

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 46-year-old desktop technician who has intermittently worked for the

same defense contractor since July 1998. Owing to periods of unemployment from July 2001 to July 2002, and from June 2003 through August of 2003, Applicant fell into arrears on his mortgage and three other debts. When he filed his Application for Security Clearance, he neglected to note that two of his debts were over 180 days delinquent. Applicant successfully explained how he incorrectly answered the question regarding delinquencies on his security clearance application and has mitigated concerns with regard to his debts. Clearance is granted.

CASENO: 04-03130.h1

DATE: 07/29/2005

DATE: July 29, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-03130

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 46-year-old desktop technician who has intermittently worked for the same defense contractor since July 1998. Owing to periods of unemployment from July 2001 to July 2002, and from June 2003 through August of 2003, Applicant fell into arrears on his mortgage and three other debts. When he filed his Application for Security Clearance, he neglected to note that two of his debts were over 180 days delinquent. Applicant successfully explained how he incorrectly answered the question regarding delinquencies on his security clearance application and has mitigated concerns with regard to his debts. Clearance is granted.

STATEMENT OF THE CASE

On February 9, 2005, 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). That SOR detailed why, pursuant to Guideline F (Financial Considerations) and Guideline E (Personal Conduct), it 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. By letter of March 11, 2005, Applicant admitted to the five allegations arising under Guideline F, and the two allegations raised under Guideline E, as set forth in the SOR. ⁽¹⁾ As to these allegations, Applicant requested a determination without hearing.

The Government's case was submitted on March 23, 2005, and a complete copy of the file of relevant material (FORM) ⁽²⁾ was provided to Applicant. Applicant was afforded the opportunity to file objections and submit evidence in refutation, extenuation, or mitigation. Applicant received a copy of the FORM on April 1, 2005, and responded on April

6, 2005. I was assigned this case on April 28, 2005.

FINDINGS OF FACT

Applicant has admitted to all of the allegations set forth in the SOR. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is a 47-year-old desktop technician who has intermittently worked for the same defense contractor since July 1998. He has a diploma from a technical school in computer technology. Applicant has been married since 1981 and the couple has college aged children. [\(3\)](#)

Prior to 2001, Applicant was steadily employed and his expenses were kept within the level of his income. He had retirement savings, investments aimed toward the education of his children, and a rental property financed so as to permit incoming rents to pay off its mortgage. During a period of unemployment lasting from 2001 through July 2002, Applicant resorted to part-time work and to liquidating his holdings in order to generate income until he returned to his job. After returning to his previous work, he was again left unemployed, from June 2003 to August 2003. Although his wife also worked both part-time and full-time, the family's bills mounted during his periods of unemployment. In order to alleviate the financial strain on their everyday expenses, including costs associated with their children's educations, Applicant attempted, albeit unsuccessfully, to refinance his homes and to sell the rental property that had become vacant in July 2002. After returning to his job and a steady income, Applicant also found renters for his rental property [\(4\)](#) and worked on meeting his financial obligations.

The debts cited by the SOR as being unpaid as of March or April 2004 are:

1.a - Indebted for a mortgage that was placed in default in or around March 2004, in the approximate amount of \$5,652. Applicant, however, has introduced a receipt showing that as of at least February 1, 2005, the loan was paid in full. [\(5\)](#)

1.b - Indebted to [a financial institution] on an account that was charged off in or around September 2001, in the approximate amount of \$5,033. Applicant has explained that he discussed his situation with this creditor and claims, without documentary substantiation, that a payment schedule was implemented. He has, however, only provided this tribunal with a copy of a February 17, 2005, payment receipt that states that his "last payment (of \$150) was received [\(6\)](#)

on: February 16, 2005."

1.c - Indebted to [a telephone company] on an account that was charged off in or around December 2003, in the approximate amount of \$320. Applicant, however, has introduced receipts showing that as of at least February 24, 2005, this debt was paid in full. [\(7\)](#)

1.d - Indebted for another telephone account balance from a different provider. This debt was placed into collection on or around February 2003, in the approximate amount of \$456. It arose in 2001 or 2002, in part, from an early termination charge that Applicant was then unable to pay. Despite Applicant's efforts by way of inquiry, the collection agency would not initially accept partial or installment payments to satisfy the debt. [\(8\)](#) Eventually, an offer to settle this debt for a lesser amount was extended by the collection agency. Applicant asserts he accepted and satisfied the proposal to settle, but has not produced evidence of such payment and satisfaction. [\(9\)](#)

Additionally, the SOR states that -

1.e - In or around April 2004, Applicant was notified by the mortgage company cited at 1.a, above, that his check had been returned as unpaid, causing his mortgage to go into default. Applicant acknowledges this, but notes that the loan was subsequently paid and restitution made, as evidenced by the same proof noted for 1.a, above. [\(10\)](#)

Furthermore, on September 8, 2003, Applicant completed his Application for Security Clearance (SF86). On that SF86, Applicant only indicated mortgage delinquency with regard to Question 38 ("*Your Financial Delinquencies - 180 Days. In the last 7 years, have you been over 180 days delinquent on any debt(s)?*"). In truth, however, the debts cited at 1.b and 1.d, above, were delinquent. Regarding the account at 1.b, Applicant forgot the status of the account, having apparently confused it with another debt that similarly had been forwarded for collection by the same agency in 2003. [\(11\)](#) Regarding the telephone bill-based collection cited at 1.d, Applicant forgot about this outstanding balance when filing his Security Clearance Application.

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, these adjudicative guidelines are subdivided

into those that may be considered in deciding whether to deny or revoke one's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to determine one could still be eligible for access to classified information (Mitigating Conditions).

In application, an Administrative Judge is not strictly bound to the adjudicative guidelines. As guidelines, they are but part of an amalgam of elements for the Administrative Judge to consider in assessing an applicant in light of the circumstances giving rise to the SOR, as well as in assessing the applicant as a whole. The concept of the "whole person" means that all available, reliable information about the person - whether it is good or bad, present or past - should be considered in making a fair, impartial, and meaningful decision as to his or her suitability to hold a security clearance. To that end, Enclosure 2 also sets forth factors to be considered during this part of the adjudicative process, including: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

After a full and thorough examination, however, the final assessment must comport with the considerable gravity of the final decision. There is no right to a security clearance⁽¹²⁾ and one seeking

access to classified information must be prepared to enter into a fiduciary relationship with the United States Government that is inherently predicated on trust and confidence. Therefore, when the facts proven by the Government raise doubts as to an applicant's judgment, reliability, or trustworthiness, the applicant has the heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹³⁾ Therefore, any doubts will be resolved in favor of the national security, not the applicant.

Finally, it should be noted that Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that 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." Therefore, nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts in this case:⁽¹⁴⁾

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.*

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.

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

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all legal precepts, factors, and conditions, including those described briefly above, I find the following with respect to the allegations set forth in the SOR:

With regard to Guideline F (Financial Considerations), the Government has established its case. Applicant admits to the four debts cited. Consequentially, I find that both Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*[a] history of not meeting financial obligations*) and FC DC E2.A6.1.2.3 (*[i]nability or unwillingness to satisfy debts*) apply.

Additionally, the Government has met its burden with regard to Guideline E (Personal Conduct). Applicant admits that his negative answer to Question 38 of his SF86, dated September 8, 2003, was not correct. Therefore, I find that Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2 (*[t]he 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*) applies.

When the Government's initial burden has been met and disqualifying conditions raised, the burden shifts to the Applicant to come forward with evidence in rebuttal, explanation, or mitigation which is sufficient to overcome or outweigh the Government's case. As such, it is Applicant's ultimate burden to show that it is clearly consistent with the national interest to grant him a security clearance. This burden includes presenting sufficient evidence to warrant application of the Adjudicative Guidelines' mitigating conditions.

Here, Applicant has explained that he was unemployed for a significant portion of the last four years, from July 2001 to July 2002, and again from June to August of 2003. [\(15\)](#)

The debts at issue were charged off or placed into default following the commencement of these periods of unemployment, between in or around September 2001 and March 2004. It seems highly likely, therefore, that Applicant's unemployment, reduced income, and, consequentially, mounting bills gave rise to the actions taken by his creditors. Therefore, I find that Financial Consideration Mitigating Condition (FC MC) E2.A6.1.3.3 (*[t]he 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. Furthermore, despite earlier, unsuccessful, attempts to refinance his mortgage or to sell his rental property in order to meet his debts, he has since made significant strides to regain his financial solvency; these strides were made possible by his return to stable employment in the fall of 2003, and then his placement of new tenants in his rental property. Indeed, he has satisfied the largest debt, cited at SOR subparagraph 1.a; paid off the debt at subparagraph 1.c; resumed at least some payment to the collection agent for the debt cited at subparagraph 1.b, and has either worked out an offer to satisfy or has paid off the smallest debt, cited at subparagraph 1.d. Therefore, I also find 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.

Although I am dubious as to whether Applicant's failure to include debts 1b and 1.d in his answer to Question 38 on his SF86 was truly a deliberate act of omission, concealment, or falsification, especially given his inclusion of mortgage delinquency in his answer, his explanation as to why he did not list the other debts, and in light of all the numerous other financial issues he no doubt faced following an off-again, on-again, employment cycle, the fact remains that he failed to acknowledge those two delinquencies on his SF86. Despite the fact that failure constitutes an isolated incident and Applicant's subsequent corrective efforts were voluntary and forthcoming, Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.2 (*[t]he falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*) does not apply because the act occurred as recently as September 2003. When the matter was brought to his attention by way of the March 23, 2004, Financial Interrogatories, however, his response was direct, corrective, and included an offer to provide more information. Moreover, he has made notable efforts both to ameliorate the financial conditions underlying the question now under scrutiny, and to explain how his incorrect answer was originally made. Consequentially, I find that 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.

Additionally, with regard to the debt cited at 1.b, Applicant explained that he confused that debt with a more recent debt that was also being handled by the same collection agency, and eventually consolidated by that agency in order to prepare a settlement sum. Such confusion is plausible. As for the smaller debt cited at subparagraph 1.d of the SOR, Applicant, again, explained that confusion and failure to remember its existence are to blame for not listing it on his SF86. Again, I do not find his explanation to be implausible or without a logical basis.

I have considered both the facts before me and the Applicant under the "whole person" concept. As a husband and father of college aged children, he faced difficulty in holding his job in a field that was experiencing much change. In the absence of any indication that Applicant had any prior financial problems, it seems logical that these periods of unemployment, coming when they did, gave rise to his financial difficulties. During his periods of unemployment, Applicant was neither idle nor quiescent; he found part-time work to help make ends meet while his wife's work efforts helped to contribute to their familial income. Once he again returned to stable employment, he made strides to meet his obligations. Based on Applicant's evidence and explanation, I find that he has met his burden in showing that extenuating circumstances exist and mitigating conditions apply. Therefore, I find for Applicant with regard to paragraph 1, subparagraphs 1.a through 1.e, and paragraph 2, subparagraph 2a, of the SOR.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.2.5 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

Paragraph 2, Guideline E: FOR THE APPLICANT

Subparagraph 2.a: 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 a security clearance for Applicant. Clearance is granted.

Arthur E. Marshall, Jr

Administrative Judge

1. The Applicant's Complete Answer with Attachments along with Incomplete Answer (dated March 11, 2005), consisted of 13 pages, including argument and documents.
2. ⁰ The government submitted 9 items in support of its case.
3. The submitted copy of Applicant's Application for a Security Clearance is missing page 3, therefore, I am unable to assess the number or age of the couple's children. *See* Government Item 4 (Application for Security Clearance, dated September 8, 2003).
4. An out of state home serving as a rental/investment property went vacant from July 2002 to December 2003. Inasmuch as incoming rents covered the mortgage payments for this property, the period of non-occupancy caused additional drain on the family's resources. *See* Item 5 (Statement to the Defense Security Service, dated January 30, 2004), at 4.
5. Item 3 (Applicant's Response to the SOR, dated March 11, 2005), at 2.
6. *Id.*, at 3. *See also* Item 5, at 5.
7. *Id.*, *supra* note 4, at 4-5.
8. Item 5, *supra* note 5, at 6.
9. Item 3, *supra* note 4, at 6. *See also* Item 6 (Response to Financial Interrogatories, dated March 23, 2004), at 3-4, regarding a prior settlement discussion..
10. *Id.*, at 1, 2, and 7.
11. Item 5, *supra* note 5, at 5 for explanation. *See Id.*, at 8. For name of receiving entity; *compare* with Item 8 (Credit Bureau Report, (dated March 23, 2004), at 1, noting the existence of a another credit line with the same name of the receiving entity cited for debt 1.b. Applicant claims that the entity eventually combined the two debts for settlement purposes.
12. ⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
13. ⁰ *Id.*, at 531.
14. *See*, Directive, Enclosure 2, Attachment 6, Guideline F, ¶ E2.A6.1.1 and Directive, Enclosure 2, Attachment 5, Guideline E, ¶ E2.A5.1.1, respectively.

15. The Government concedes that Applicant's financial trouble may be attributed to these periods of unemployment. *See* Government's FORM, at 5.