

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant whose initial financial delinquencies were discharged in bankruptcy in June 1998, permitted his finances to deteriorate to the point where his accounts became delinquent and either sent to collection or charged off. With mounting financial pressures, he did nothing with 95% of his accounts until the trustworthiness review commenced. In 2003, in reply to a question regarding delinquent accounts, he lied and denied having any accounts 180 days delinquent. Questions and doubts remain as to his eligibility for occupying an Information Systems Position designated ADP-II. Eligibility is denied.

CASENO: 03-25453.h1

DATE: 06/08/2005

DATE: June 8, 2005

In re:

SSN: -----

Applicant for Trustworthiness Determination

ADP Case No. 03-25453

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant whose initial financial delinquencies were discharged in bankruptcy in June 1998, permitted his finances to deteriorate to the point where his accounts became delinquent and either sent to collection or charged off. With mounting financial pressures, he did nothing with 95% of his accounts until the trustworthiness review commenced. In 2003, in reply to a question regarding delinquent accounts, he lied and denied having any accounts 180 days delinquent. Questions and doubts remain as to his eligibility for occupying an Information Systems Position designated ADP-II. Eligibility is denied.

STATEMENT OF THE CASE

On June 10, 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; Department of Defense Regulation 5200.2-R., *Personnel Security Program*, dated January 1987, as amended and modified (the Regulation); Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended and modified (Directive); and a memorandum from the Deputy Director for Personnel Security, Office of the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (C³I), dated August 4, 1999, 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 Applicant's eligibility for occupying an Information Systems Position designated ADP-II to support a contract with the Department of Defense, and recommended referral to an Administrative Judge to determine whether such eligibility should be granted, continued, denied, or revoked.

In a sworn written answer, dated July 19, 2004, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on October 15, 2004. A notice of hearing was issued that same date

scheduling the hearing for November 17, 2004. The hearing was held as scheduled. During the hearing, 8 government exhibits, and 13 Applicant exhibits, and the testimony of one Applicant witness (the Applicant), were received. The transcript (Tr.) was received on November 29, 2004.

RULINGS ON PROCEDURE

At the commencement of the hearing, the Department Counsel conceded Applicant had mitigated the following factual allegations pertaining to financial matters under Guideline F in the SOR: subparagraphs 1.d., 1.h., 1.i., 1.k., 1.l., 1.n., 1.o., 1.p., and 1.u.; as well as the following factual allegations pertaining to personal conduct under Guideline E in the SOR: subparagraph 2.a. as it referred to subparagraphs 1.a., 1.b., 1.c., 1.d., 1.i., 1.j., 1.k., 1.l., 1.m., 1.n., 1.p., 1.s., 1.t., and 1.w., and urged me to find those allegations in favor of the Applicant.⁽¹⁾ In light of that concession, I ruled the allegations had been successfully mitigated and advised Applicant he was under no further obligation to address them.⁽²⁾

FINDINGS OF FACT

Applicant has admitted several of the factual allegations pertaining to financial matters under Guideline F (subparagraphs 1.e., 1.g., 1.i., 1.j., 1.q., 1.r., 1.v., and 1.w.). Those admissions are incorporated herein as findings of fact. He denied the remaining factual allegations under Guideline F (subparagraphs 1.a. through 1.d., 1.f., 1.h., 1.k. through 1.p., 1.s. through 1.u., and 1.x.), as well as personal conduct under Guideline E (subparagraph 2.a.).

After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is a 39-year-old employee of a defense contractor seeking to be granted eligibility for occupying an Information Systems Position designated ADP-II.

Applicant's finances were generally in good order until the mid-1990s.⁽³⁾ While attending college he had a series of lower-paying jobs that provided income sufficient to live on but nothing to save.⁽⁴⁾ He and the woman he later married
⁽⁵⁾ ⁽⁶⁾ ⁽⁷⁾

in January 1992 moved to another state in early 1991, about the time he accepted a job as a driver. Shortly after their relocation, Applicant's wife was arrested for previous welfare fraud and extradited back to the state where they originally resided.⁽⁸⁾ He had to raise \$3,000.00 to bail her out of jail.⁽⁹⁾ The family relocated back to where they left, without jobs,⁽¹⁰⁾ and money had to be shifted around from intended creditors.⁽¹¹⁾ Accounts became delinquent.⁽¹²⁾ Applicant obtained a job about four weeks after relocating,⁽¹³⁾ and his wife had one waiting for her upon her release from jail.⁽¹⁴⁾ After working his way through several lower-paying jobs such as truck driver, warehouse worker, pizza deliveryman, etc.,⁽¹⁵⁾ as well as several periods of unemployment,⁽¹⁶⁾ he decided to return to school to earn his degree and qualify for a higher-paying job⁽¹⁷⁾ with a career and a future.⁽¹⁸⁾

Still burdened with financial delinquencies, Applicant and his wife initially sought the assistance of a credit counseling service.⁽¹⁹⁾ When they realized they were not in a position to successfully address those delinquencies, they sought the assistance of an attorney.⁽²⁰⁾ They filed a voluntary petition for bankruptcy under Chapter 13 in June 1996,⁽²¹⁾ listing assets of \$21,675.00 and liabilities of \$68,502.00.⁽²²⁾ Because of difficulties with one creditor who demanded a much higher monthly payment than Applicant could afford, the bankruptcy action was dismissed in January 1997.⁽²³⁾ Two months later, in March 1997, they filed another voluntary petition for bankruptcy under Chapter 13,⁽²⁴⁾ listing assets of \$23,225.00 and liabilities of \$46,754.00.⁽²⁵⁾ That bankruptcy action was, likewise, dismissed in May 1998.⁽²⁶⁾

In March 1998, Applicant filed a voluntary petition under Chapter 7,⁽²⁷⁾ listing assets of \$12,700.00 and liabilities of \$33,320.25.⁽²⁸⁾ There were approximately 80 creditors identified as holding unsecured nonpriority claims,⁽²⁹⁾ involving charge accounts, medical service, magazine subscriptions, fitness center expenses, video rentals, automobiles, rent, loans, food, photographs, beauty supplies, utility service, and a number of bounced checks. At the time of the petition, Applicant's wife was the sole wage earner and Applicant was a full-time student.⁽³⁰⁾ They were released from all dischargeable debts in June 1998.⁽³¹⁾ Nevertheless, after the bankruptcy discharge, his financial situation was "shaky for a time."⁽³²⁾

Since Applicant's initial financial burden was resolved in bankruptcy, he has had a succession of better-paying positions.⁽³³⁾ His annual salary in 1999 was approximately \$30,000.00,⁽³⁴⁾ and it is currently \$82,000.00.⁽³⁵⁾ Unfortunately, despite the discharge of his debts in 1998, and the substantial increase in salary, Applicant continues to have significant financial delinquencies which he attributes to one of his employers going out of business unexpectedly, medical, dental, and orthodontic bills, multiple automobile purchases, and a home purchase, as well as "not being responsible."⁽³⁶⁾ He encountered another automobile repossession shortly after he purchased a new residence in 2002-03.⁽³⁷⁾

In April 2003, Applicant began to reassess his financial situation and vowed to repair his credit.⁽³⁸⁾ He claimed it was his goal for 2003 to pay off all of his bills, including his back taxes to the Internal Revenue Service and two personal loans.⁽³⁹⁾ At that time he had a total net monthly income of \$5,740.54 (including his wife's salary), monthly expenses of \$2,150.00, monthly household debt payments of \$3,181.00, and a monthly net remainder available for discretionary spending of \$409.54.⁽⁴⁰⁾ In November 2004, Applicant had revolving accounts with five creditors totaling \$25,243.80
⁽⁴¹⁾

and eight collection accounts totaling \$1,157.00.

The SOR originally identified 21 delinquent accounts which had either been sent to collection or charged off long after other delinquent accounts had been discharged in bankruptcy. However, in light of the concessions made by the Department Counsel regarding a number of those accounts, the government now contends there are only 12 delinquent accounts totaling approximately \$25,310.00. Those accounts, and their current status, are described below:

SOR	TYPE DEBT	AMOUNT	CURRENT STATUS
¶1.a.	video rental (company no longer open) - placed for collection ⁽⁴²⁾	\$156.00 ⁽⁴³⁾	Unpaid. ⁽⁴⁴⁾ Account disputed by Applicant. ⁽⁴⁵⁾
¶1.b.	oral surgeon - placed for collection ⁽⁴⁶⁾	\$198.00 ⁽⁴⁷⁾	Unpaid. ⁽⁴⁸⁾ Amount disputed as it exceeded the initial estimate and the amount paid by insurance. ⁽⁴⁹⁾ Applicant offered to settle account for \$150.00. ⁽⁵⁰⁾
¶1.c.	family medical practice - placed for collection ⁽⁵¹⁾	\$170.00 ⁽⁵²⁾	Unpaid. ⁽⁵³⁾ Applicant offered to pay entire balance if future interest is suspended. ⁽⁵⁴⁾
¶1.e.	medical center emergency room - placed for collection ⁽⁵⁵⁾	\$100.00 ⁽⁵⁶⁾	Unpaid. ⁽⁵⁷⁾
¶1.f.	waste disposal - placed for collection ⁽⁵⁸⁾	\$113.00 ⁽⁵⁹⁾	Unpaid. ⁽⁶⁰⁾ Account disputed by Applicant who claimed he switched companies and account should have been closed. ⁽⁶¹⁾
¶1.g.	buffet bounced check- placed for collection ⁽⁶²⁾	\$208.00 ⁽⁶³⁾	Unpaid. ⁽⁶⁴⁾ Applicant offered to pay entire balance in installments if interest is suspended. ⁽⁶⁵⁾
¶1.j.	medical center - placed for collection ⁽⁶⁶⁾	\$175.00 ⁽⁶⁷⁾	Unpaid. ⁽⁶⁸⁾
¶1.m.	check service - placed for collection ⁽⁶⁹⁾	\$37.00 ⁽⁷⁰⁾	Unpaid. ⁽⁷¹⁾ Account disputed by Applicant. ⁽⁷²⁾
¶1.q.	bank credit card - charged off ⁽⁷³⁾	\$1,264.00 ⁽⁷⁴⁾	Unpaid. ⁽⁷⁵⁾
¶1.r.	deficiency on automobile loan for repossessed vehicle - charged off ⁽⁷⁶⁾	\$6,431.00 ⁽⁷⁷⁾	Unpaid. ⁽⁷⁸⁾
¶1.s.	federal student loan - placed for collection ⁽⁷⁹⁾	\$8,662.00 ⁽⁸⁰⁾	Unpaid. On July 1, 2004, Applicant filed an application for forbearance for up to 12 months based on hardship. ⁽⁸¹⁾ No confirmation received as of hearing.
¶1.t.	federal student loan - placed for collection ⁽⁸²⁾	\$7,796.00 ⁽⁸³⁾	Unpaid. On July 1, 2004, Applicant filed an application for forbearance for up to 12 months based on hardship. ⁽⁸⁴⁾ No confirmation received as of hearing.

Although he had planned to pay off all of his creditors in 2003, it was not until mid-October 2004 that Applicant first contacted a consumer counseling service provided by his employer to formulate a reasonable budget, a payment plan,

and a projected payment plan.⁽⁸⁵⁾ As of the date of the hearing, Applicant had still not completed all of the necessary paperwork.⁽⁸⁶⁾ He admitted that he did nothing with 95% of his accounts until the trustworthiness review commenced.⁽⁸⁷⁾ He also observed that many of the delinquent accounts "dropped off" his credit report after seven years of non-payment.⁽⁸⁸⁾ On November 1, 2004 - four days after receiving the notice of hearing in this case⁽⁸⁹⁾ - Applicant sent letters to each of the creditors or respective collection agencies asking either for account information or to arrange payment plans.⁽⁹⁰⁾ One week before the hearing he affiliated with a utility provider to market satellite systems and hopefully generate some extra money.⁽⁹¹⁾ He has also been trying to sell cartoons, articles, and screen plays over the past few years, but so far, all of his submissions have been rejected.⁽⁹²⁾

At the hearing, Applicant presented a computer-generated list of his 16 collection accounts and 5 revolving accounts along with a payment schedule for those accounts.⁽⁹³⁾ Of the 16 collection accounts, 8 have purportedly been paid off or otherwise satisfied, and they are of no current security interest. The remaining 8 collection accounts are identified in the SOR. Likewise, 4 of the 5 revolving accounts are of current security interest and are identified in the SOR (the remaining account was mitigated to the satisfaction of the government). Under Applicant's proposed payment schedule, he would give priority to accounts that have not gone to judgment or for which there are no lawsuits pending.⁽⁹⁴⁾ In November 2004, he was scheduled to make payments to 6 creditors totaling \$432.67.⁽⁹⁵⁾ In December 2004, he was to make payments to 7 creditors totaling \$582.67.⁽⁹⁶⁾ Despite his testimony that his goal was to pay off all his delinquent accounts within six months,⁽⁹⁷⁾ his computer-generated submission indicates scheduled payments running through February 2006 - clearly longer than six months.

Applicant has obviously paid off several of his other creditors, especially those creditors identified in the SOR for which the allegations have been mitigated. As he has been able to pay off one debt he has focused on paying off the next debt in line.⁽⁹⁸⁾

In February 2003, Applicant completed his SF 85P, and in response to a finance-related inquiry: ("*Are you now over 180 days delinquent on any loan or financial obligation?*"),⁽⁹⁹⁾ responded "no."⁽¹⁰⁰⁾ He certified his response was true, complete, and accurate. It was obviously false. Applicant denied intending to falsify his response and explained that when he had financed his new residence in November 2002, there were additional settlement charges for 12 different items, including 10 creditors, totaling \$924.00.⁽¹⁰¹⁾ He claims he was told all his delinquent accounts which were 180 days past due were to be paid before he could close on the house, and assumed they were all included.⁽¹⁰²⁾ Accordingly, when he answered the question, he claimed he was of the opinion there were no such remaining delinquent accounts.⁽¹⁰³⁾ He did not check any credit report to insure accuracy, but has acknowledged, in retrospect, that there were still a number of accounts over 180 days delinquent.⁽¹⁰⁴⁾

Applicant's performance assessments have shown a performance rated between "meets and exceeds" and "exemplary."⁽¹⁰⁵⁾ His managers, supervisors, and colleagues strongly support his application.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability (as well as trustworthiness eligibility). 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 or eligibility for occupying an Information Systems Position (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information or eligibility for occupying an Information Systems Position (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:

Guideline F - Financial Considerations: 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 or trustworthiness concern and may be disqualifying, as well as those which could mitigate security or trustworthiness concerns, pertaining to the adjudicative guidelines are set forth and discussed in the Conclusions section below.

Since the protection of the national security (and sensitive information) 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,"⁽¹⁰⁶⁾ 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 or eligibility for occupying an Information Systems Position. 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 or eligibility for occupying an Information Systems Position.

A person who seeks access to classified or sensitive 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 or eligibility for occupying an Information Systems Position. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified or sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive 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 (and by inference, trustworthiness 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 and trustworthiness 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 the 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. From the mid-1990s through the present, Applicant's finances have been in total disarray. The expenses of relocation, the expenses associated with his wife's arrest for welfare fraud, brief periods of unemployment and under employment, and the results of living in a one-wage earner family while he attended school, as well as the normal expenses of life, resulted in a situation where he was no longer able to remain current with his bills and they became delinquent. In March 1998, Applicant had liabilities of \$33,320.25 and assets of only \$12,700.00. He had approximately 80 creditors holding unsecured nonpriority claims, involving charge accounts, medical service, magazine subscriptions, fitness center expenses, video rentals, automobiles, rent, loans, food, photographs, beauty supplies, utility service, and a number of bounced checks. But in June 1998, he was released from all dischargeable debts and given new opportunities to start over again unburdened by financial delinquencies.

Unfortunately, Applicant failed to take advantage of his new opportunities and his financial situation soon spiraled downward once again. His increased income was accompanied by greater expenses and his "not being responsible." He chose to ignore most of his debts until at least 2003, and slowly came to the realization that his financial situation needed to be repaired. Although it was his stated goal to pay off all of his bills in 2003, he failed to do so. In mid-2004, Applicant finally took the first steps towards addressing some of his delinquent accounts, but, for the most part, was largely unmotivated until he received the SOR in this case. As noted above, he did nothing with 95% of his accounts until the trustworthiness review commenced. Applicant's actions in failing to satisfy most of his debts until he received the SOR in 2004, or his remaining longstanding outstanding financial obligations thereafter, 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*).

In considering the evidence, I do not believe that Applicant's financial situation and difficulties 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*). As noted above, after he was released from all dischargeable debts in June 1998, those conditions referred to in FC MC E2.A6.1.3.3. which might have applied to him before that time no longer applied. Likewise, the significance of his actions in finally seeking counseling from a consumer counseling service in mid-October 2004 is minimized because, as of the date of the hearing in mid-November 2004, Applicant had still not completed all the necessary paperwork. Furthermore, there are no clear indications that the problem is being resolved or is under control. Instead, there is substantial evidence Applicant's motivation is induced by this security clearance review, his future actions in addressing his financial delinquencies are

speculative at best, and there has been no demonstrative change in his financial habits. In light of the combined family income and the length of the financial delinquencies, I do not consider Applicant's recently completed or promised future efforts to repay his overdue creditors to constitute "good faith efforts" sufficient to raise FC MC E2.A6.1.3.6. Under these circumstances, Applicant has failed to mitigate or overcome the government's case, for the evidence leaves me with grave questions and doubts as to Applicant's eligibility for occupying an Information Systems Position. Accordingly, allegations 1.a. through 1.c., 1.e. through 1.g., 1.j., 1.m., 1.q. through 1.t., and 1.v. through 1.x., of the SOR are concluded against Applicant. In light of the concession by Department Counsel, allegations 1.d., 1.h., 1.i., 1.k., 1.l., 1.n., 1.o., 1.p., and 1.u., of the SOR are concluded in favor of Applicant.

The government has established its case under Guideline E. Examination of Applicant's actions reveals conduct involving questionable judgment, untrustworthiness, and unreliability in omitting and concealing the true nature of his financial disarray. His actions in February 2003 fall within Personal Conduct Disqualifying Condition (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*), PC DC E2.A5.1.2.4. (*personal 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*), and 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*).

Applicant's eventual acknowledgment regarding his history of financial delinquency, only when confronted by an Office of Personnel Management (OPM) investigator in April 2003, does not lessen or minimize, much less erase or nullify, the impact of his initial falsification, omission, and deception. That eventual admission was insufficient to activate Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.3. (*the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*).

Applicant's position regarding his financial delinquencies as of February 2003 is not credible. In light of all of his delinquent accounts at that time, it is simply unreasonable to accept his contention that he was unaware of those accounts which were 180 days delinquent. At that time, in addition to numerous other delinquent accounts, he also had delinquent accounts with the U.S. Department of Education alone totaling over \$16,000.00, and he claims the \$924.00 payments on his HUD-1 took care of those delinquencies. In this case, I believe the true measure of Applicant's candor is his admission that he did nothing with 95% of his accounts until the trustworthiness review commenced. The evidence supports a conclusion Applicant intended to conceal his financial delinquencies.

Complete honesty and candor on the part of applicants for eligibility to occupy an Information Systems Position is essential to make an accurate, meaningful trustworthiness determination. Without all the relevant and material facts, an eligibility decision is susceptible to error, thus jeopardizing the nation's security. The nature of Applicant's actions and activities therefore pose a serious potential risk to the nation's security precautions which go to the very heart of the nation's security system. An applicant's responsibilities associated with the granting of an eligibility to occupy an Information Systems Position are considerable in terms of protecting the national security and in maintaining appropriate personal conduct. Along with the responsibilities is accountability. In this instance, Applicant is now held accountable for those past actions and activities.

I do not take this position lightly. Based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my evaluation of the evidence, and my application of the pertinent factors and conditions under the Adjudicative Process, I believe Applicant has failed to mitigate or overcome the government's case. The evidence leaves me with grave questions and doubts as to Applicant's continued trustworthiness eligibility and suitability. Accordingly, allegation 2.a. of the SOR is concluded against Applicant.

For the reasons stated, I conclude Applicant is not eligible to occupy an Information Systems Position designated ADP-II to support a contract with the Department of Defense.

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: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: For the Applicant

Subparagraph 1.i.: For the Applicant

Subparagraph 1.j.: Against the Applicant

Subparagraph 1.k.: For the Applicant

Subparagraph 1.l.: For the Applicant

Subparagraph 1.m.: Against the Applicant

Subparagraph 1.n.: For the Applicant

Subparagraph 1.o.: For the Applicant

Subparagraph 1.p.: For the Applicant

Subparagraph 1.q.: Against the Applicant

Subparagraph 1.r.: Against the Applicant

Subparagraph 1.s.: Against the Applicant

Subparagraph 1.t.: Against the Applicant

Subparagraph 1.u.: For the Applicant

Subparagraph 1.v.: Against the Applicant

Subparagraph 1.w.: Against the Applicant

Subparagraph 1.x.: Against the Applicant

Paragraph 2., Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for occupying an Information Systems Position designated ADP-II. Eligibility is denied.

Robert Robinson Gales
Chief Administrative Judge

1. Tr., at 11-13.
2. Tr., at 13.
3. Tr., at 56.
4. Government Exhibit 6 (Affidavit, dated April 28, 2003), at 1.
5. Government Exhibit 1 (Public Trust Position Application (SF 85), dated February 27, 2003), at 5.
6. Tr., at 56.
7. Government Exhibit 1, *supra* note 5, at 4.
8. Tr., at 57.
9. Tr., at 57-58.
10. Tr., at 57.
11. Tr., at 57.
12. Tr., at 59.
13. Tr., at 62.
14. Tr., at 62.
15. Tr., at 63.
16. Tr., at 62.
17. Tr., at 59.
18. Government Exhibit 6, *supra* note 4, at 1.
19. *Id.*
20. *Id.*, at 2.
21. Government Exhibit 5 (Extract of U.S. Bankruptcy Court Records, undated).
22. *Id.*
23. *Id.*
24. Government Exhibit 4 (Extract of U.S. Bankruptcy Court Records, undated).
25. *Id.*

26. *Id.*
27. Applicant Exhibit F (Bankruptcy File - Voluntary Petition, dated March 24, 1998).
28. *Id.* (Bankruptcy File - Summary of Schedules).
29. *Id.* (Bankruptcy File - Schedule F - Creditors Holding Unsecured Nonpriority Claims)
30. *Id.* (Bankruptcy File - Schedule I - Current Income of Individual Debtor(s)).
31. *Id.* (Bankruptcy File - Discharge of Debtor, dated June 25, 1998).
32. Government Exhibit 6, *supra* note 4, at 6.
33. Tr., at 66-68.
34. Tr., at 67.
35. Tr., at 68.
36. Tr., at 64-65, 68-69; Government Exhibit 6, *supra* note 4, at 6.
37. Tr., at 65; *Id.* Government Exhibit 6, at 6, 8.
38. *Id.* Government Exhibit 6, at 8-9.
39. *Id.*, at 9.
40. Government Exhibit 7 (Personal Financial Statement, dated April 24, 2003).
41. Applicant Exhibit A (List of Creditors, undated), at 1-2.
42. Government Exhibit 2 (Equifax Credit Report, dated May 5, 2004), at 1.
43. *Id.*
44. *Id.*; Applicant Exhibit A, *supra* note 41, at 1.
45. Tr., at 37; Applicant Exhibit C (Letter to creditor/collection agency, dated November 1, 2004), at 1. Applicant claimed he called the creditor in July 2004 and was told he had no outstanding balance and no account. Response to SOR, dated July 19, 2004, at 1.
46. Government Exhibit 2, *supra* note 42, at 1.
47. *Id.*
48. *Id.*
49. Tr., at 39-40; Applicant Exhibit C, *supra* note 45, at 2.
50. *Id.* Applicant Exhibit C.
51. Government Exhibit 2, *supra* note 42, at 1.
52. *Id.*
53. *Id.*; Applicant claimed he called the creditor in July 2004 and was told he had no outstanding balance. However,

shortly thereafter, he received a call from the collection agency claiming the balance was still outstanding. Response to SOR, *supra* note 45, at 1-2; Tr., at 40-41.

54. Applicant Exhibit C, *supra* note 45, at 3.

55. Government Exhibit 2, *supra* note 42, at 1.

56. *Id.*

57. *Id.*

58. Government Exhibit 2, *supra* note 42, at 1.

59. *Id.*

60. *Id.*

61. Tr., at 42-43.

62. Government Exhibit 2, *supra* note 42, at 1; Tr., at 73.

63. *Id.* Government Exhibit 2.

64. *Id.*

65. Applicant Exhibit C, *supra* note 45, at 6.

66. Government Exhibit 2, *supra* note 42, at 2.

67. *Id.*

68. *Id.*

69. Government Exhibit 2, *supra* note 42, at 2.

70. *Id.*

71. *Id.*

72. Tr., at 44-45. Applicant claimed he called the creditor and was told there was no record of his account. Response to SOR, *supra* note 45, at 3; Tr., at 44-45.

73. Government Exhibit 2, *supra* note 42, at 2.

74. *Id.*

75. *Id.*

76. Government Exhibit 2, *supra* note 42, at 2.

77. *Id.*

78. *Id.*

79. Government Exhibit 2, *supra* note 42, at 2.

80. *Id.*

81. Forbearance Application, dated July 1, 2004, attached to Response to SOR, *supra* note 45.
82. Government Exhibit 2, *supra* note 42, at 2.
83. *Id.*
84. Forbearance Application, dated July 1, 2004, attached to Response to SOR, *supra* note 45.
85. Tr., at 81; Applicant Exhibit E (Employer Personnel Records - letter from counseling service, dated October 25, 2004).
86. Tr., at 81.
87. Tr., at 91.
88. Tr., at 91-92.
89. According to the receipt signed by Applicant, he received the notice of hearing on October 28, 2004.
90. Applicant Exhibit C, *supra* note 45.
91. Tr., at 83.
92. Tr., at 84.
93. Applicant Exhibit A, *supra* note 41.
94. Tr., at 54-55.
95. Applicant Exhibit A, *supra* note 41, at 3.
96. *Id.*
97. Tr., at 55-56.
98. Tr., at 54.
99. Question 20.
100. Government Exhibit 1, *supra* note 5, at 7.
101. Addendum to HUD-1, undated, attached to Response to SOR, *supra* note 45.
102. Tr., at 50.
103. Tr., at 50.
104. Tr., at 50-51.
105. Applicant Exhibit I (Performance Management Cycle and Assessment Process, dated March 4, 2004), at 7; Performance Management Cycle and Assessment Process, dated February 21, 2003), at 6.
106. 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.)