

KEYWORD: Financial; Personal Conduct

DIGEST: Forty-year-old Applicant with a history of financial delinquencies commencing shortly after he left active duty, was unemployed for lengthy periods during 1995-2000, and 2001-02, in part, because he was a house-husband and unable to find a job due to his wife's military reassignments. Some of Applicant's accounts became delinquent and were charged off as bad debts or placed for collection. He eventually took efforts to resolve his debts, although somewhat belatedly, by seeking the assistance of an attorney and a debt solution company. Most of his debts were either resolved, disputed, or are paid under a debt consolidation plan. Questions and doubts as to his security eligibility and suitability have been satisfied. Clearance is granted.

CASENO: 05-05132.h1

DATE: 05/23/2006

DATE: May 23, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-05132

DECISION OF CHIEF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Forty-year-old Applicant with a history of financial delinquencies commencing shortly after he left active duty, was unemployed for lengthy periods during 1995-2000, and 2001-02, in part, because he was a house-husband and unable to find a job due to his wife's military reassignments. Some of Applicant's accounts became delinquent and were charged off as bad debts or placed for collection. He eventually took efforts to resolve his debts, although somewhat belatedly, by seeking the assistance of an attorney and a debt solution company. Most of his debts were either resolved, disputed, or are paid under a debt consolidation plan. Questions and doubts as to his security eligibility and suitability have been satisfied. Clearance is granted.

STATEMENT OF THE CASE

On March 11, 2004, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86).
[\(1\)](#) On November 17, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, 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. The SOR detailed reasons under Guideline F (financial matters) and Guideline E (personal conduct) 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 statement, dated December 5, 2005, Applicant responded to the SOR allegations and requested a hearing. Department Counsel indicated the government was ready to proceed on January 24, 2006, and the case was assigned to me on March 7, 2006. A notice of hearing was issued that same day, and the hearing was held, as scheduled, on March 29, 2006. During the hearing, nine Government exhibits, six Applicant exhibits, and Applicant's testimony

were received. The transcript (Tr.) was received on April 19, 2006. At Applicant's request, the record was kept open until April 5, 2006, to enable him to supplement the record. Applicant timely submitted two additional exhibits. They were admitted without objection.

FINDINGS OF FACT

Applicant admitted all of the factual allegations pertaining to financial matters under Guideline F (subparagraphs 1.a. through 1.h.). Those admissions are incorporated herein as findings of fact. He failed to address the allegation pertaining to personal conduct under Guideline E (subparagraph 2.a.), and that failure will be construed as a denial. 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 40-year-old employee of a defense contractor and he is seeking to obtain a security clearance, the level of which has not been divulged. He has been employed by the same government contractor since January 2004, and currently serves as a senior purchasing manager,⁽²⁾ and as such is responsible for thousands of dollars of procurement items.⁽³⁾ Supervisors, co-workers, and friends support his application and have characterized him in glowing terms. He is "dependable, reliable, hard-working, conscientious, and honest."⁽⁴⁾ Applicant served in an enlisted status, initially inactive with the U.S. Army Reserve (1984-86) and subsequently on active duty with the U.S. Army (1986-95).⁽⁵⁾ It appears he may have also been in an inactive reserve status for some unspecified period subsequent to 1995.⁽⁶⁾ He was married in May 1992, had three children (born in 1995, 1997, and 2000, respectively),⁽⁷⁾ and expects to be divorced shortly.⁽⁸⁾ His soon-to-be-ex-wife--an officer serving on active duty with the U.S. Army⁽⁹⁾--now has physical custody of their children.⁽¹⁰⁾

Applicant's finances were apparently unremarkable until shortly after he left active duty.⁽¹¹⁾ He was unemployed from July 1995 until January 1998,⁽¹²⁾ from September 1998 until March 2000,⁽¹³⁾ and again from October 2001 until January 2002,⁽¹⁴⁾ in part, because he was a house-husband and unable to find a job due to his wife's reassignments.⁽¹⁵⁾ On some occasions the family relocated together, and on other occasions she relocated by herself. Shortly after September 11, 2001, while his wife was preparing for her new assignment, Applicant also took steps for possible deployment because his old reserve unit was apparently in the early stages of activation, and he wanted to go with them.⁽¹⁶⁾ The family moved together to the continental U.S. in October 2001,⁽¹⁷⁾ and in December 2002, Applicant's wife accepted an unaccompanied school reassignment in another state.⁽¹⁸⁾ From that assignment, in October 2003, she was transferred overseas, unaccompanied.⁽¹⁹⁾ In October or November 2004, she took a two year overseas assignment, this time accompanied by their children.⁽²⁰⁾ Whenever they relocated together, they never advised their creditors of their new address.⁽²¹⁾ As a result, some of Applicant's accounts became delinquent and were charged off as bad debts or placed for collection. Although the SOR identified eight delinquent accounts, in May 2004, he apparently had an unspecified number of other debts.⁽²²⁾ The eight accounts in the SOR, and their current status, are described below:

SOR ¶	TYPE DEBT	AMOUNT	CURRENT STATUS
¶1.a.	orthodontic contract unilaterally terminated by Applicant before relocating (23) - placed for collection in April 2002 (24)	\$2,204, (25) down from \$6,500 (26)	Applicant disputed balance through his attorney claiming he should not be responsible for balance if no further work was performed. (27) Debt remains unpaid. (28)
¶1.b.	individual credit card used for living expenses, opened in May 1994 (29) - charged off and placed for collection in April 2004 (30)	\$4,971, (31) down from \$5,345 (32)	Monthly payments of \$116 under a plan in effect for 6 months ceased in July 2004. (33) Unpaid balance scheduled for debt consolidation. (34)
¶1.c.	satellite service account - placed for collection in December 2004 (35)	\$95 (36)	Paid off sometime before September 2005. (37)
¶1.d.	wife's credit card, used by her, (38) with Applicant as authorized user, (39) but never used by him (40) - charged off	\$287 (41)	Applicant contends this debt belongs to his soon-to-be ex-wife, but he will pay it if he is responsible for it. (42)
¶1.e.	automobile loan (43) - considered 30 days past due as of August 2005 (44)	\$235 (45)	Applicant was paying dealer who would forward payments to lender. (46) Automobile vandalized, insurance company deemed it "totaled," and paid off loan. (47)
¶1.f.	rental home mortgage in Applicant's name only (48) - trashed by tenants (49)	\$81,400 original loan borrowed in arch 2003 (50)	Applicant's wife was to make payments. Upon learning it was delinquent in February or March 2004, he was unable to make lump sum payments of over \$3,000 per month to settle delinquency while maintaining two separate family homes. Foreclosure option chosen. (51) Foreclosed in 2004. (52) Zero balance. (53)
¶1.g.	allegation withdrawn (54)		
¶1.h.	student loan authorized, (55) but never received by Applicant (56) - placed for collection in January 2003 (57)	\$459 (58)	Applicant disputed balance through his attorney claiming he should not be responsible for balance since he never received the check, but will consider paying it off through debt consolidation. (59)

Applicant's intentions are to pay off his remaining delinquent debts provided he is deemed responsible for them and they are not the responsibility of his soon-to-be ex-wife. In addition to the attorney, he also engaged the professional services of a debt solution company in an effort to settle his outstanding debts, and currently pays the company \$231 per month to do so. (60) According to the Consent Decree of Dissolution of Marriage, (61) Applicant and his soon-to-be ex-wife are to be responsible for their own debts and will hold each other harmless for any losses or payments incurred on behalf of the other. (62) In October 2005, Applicant's monthly net remainder for discretionary spending after paying monthly payments was approximately \$973. (63) He will not have to pay child support for the foreseeable future, (64) and that reduces his monthly expenditures and raises the amount of money he will now have available to resolve his delinquent

debts.

As noted above, on March 11, 2004, Applicant completed his SF 86. In it there was a question of particular significance pertaining to financial matters. Question 38 asked: "In the last 7 years, have you ever been over 180 days delinquent on any debt(s)?"⁽⁶⁵⁾ He responded "no," and certified that his response was true, complete, and accurate.⁽⁶⁶⁾ It was not. In his affidavit of October 2004, Applicant acknowledged that he answered the question as he had because he was confused as to how to answer because he did not know what accounts would appear on his credit report.⁽⁶⁷⁾ He later further refined his explanation and claimed at the time he completed the SF 86 he did not have a copy of a credit report and was unaware that his debts were over 180 days delinquent.⁽⁶⁸⁾ He denied any intent to intentionally mislead anyone."⁽⁶⁹⁾

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 set forth in Section E.2.2., 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 that the issuance of the clearance is "clearly consistent with the interests of national security" or "clearly consistent with the national interest."⁽⁷⁰⁾ For the purposes herein, despite the different language in each, I have concluded all of the standards are 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 that are 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, that 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 that 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 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.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of 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 were generally thrown into disorder after he left active duty in 1995 and he found himself unemployed for lengthy periods of time while serving as a house-husband. Although his unemployment was periodically interrupted by brief periods of employment, he did not manage to secure a permanent employment status until January 2002. For whatever reason, although his wife was fully employed throughout this period as an officer on active duty, family debts did not get paid and were eventually placed for collection. Matters deteriorated even further when she decided to take some unaccompanied tours, leaving Applicant and their children behind while incurring the costs of an additional residence. Other delinquencies followed, and by May 2004, there were delinquent accounts in addition to the eight accounts referred to in the SOR. Applicant's actions in failing to satisfy his outstanding financial obligations in a timely manner give 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*).

With the exception of some of his debts, Applicant's financial difficulties remain largely unexplained. Aside from failing to notify his creditors when he moved to a new location, there is little evidence to explain why these eight accounts became delinquent. His wife remained gainfully employed throughout the entire period, and he had periods of employment, however brief. Nevertheless, Applicant was unemployed for lengthy periods over a seven year period, and his wife's assignments created the two-household expenses. These circumstances raise 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)*).

His efforts to resolve his debts, although somewhat belatedly, by seeking the assistance of an attorney and a debt solution company raise 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*). Of the eight alleged debts, three were resolved before the issuance of the SOR (1.c., 1.e., and 1.f. of the SOR), one is his wife's debt (1.d.), one was withdrawn (1.g.), one is being paid under a debt consolidation plan (1.b.), and two are being legitimately disputed (1.a. and 1.h.).

Because of his pending divorce, the circumstances surrounding his conduct (being a house-husband, maintaining separate households, and being ignorant of a spouse's debt payments, or non-payments, as appropriate) are unlikely to

continue or recur. He now has a permanent position, and has reached the point financially where he has a monthly remainder sufficient to make discretionary payments for his remaining overdue debts while keeping current on his routine household expenses. Applicant has, through evidence of extenuation and explanation, successfully mitigated or overcome the government's case. Accordingly, allegations 1.a. through 1.h. of the SOR are concluded in favor of Applicant.

The government has established its case under Guideline E. In March 2004, Applicant completed an SF 86, and incorrectly answered a question regarding his financial matters. His response to the inquiry regarding accounts which might have been 180 days delinquent during the past seven years was "no," when it should have been "yes," because he did have accounts which were covered by the question. He denied he had deliberately failed to disclose the truth and contended he was confused as to how to answer the question because he did not know what accounts would appear on his credit report. Also, he did not have a copy of a credit report and was thus unaware if some of his debts should have been listed. Regarding the foreclosure of his rental property, Applicant was unaware his wife had neglected to make the mortgage payments until it was brought to his attention in February or March 2004. There is no evidence to support the government's contention that when Applicant completed his SF 86 he knew the mortgage was 180 days delinquent.

I have reviewed the four credit reports in evidence, and even with a guide to assist in deciphering the entries, found them to be garbled and internally inconsistent, with minimum indicia of reliability, and, thus, not worthy of significant consideration. They are inaccurate, unreliable, and untrustworthy computer-generated nonsense. The information in those reports would not have furnished Applicant with sufficient information to alter his response.

Examination of his actions reveals that Applicant's response was careless, but not deliberate and did not involve questionable judgment, untrustworthiness, unreliability, or lack of candor. It does not fall within any Personal Conduct Disqualifying Condition (PC DC), especially PC DC E2.A5.1.2.2. (*the deliberate omission, concealment, or falsification of relevant and material 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*). Considering the "whole-person concept," Applicant's reputation for honesty, the circumstances surrounding the SF 86 entry, Applicant's careless action, and the unlikelihood of continuation or recurrence, 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 suitable for access to classified information.

FORMAL FINDINGS

Formal Findings For or Against Applicant on the allegations set forth in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

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.: Withdrawn/For Applicant

Subparagraph 1.h.: For Applicant

Paragraph 2., Guideline E: FOR APPLICANT

Subparagraph 2.a.: For 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 March 11, 2004).
2. *Id.* at 2.
3. Applicant Exhibit A (letter from company officer, dated March 24, 2006).
4. Applicant Exhibit D (letter from company group manager, dated March 21, 2006).
5. Government Exhibit 1, *supra* note 1, at 7.
6. Tr. at 26. Applicant referred to his "IAR" status at about the time of the terrorist attacks on September 11, 2001.
7. Applicant Exhibit 8 (state court Consent Decree of Dissolution of Marriage, signed by Applicant March 15, 2006) at 2.
8. *Id.* at 1-11, and Stipulation to File a Consent Decree of Dissolution of Marriage, signed by Applicant March 15, 2006) at 1-5.
9. Tr. at 40.
10. *Id.* at 64-65.
11. Government Exhibit 4 (Affidavit, dated October 20, 2004) at 2-3.
12. Government Exhibit 1, *supra* note 1, at 3.
13. *Id.*
14. *Id.*
15. Government Exhibit 4, *supra* note 11, at 3, 7.
16. Tr. at 26. In an effort to become "deployable," Applicant had his orthodontist remove his braces.
17. Government Exhibit 1, *supra* note 1, at 3.
18. Tr. at 36.
19. *Id.* at 36, 38.
20. *Id.* at 38-39, 64-65; Applicant Exhibit 7 (Applicant message to Department Counsel, dated April 4, 2006).
21. Government Exhibit 4, *supra* note 11, at 3.
22. Government Exhibit 3 (Combined Experian/Equifax Credit Report, dated May 13, 2004).
23. Tr. at 26-27.
24. Government Exhibit 3, *supra* note 22, at 11.

25. *Id.*; Government Exhibit 8 (Equifax Credit Report, dated January 4, 2006) at 1; Response to SOR, dated December 5, 2005.
26. Tr. at 27. The original contract cost was approximately \$6,500, not \$65 as incorrectly reflected in the transcript.
27. *Id.* at 27, 29.
28. Response to SOR, *supra* note 25; Government Exhibit 8, *supra* note 25, at 1.
29. Government Exhibit 3, *supra* note 22, at 5; Government Exhibit 4, *supra* note 11, at 2.
30. *Id.* Government Exhibit 3, at 9. This account appears as four separate entries on the same page of the Credit Report.
31. Response to SOR, *supra* note 25.
32. Government Exhibit 8, *supra* note 25, at 2.
33. Tr. at 31.
34. *Id.*
35. Government Exhibit 8, *supra* note 25, at 1.
36. *Id.*
37. *Id.*; Tr. at 32; Government Exhibit 6 (Responses to Interrogatories, dated October 10, 2005) at 10.
38. Government Exhibit 4, *supra* note 11, at 3.
39. There is a dispute as to the nature of the account. According to Government Exhibit 8, *supra* note 25, at 1, and Government Exhibit 7 (Equifax Credit Report, dated August 23, 2005) at 1, the account was in another name with Applicant as an authorized user. However, according to Government Exhibit 3, *supra* note 22, at 7, the account is a joint account. *See* Government Exhibit 9 (Equifax Acrofile Plus Training Brochure, dated March 2002) at 1.
40. Tr. at 33.
41. Government Exhibit 8, *supra* note 25, at 1.
42. Tr. at 33; Response to SOR, *supra* note 25; Government Exhibit 6, *supra* note 37, at 10.
43. Tr. at 41.
44. Response to SOR, *supra* note 25.
45. Government Exhibit 7, *supra* note 39, at 2.
46. Response to SOR, *supra* note 25.
47. Tr. at 41-42.
48. Government Exhibit 4, *supra* note 11, at 5; *Id.* at 45-46.
49. Tr. at 46.
50. Government Exhibit 4, *supra* note 11, at 5.

51. *Id.*
52. Government Exhibit 8, *supra* note 25, at 2 (foreclosure process started December 2003).
53. Tr. at 46.
54. *Id.* at 49.
55. *Id.* at 58.
56. *Id.*
57. Government Exhibit 3, *supra* note 22, at 11.
58. *Id.*
59. Tr. at 58-59.
60. *Id.* at 30.
61. Applicant Exhibit 7, *supra* note 7.
62. *Id.* at 9.
63. Government Exhibit 6, *supra* note 37, at 5 (Personal Financial Statement, dated October 6, 2005).
64. Applicant Exhibit 7, *supra* note 7, at 5.
65. Government Exhibit 1, *supra* note 1, at 10.
66. *Id.*
67. Government Exhibit 4, *supra* note 11, at 1-2.
68. Tr. at 55-56.
69. Government Exhibit 4, *supra* note 11, at 2.
70. The Directive, as amended by Change 4, dated April 20, 1999, uses "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.), "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.).