

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant's liabilities were discharged in bankruptcy in 1993. Because of medical issues and his wife's unemployment, his financial delinquencies eventually continued so that newer accounts became delinquent and charged off and sent to collection. He also fell behind in making certain federal and state income tax payments. Applicant's actions in obtaining credit counseling as well as his continuing efforts to resolve all past outstanding financial obligations, while constrained by available income, have successfully mitigated or overcome the government's case. The questions and doubts as to his security eligibility and suitability have been satisfied. Clearance is granted.

CASENO: 03-17884.h1

DATE: 09/30/2005

DATE: September 30, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-17884

DECISION OF CHIEF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Esquire, Department Counsel

FOR APPLICANT

D. Christopher Russell, Esquire

SYNOPSIS

Applicant's liabilities were discharged in bankruptcy in 1993. Because of medical issues and his wife's unemployment, his financial delinquencies eventually continued so that newer accounts became delinquent and charged off and sent to collection. He also fell behind in making certain federal and state income tax payments. Applicant's actions in obtaining credit counseling as well as his continuing efforts to resolve all past outstanding financial obligations, while constrained by available income, have successfully mitigated or overcome the government's case. The questions and doubts as to his security eligibility and suitability have been satisfied. Clearance is granted.

STATEMENT OF THE CASE

On April 14, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written response, dated May 14, 2004, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on February 17, 2005. A notice of hearing was issued on February 25, 2005, scheduling the hearing for March 15, 2005, and the hearing was held as scheduled. Five government exhibits, twenty-two Applicant exhibits, and the testimony of four Applicant witnesses (including the Applicant), were received. The record was kept open for 10 days to receive additional Applicant exhibits. An additional exhibit, with 14 attachments, was timely submitted and admitted without objection. The transcript (Tr.) was received on March 24, 2005.

FINDINGS OF FACT

Applicant has admitted nearly all of the factual allegations pertaining to financial matters under Guideline F (subparagraphs 1.a. through 1.d., and 1.f.), as well as the factual allegation pertaining to personal conduct under Guideline E (subparagraph 2.a.). Those 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 48-year-old employee of a defense contractor seeking to obtain a security clearance, the level of which has not been divulged. He had previously been granted a security clearance, but the date is not known.⁽¹⁾

Applicant's finances have generally been in disarray since about 1993. In November of that year, he and his wife filed for bankruptcy with liabilities totaling about \$10,000.00.⁽²⁾ His debts were discharged in April 1994.⁽³⁾ Despite that financial relief, he continued to experience financial difficulties throughout the ensuing years. His wife lost her job as a controller for a radio station in July 2000, with the accompanying loss of her \$12,000.00 annual income and major benefits;⁽⁴⁾ they experienced specified and unspecified family health issues during 2000-05;⁽⁵⁾ and encountered unexpected repair bills for their residence roof and pool.⁽⁶⁾ As their expenditures mounted, so did their delinquencies. He fell behind in making his federal income tax payments for the tax years 1993-95, and 1997,⁽⁷⁾ as well as one state income tax payment for an unspecified tax year.⁽⁸⁾

In an effort to repair their financial status, in early 2003, Applicant and his wife met with a credit counselor to seek assistance, but they were advised that a payment plan could not be made at that time.⁽⁹⁾ They were also counseled to continue keeping their new accounts current while commencing to pay off their delinquent debts.⁽¹⁰⁾ They chose not to file bankruptcy and, instead, enrolled in a three to four week credit counseling correspondence program.⁽¹¹⁾ When Applicant met with a special agent of the Defense Security Service (DSS) in June 2003, he indicated \$3,988.00 total net monthly income for himself and his wife;⁽¹²⁾ \$2,198.00 total net monthly expenses;⁽¹³⁾ \$125,371.14 total debt owed (including a \$99,951.14 mortgage)⁽¹⁴⁾ of which \$15,947.00 was delinquent debts;⁽¹⁵⁾ with a \$1.00 monthly net remainder available for discretionary purposes.⁽¹⁶⁾ At that time, Applicant had been making small payments to the Internal Revenue Service (IRS) for about 10 years.⁽¹⁷⁾

The SOR reflects six delinquent debts totaling approximately \$16,533.00, excluding the state income tax delinquency. Two of those debts (subparagraphs 1.a. and 1.e.) are, in fact, the same debt reflected separately as the original debt without interest and late charges (subparagraph 1.e.),⁽¹⁸⁾ and the collection agency version of the debt with the interest and late fees included (subparagraph 1.a.).⁽¹⁹⁾

SOR ¶	DEBT TYPE	DEBT AMOUNT	CURRENT STATUS
1.a./1.e.	credit card (used primarily for living expenses in 2000-01) ⁽²⁰⁾ charged off and referred to collection	\$4,700 increased to \$6,071 ⁽²¹⁾	Unpaid. ⁽²²⁾ Two other accounts take priority. ⁽²³⁾
1.b.	credit card (used primarily for living expenses) ⁽²⁴⁾	\$1,000.00 ⁽²⁵⁾	Unpaid. ⁽²⁶⁾ Second on the priority list of accounts to be paid. ⁽²⁷⁾
1.c.	hospital bill referred to collection ⁽²⁸⁾	\$192.00 ⁽²⁹⁾	Settled in full at reduced amount in arch 2005. ⁽³⁰⁾
1.d.	dental bill referred to collection ⁽³¹⁾	\$62.00 ⁽³²⁾	Settled in full at reduced amount in arch 2005. ⁽³³⁾
1.f.	IRS income tax deficiencies for tax years 1993-95, 97.	\$4,508.00 reduced to \$1,751.74 ⁽³⁴⁾	Amounts for 1993, ⁽³⁵⁾ 94 ⁽³⁶⁾ , and 95 ⁽³⁷⁾ paid off. Monthly \$100.00 payments currently being made for 1997. ⁽³⁸⁾
2.a.	state income tax deficiency ⁽³⁹⁾	\$224.27 ⁽⁴⁰⁾	Paid in full by payroll deductions. ⁽⁴¹⁾

Applicant's wife handles the family finances.⁽⁴²⁾ Through their continuing efforts with guidance obtained in their credit counseling course, Applicant and his wife set up a priority payment plan.⁽⁴³⁾ Her pay increases have furnished additional available income. Furthermore, in an effort to boost their earnings, in about January 2004, Applicant and his wife purchased a small growing business from friends.⁽⁴⁴⁾ They have avoided frivolous expenses,⁽⁴⁵⁾ withdrew funds from Applicant's retirement account,⁽⁴⁶⁾ and eventually managed to gain control over their finances. Their outstanding debt has been reduced from between \$15,000.00 and \$18,000.00 to between \$8,000.00 and \$10,000.00.⁽⁴⁷⁾ While there have been a number of financial delinquencies, including those identified in the SOR, Applicant has paid most of them off and is largely current with most of his accounts.

In February 2001, Applicant completed a Security Clearance Application (SF 86) and through simple oversight, failed to list his 1998 wage garnishment arising out of his state income tax deficiency.⁽⁴⁸⁾

Applicant has been employed as an engineer technician by a government contractor, or its successors on the same contract, since August 1995.⁽⁴⁹⁾ Applicant's father--a retired special agent with a federal agency--considers his son to be trustworthy and truthful.⁽⁵⁰⁾ The corporate security officer for Applicant's employer has known Applicant for about 10 years and considers him to be of good moral character.⁽⁵¹⁾ According to a longtime friend and former co-worker, he is trustworthy, on time, and dependable.

The government conceded the allegations under Guideline E (paragraph 2. and subparagraph 2.a.) as having been adequately explained and mitigated. [\(52\)](#)

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).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious 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. The Adjudicative Process factors which an administrative judge should consider are: (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) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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.

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

Financial Considerations - Guideline F: 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.

Personal Conduct - Guideline E: 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.

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

Since the protection of the national security is the paramount consideration, the final decision in each case must be arrived at by applying the standard the issuance of the clearance is "clearly consistent with the interests of national security," [\(53\)](#) or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded both standards are one and the same. 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, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

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 include, by necessity, consideration of the possible risk 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.

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of witness credibility, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

The government has established its case under Guideline F. Applicant's finances have generally been in disarray since about 1993, and despite having approximately \$10,000.00 in liabilities discharged in bankruptcy that year, his financial delinquencies eventually continued to mount. Accounts became delinquent and were charged off and sent to collection. In addition, he fell behind in making his federal income tax payments for the tax years 1993-95, and 1997, as well as one state income tax payment for an unspecified tax year. Applicant's actions in failing to satisfy his outstanding financial obligations gives rise to Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. (*history of not meeting financial obligations*); and FC DC E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*).

Applicant's financial situation and difficulties, as well as his subsequent efforts, also bring this matter within Financial Considerations Mitigating Condition (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)*), 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*), and FC MC E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). The loss of his wife's employment and the unexpected family medical emergencies were conditions over which he had no control for as long as they lasted and impacted the family finances. Moreover, Applicant's actions in educating himself on credit counseling matters through a correspondence course recommended to him by a credit counselor, his continuing efforts to resolve all past outstanding financial obligations, as well as current obligations, while constrained by available income, have not gone unnoticed. A payment plan has been established, and creditors have been paid according to his priority list. Applicant has, through evidence of extenuation and explanation, successfully mitigated or overcome the government's case. Accordingly, allegations 1.a. through 1.f. of the SOR are concluded in favor of Applicant.

The government has conceded its case under Guideline E. Thus, Applicant has, through evidence of extenuation and explanation, successfully mitigated or overcome the government's case. Accordingly, allegation 2.a. of the SOR is concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is eligible for access to classified information.

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: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Paragraph 2., Guideline E: CONCEDED/FOR THE APPLICANT

Subparagraph 2.a.: Conceded/For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Robert Robinson Gales

Chief Administrative Judge

1. Government Exhibit 1 (Security Clearance Application, dated February 12, 2001), at 7.

2. Government Exhibit 2 (Statement of Subject, dated June 3, 2003), at 5.

3. *Id.*

4. Tr. 24-25.
5. Tr. 26, 48-49.
6. Tr. 56.
7. Response to SOR, dated May 14, 2004, at 1.
8. *Id.*; Government Exhibit 4 (Notice of Levy on Salary or Wages, dated July 17, 1998), at 2.
9. Government Exhibit 3 (Answers to Interrogatories, dated December 22, 2003), at 9.
10. *Id.*; Tr. 77.
11. Tr. 29.
12. Personal Financial Statement, dated June 3, 2003, attached to Government Exhibit 2, *supra* note 2, at 5.
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*
18. Tr. 26.
19. Tr. 26.
20. Tr. 36-37.
21. Experian Credit Report, dated December 13, 2003, at 1, 4-5, attached to Government Exhibit 3, *supra* note 9.
22. Tr. 28.
23. Tr. 28.
24. Tr. 40.
25. Tr. 39.
26. Tr. 39.
27. Tr. 39; Applicant Exhibit W (Post-hearing submission, dated March 24, 2005), reflecting "old debt 2005 priority list," undated.
28. Tr. 45-47.
29. Experian Credit Report, *supra* note 21, at 3.
30. Applicant Exhibit W, *supra* note 27, reflecting zero balance on receipt from creditor collection agency, dated March 21, 2005.
31. Tr. 46-47.

32. Experian Credit Report, *supra* note 21, at 3.
33. Applicant Exhibit W, *supra* note 27, reflecting zero balance on receipt from creditor collection agency, dated March 21, 2005.
34. Response to SOR, *supra* note 7, at 1; Applicant Exhibit N (IRS Monthly Statement, dated February 16, 2005); Tr. 66.
35. Applicant Exhibit W, *supra* note 27, reflecting zero balance on IRS letter, dated March 21, 2005.
36. *Id.*, reflecting zero balance on IRS Installment Agreement Activity for June 4, 2001 to July 8, 2002, undated.
37. *Id.*, reflecting zero balance on IRS Installment Agreement Activity for June 5, 2000 to June 1, 2001, undated.
38. Applicant Exhibit N, *supra* note 34.
39. Tr. 78; Government Exhibit 4, *supra* note 8, at 2.
40. Response to SOR, *supra* note 7, at 1.
41. Government Exhibit 2, *supra* note 2, at 4.
 42. Tr. 98.
 43. Tr. 52.
 44. Tr. 106.
 45. Tr. 68.
 46. Tr. 52.
 47. Tr. 68.
48. Response to SOR, *supra* note 7, at 1; Tr. 99.
49. Government Exhibit 1, *supra* note 1, at 3.
 50. Tr. 86.
 51. 93-94.
 52. Tr. 109.
53. Exec. Or. 12,968, *Access to Classified Information*; as implemented by Department of Defense Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended by Change 3, dated November 8, 1995, and further modified by memorandum, dated November 10, 1998. However, the Directive, as amended by Change 4, dated April 20, 1999, uses both "clearly consistent with the national interest" (Sec. 2.3.; Sec.2.5.3.; Sec. 3.2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1.; Sec. E3.1.2.; Sec. E3.1.25.; Sec. E3.1.26.; and Sec. E3.1.27.), and "clearly consistent with the interests of national security" (Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (Enclosure 2, Sec. E2.2.2.)