁾

Still recovering from his year of unemployment, Applicant's accrued debts eventually became delinquent. That situation continued until 2001, when he stopped accruing new debt. He took control of his finances in order to prepare for his impending marriage. Around the time of his April 2002 marriage, however, he left one employer for another. The work there proved to be less than full-time and offered limited potential for permanency. He was soon offered a full time position, but it required him to move to another state. That summer, the couple prepared to move, and Applicant's wife turned in her notice to her employer in July. Once they were moved, Applicant began his current job in August 2002.

There are 11 debts at issue in the SOR, plus two entries that are duplicates of debts noted elsewhere. Applicant disputes one of the debts. Those debts are as follows:

SOR #	CREDITOR	STATUS	DOCUMENTATION
1.a	RADIOLOGY debt, for approximately \$220, in collection as of March 28, 2003,	Paid.	Answer to SOR, attachment 1. ⁽⁶⁾
1.b	UTILITY debt, for approximately \$311, in collection as of March 28, 2003.	Paid.	Answer to SOR, attachment 2. ⁽⁷⁾
1.c	HOSPITAL debt, for \$271, in collection as of March 28, 2003.	Paid; erroneously reported as in collection.	Answer to SOR, attachment 3. ⁽⁸⁾
1.d	DEPARTMENT STORE debt, for \$630, charged off as bad	Repayment plan initiated.	Answer to SOR,

	debt as of arch 28, 2003.		attachment 4. (9)
1.e	FINANCIAL INSTITUTION debt, for \$559, charged off as bad debt as of arch 28, 2003.	Repayment plan initiated.	Answer to SOR, attachment 5. (10)
1.f	BANK debt, for \$580, charged off as bad debt as of March 28, 2003.	Settlement agreement initiated.	Answer to SOR, attachment 6. (11)
1.g	FINANCE COMPANY debt, for \$1,675, charged off as bad debt as of arch 28, 2003.	Initial payment agreement instituted.	Answer to SOR, attachment 7. (12)
1.h	BANK debt, for \$736, in collection as of March 28, 2003.	Agreement to settle.	Answer to SOR, attachment 8. (13)
1.i	CAR LOAN debt, for \$9,779 after voluntary repossession, balance unpaid as of March 28, 2003.	Disputed.	None. (14)
1.j	COLLECTIONS FOR UTILITY debt, for \$311, unpaid as of March 28, 2003.	Duplicate entry of 1.b above.	Answer to SOR, attachment 1. (15)
1.k	DEPARTMENT STORE ACCOUNT settled for less than the full amount.	Paid; settled in full.	Answer to SOR, attachment 9. (16)
1.l	CREDIT COMPANY debt, for \$711, delinquent as of March 28, 2003.	Duplicate entry of 1.h above.	Answer to SOR, p. 3. (17)
1.m	RENTAL-based civil judgment, unpaid as of March 28, 2003.	Paid.	Answer to SOR, attachment 10. (18)

In sum, of the 13 entries above: two are duplicate entries, one entry is disputed, five debts have been paid or settled, and repayment or settlement plans for the remaining five debts have been initiated, although Applicant failed to provide proof that any payments have been made on these plans.

The final financial concern noted in the SOR is SOR subparagraph 1.n. That subparagraph alleges that Appellant has made little effort to address his debts, despite having a net remainder of \$737 per month after expenses. Applicant has responded by stating this sum, based on his August 2, 2002, financial statement, is misleading inasmuch as it represents the combined income of both himself and his wife for the three month period both were simultaneously employed. [\(19\)](#) Due to relocation expenses and his wife's resultant period of unemployment, their income became significantly reduced shortly after the August 2002 financial statement was completed. For similar reasons he dismisses the accuracy of the March 28, 2003, credit report as not taking into consideration the couple's financial ups and downs. Applicant stresses, however, that he began addressing his debts prior to the initiation of the security clearance process, citing to his initial efforts of paying off some of his debts prior to his April 2002 marriage. To fortify his position, Applicant notes the fact he has not had a negative bank account balance since 2001, and points to his improved credit reports from March 2003 and February 2004.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. 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. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²⁰⁾ The government has the burden of proving controverted facts.⁽²¹⁾ The burden of proof is something less than a preponderance of evidence.⁽²²⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.⁽²³⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽²⁴⁾

No one has a right to a security clearance⁽²⁵⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽²⁶⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽²⁷⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽²⁸⁾ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline F - Financial Considerations. *The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.*⁽²⁹⁾

Guideline E - Personal Conduct. *The Concern: Conduct involving questionable judgment, untrustworthiness,*

unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. [\(30\)](#)

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

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). For clarity, I will discuss each separately.

Financial Considerations

The Regulation sets out several potentially disqualifying and mitigating conditions under Guideline F:

Following a period of unemployment lasting over a year in 1995 and 1996, Applicant began accruing debts. This acquisition lasted until 2001, when he was able to start maintaining a positive bank balance. Consequently, because of these accrued debts, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.2 (*a history of not meeting financial obligations*) and FC DC E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*) apply.

I considered all the Financial Considerations Mitigating Conditions (FC MC). Applicant started addressing his acquired debts in 2001. To date, however, at least six debts remain unsatisfied, including one which he disputes. Under these facts, neither FC MC E2.A6.1.3.1 (*the behavior was not recent*) nor FC MC E2.A6.1.3.2 (*it was an isolated incident*) applies.

By around March 1996, Applicant resumed work after a period of unemployment that lasted over a year. During that time, debts began to mount. Once they had started, he never again had a positive bank balance until 2001. Therefore, it appears that his lengthy unemployment started the financial disorder that dogged him through 2001, when he returned to

maintaining a positive bank balance, if not, to a lesser degree, through the mid-2000s.⁽³¹⁾ Therefore, 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)*) applies to a limited extent.

At no point in the case file is there any evidence that Applicant received financial counseling. In the absence of appropriate and much needed professional guidance and fiscal education, 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.

Starting in 2001, Applicant began maintaining a positive balance in his bank account and he started to work on his financial condition. Although there was a financial struggle in 2002 with his marriage, his wife's temporary loss of employment, his period of self-employment, and their eventual relocation in July or August 2002, he ceased acquiring new debt and, apparently, satisfied some debts. The record clearly documents that he has satisfied 5 of the 11 debts cited in the SOR.

Remaining are five unpaid debts and the one which Applicant disputes. As of the time of his final submission, there is no evidence that any payments had been made on the remaining debts or any action taken regarding the car loan. He has demonstrated good faith inasmuch as he has initiated contact with five of the creditors, and either instituted repayment or settlement agreements, or received offers for settlement. There is no evidence, however, that any payments have been made on any of the agreements or settlements. The lack of proof of payments is problematic because the existence of an agreement or an offer to settle is of little significance if there is no proof the agreement was implemented with an acceptance payment. Therefore, Applicant has not established that FC MC E2.A6.1.3.6 (*[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies.

What is troublesome are his current finances. He has paid five of the undisputed debts and sought repayment plans on the remaining debts. He has made no proffer, however that the next, most important step has been made: namely, to start making payments on them. Still the amount at issue is a manageable sum, a little more than \$4,000. By itself, Applicant might therefore be given the benefit of the doubt, given his efforts in securing payment plans. It is the car loan debt, however, that is most troubling. Applicant states that he disputes the nearly \$10,000 allegedly owed, but has offered no proof that he has attempted to put the matter into formal dispute with any of the major credit reporting bureaus, requested an adjustment from the creditor based on the resale of his car after voluntary repossession, or otherwise sought to resolve the matter. Until he does so, that amount more than trebles the debt for which he has pursued settlement or repayment plans. Consequently, the cumulative amount of the debt is significant and the vast majority of it unaddressed. Therefore, I find that he has failed to mitigate financial concerns.

Personal Conduct

The Regulation sets out several potentially disqualifying and mitigating conditions under Guideline E:

The SOR alleges that Applicant wrote a number of checks in November 1997 that were subsequently returned for non-sufficient funds. He admits this fact, noting that the checks were returned because an out-of-town deposit had not cleared the bank before the checks were presented. The SOR further alleges that he was twice arrested for writing worthless checks. Applicant, however, has demonstrated that no arrests were made. Rather, summons' were issued on two of the checks, for which he went to court and paid restitution. Regardless, the fact remains that a number of worthless checks were written in November 1997 which eventually led to his being summoned to court on two of those checks. Consequently, Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.4 (*[p]ersonal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation, or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail*) applies. [\(32\)](#)

The majority of Personal Conduct Mitigating Conditions (PC MC) presuppose the falsification, omission, or withholding of information, and are, therefore, inapplicable. Here, Applicant prematurely wrote checks before a deposited out-of-town check had cleared. As a consequence, the checks were returned for non-sufficient funds. At the time, Applicant was one year out of school and out from his parents home, living independently. He was young and inexperienced with finance and banking.

Between December 1997 and January 1998, Applicant redeemed all but 2 of the 9 checks. The remaining two obligations were satisfied in court as a matter of public record in February 1998. When Applicant completed his September 2002 security clearance application, he properly noted the worthless check offenses on Question 26 ("Your Police Record - Other Offenses"). [\(33\)](#)

Because he satisfied the debts at issue and because he has been candid about an incident that is already a matter of public record, his youthful financial naïveté and unconcealed conduct should not be held against him nearly a decade later. PC MC E2.A5.1.3.5 (*[t]he individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*) applies.

I considered all the facts and circumstances surrounding this case, including the "whole person" concept. Applicant is a young, married man with an associate's degree. Not long after finishing college, he wrote a number of checks against an out-of-town deposit that had not yet cleared. Subsequently, the checks were properly redeemed. Given his age and inexperience, this may be viewed as a learning experience; indeed, there is no evidence that he has written any bad checks since. Therefore, I find that personal conduct concerns have been mitigated to the extent they arise from the 1997 returned checks.

Taken together, Applicant has mitigated concerns arising from an incident from his past that bears little weight on his character today. He has made commendable efforts toward his current debts. He has failed, however, to equally exert any demonstrable effort toward negotiating, settling, repaying, or even addressing his largest debt. Until all of his debts have at least been addressed and brought under control, security concerns linger, both as to his financial stability and his judgment. Clearance is denied.

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FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: For Applicant

Subparagraph 1.k: For Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m: For Applicant

Paragraph 2, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 2.a: For Applicant

DECISION

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

Arthur E. Marshall, Jr.

Administrative Judge

1. 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).
2. There was also a brief period in March and April 2000 where he was constructively unemployed, inasmuch as he resorted to self-employment while between employers.
3. Government Item 3 (Answers to Statement of Reasons, dated May 20, 2003) (hereinafter "Answer to SOR") at Attachment 20 (Letter from court's Worthless Check Program Coordinator, dated May 9, 2003, specifically noting Applicant only received criminal summons' and that no arrest(s) were made).
4. Similarly, there is no record of a January 1998 arrest. *See* Government Item 5, *supra*, footnote 3, at 3/7.
5. *Id.*, *see also* Government Item 3, *supra*, footnote 3, at Attachment 21 (Disposition sheets on the two case files, dated March 9, 1998).
6. Government Item 3, *supra*, footnote 3, at Attachment 1 (Radiological facility letter, dated May 6, 2003, indicating the charge of \$220 had been previously paid).
7. *Id.*, at Attachment 2 (Utility Commission letter, dated May 7, 2003, indicating payment of \$311.57 balance).
8. *Id.*, at Attachment 3 (Hospital's collection agency letter, dated May 8, 2003, indicated the account was reported to the credit bureau in error, that the account was closed as satisfied, and that it now reflects a zero balance).
9. *Id.*, at Attachment 4 (Statement, dated May 7, 2003, indicating balance of \$630.11 to support Applicant's contention that he has made contact with the store to initiate repayment at \$100 per month). No proof of payment(s) offered.
10. *Id.*, at Attachment 5 (Collection agency letter, dated May 6, 2003, with negotiated offer to settle the matter for two \$50 payments). No proof of payment(s) offered.

11. *Id.*, at Attachment 6 (Collection agency letter, dated May 9, 2003, confirming negotiated settlement of debt at a prescribed payment schedule). No proof of payment(s) offered.
12. *Id.*, at Attachment 7 (Collection agency letter, dated May 7, 2003, reflecting an initial payment agreement). No proof of payment(s) offered.
13. *Id.*, at Attachment 8 (Collection agency letter, dated May 9, 2003, indicating an agreement to settle the account). No proof of payment(s) offered.
14. The amount reflected is the amount that remained on the loan when Applicant returned the vehicle. He has yet to receive notice that the car was sold and the proceeds deducted from the balance. He disputes, therefore, that this is the true balance. He offered no documentary evidence indicating that he has formally disputed this with any of the major credit reporting bureaus or the creditor.
15. Government Item 3, *supra*, footnote 3, at Attachment 1.
16. *Id.* at Attachment 9 (Collection agency letter, dated May 7, 2003, noting the account was settled in full, that the credit bureau would be instructed to correct the misleading information, and extending an apology to Applicant).
17. *Id.* After several calls to various collection agencies, Applicant discovered this collection effort was duplicative of the one noted at SOR subparagraph 1.h. He was therefore advised to admit to 1.h and to deny this entry as duplicative. *See also* Answer to the SOR, p. 3.
18. Government Item 3, *supra*, footnote 3, at Attachment 10 (Letter from claim holder, dated May 7, 2003, noting that the judgment had been previously satisfied and stating the record was apparently never canceled).
19. By August 2002, the couple had been married about four months. During the period of May through July, both spouses were employed and drawing regular incomes. Prior to this period, Applicant was self-employed; after this period, his wife was unemployed due to the move out of state.
20. ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).
21. ISCR Case No. 97-0016 at 3 (App. Bd. Dec 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
22. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
23. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
24. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
25. *Egan*, 484 U.S. 518, at 531.
26. *Id.*
27. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
28. Executive Order 10865 § 7.
29. Directive, Enclosure 2, ¶ E2.A6.1.1
30. Directive, Enclosure 2, ¶ E2.A5.1.1.
31. Additionally, he had to resort to personally seeking work while self-employed for two months in 2002.
32. Department Counsel similarly urges application of PC DC E2.A5.1.2.5 (*[a] pattern of dishonesty or rule violations*,

including violation of any written or recorded agreement made between the individual and the agency). Here, however, the checks at issue were all processed around the same time, in November 1997. Since the incidents are isolated to this one brief period of time, and since there is no evidence such behavior was later repeated, there is no pattern, *per*

se, of dishonesty or rule violations.

33. He also noted it, in error, under Question 21 ("Your Police Record - Felony Offenses").