

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant's finances were in disarray since about 2001, when he started an ill-fated part-time business for which he used his credit cards. His balances became overwhelming and increasingly delinquent. With the assistance of a credit counseling service and an attorney, he set up a budget and attempted to make timely payments to some creditors. By May 2004, his monthly expenses left him with a net monthly deficit of over \$800.00. In July 2005, his liabilities, totaling nearly \$25,000.00, were discharged in bankruptcy. 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: 04-05407.h1

DATE: 01/31/2006

DATE: January 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-05407

DECISION OF CHIEF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's finances were in disarray since about 2001, when he started an ill-fated part-time business for which he used his credit cards. His balances became overwhelming and increasingly delinquent. With the assistance of a credit counseling service and an attorney, he set up a budget and attempted to make timely payments to some creditors. By May 2004, his monthly expenses left him with a net monthly deficit of over \$800.00. In July 2005, his liabilities, totaling nearly \$25,000.00, were discharged in bankruptcy. 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 March 23, 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) 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, notarized April 12, 2005, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on October 28, 2005. A notice of hearing was issued that same day, scheduling the hearing for November 15, 2005, and the hearing was held as scheduled. Five government exhibits, five Applicant exhibits, and Applicant's testimony were received. The record was kept open for 10 days to receive additional Applicant exhibits. Three additional exhibits, including two of which were signed substitutes for previously received and conditionally admitted Applicant exhibits, were timely submitted and admitted without objection.

On December 1, 2005, an attorney who had previously represented Applicant in a bankruptcy proceeding submitted additional documents-the bankruptcy file-to Department Counsel. Those documents were among those for which the record had previously been kept open. Department Counsel indicated he would not oppose a reopening of the record for admission of the documents, but indicated that if the record was reopened, he would object to the admission of the bankruptcy file. Upon consideration of the competing interests in this case, I reopened the record to receive the tardy submission, most of which had already been attached to Applicant's response to SOR, and overruled the government's objection, to permit the development of a full and complete record. During the hearing, Department Counsel moved to amend the SOR to correct an erroneous entry. There being no objection, subparagraph 1.e. of the SOR was amended. The transcript (Tr.) was received on November 28, 2005.

FINDINGS OF FACT

Applicant denied all of the factual allegations pertaining to financial matters under Guideline F (subparagraphs 1.a. through 1.h.), as well as the factual allegations pertaining to personal conduct under Guideline E (subparagraphs 2.a. through 2.c.).

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 50-year-old employee of a defense contractor seeking to retain a security clearance. He had previously been granted a CONFIDENTIAL security clearance, which he had for about 31 years,⁽¹⁾ but it was revoked in April or May 2005.⁽²⁾

Applicant's finances have generally been in disarray since about 2001 when he started his own part-time business repairing and selling computers while still holding his full-time position with his employer.⁽³⁾ Since he was unable to obtain financing to fund what he considered to be a lucrative business venture, he started using his personal credit cards to purchase necessary computer components.⁽⁴⁾ After about one year, he realized he could not compete in the marketplace. His credit card balances became "overwhelming" and he fell behind in his payments.⁽⁵⁾

A number of accounts had become delinquent. After making unsuccessful efforts to satisfy his overdue accounts, in late 2002, Applicant sought the assistance of a nonprofit credit counseling service to assist him with his financial issues.⁽⁶⁾ Although he made routine payments for about six months, he discovered his outstanding balances were not decreasing

and he was continuing to receive notices from his creditors.⁽⁷⁾ Following an attorney's advice, he set up a budget and tried to enter into payment arrangements with his creditors.⁽⁸⁾ Some creditors were cooperative but others demanded higher payments than he could provide. The agreed-upon arrangements were successful for several months, but came to a halt when his stepson's vehicle, for which he had cosigned on the loan, was repossessed.⁽⁹⁾

By May 2004, his total net monthly income was approximately \$2,557.00, his routine monthly expenses totaled approximately \$2,205.00, and his monthly debt payments totaled approximately \$1,163.00.⁽¹⁰⁾ That left him with a monthly net deficit of approximately \$811.00.⁽¹¹⁾ Because of his extreme financial situation, Applicant realized the wisdom of seeking relief through bankruptcy and intended to commence the process as soon as he accumulated sufficient money to pay an attorney. He finally filed an individual voluntary petition for bankruptcy under Chapter 7, in April 2005,⁽¹²⁾ one month after receiving the SOR. In his petition, he listed assets totaling \$12,844.08 and liabilities totaling \$24,635.21.⁽¹³⁾ His listed debts were discharged in July 2005,⁽¹⁴⁾ four months before the hearing in this matter. Before his bankruptcy discharge, Applicant and his wife maintained separate accounts, but now they share their finances.⁽¹⁵⁾

The SOR reflects the following seven delinquent debts totaling approximately \$33,588.00:

SOR #	DEBT TYPE	DEBT AMOUNT	CURRENT STATUS
1.a.	credit card (used 40-50% for business) ⁽¹⁶⁾ charged off ⁽¹⁷⁾	\$11,611.00 ⁽¹⁸⁾	Discharged in bankruptcy ⁽¹⁹⁾
1.b.	credit card (used 80% for business) ⁽²⁰⁾ charged off ⁽²¹⁾	\$3,790.00 ⁽²²⁾	Discharged in bankruptcy ⁽²³⁾
1.c.	cosigner on automobile loan ⁽²⁴⁾ charged off and vehicle repossessed ⁽²⁵⁾	\$8,833.00 ⁽²⁶⁾	Unclear, although Applicant contends it was discharged in bankruptcy ⁽²⁷⁾
1.d.	credit card (primarily for personal use) ⁽²⁸⁾ charged off ⁽²⁹⁾	\$675.00 ⁽³⁰⁾	Discharged in bankruptcy ⁽³¹⁾
1.e.	credit card (used primarily for business) ⁽³²⁾ charged off ⁽³³⁾	\$5,982.00 ⁽³⁴⁾	Discharged in bankruptcy ⁽³⁵⁾
1.f.	gasoline credit card ⁽³⁶⁾	\$797.00 ⁽³⁷⁾	Discharged in bankruptcy ⁽³⁸⁾
1.g.	2002 Federal Income Tax deficiency ⁽³⁹⁾	\$1,900.00 ⁽⁴⁰⁾	Paid off ⁽⁴¹⁾

In about September 2001, Applicant completed a handwritten worksheet of a Security Clearance Application (SF 86) and submitted it to his supervisor.⁽⁴²⁾ In the worksheet, Applicant denied that in the last seven years he had property repossessed,⁽⁴³⁾ that in the last seven years he had been over 180 days delinquent on any debt,⁽⁴⁴⁾ or that he was⁽⁴⁵⁾

currently 90 days delinquent on any debt. At that time, those responses were essentially correct.

Nearly two years later, he was informed that the security office had never received his SF 86. They requested that he complete a new application.⁽⁴⁶⁾ He took his copy of the original worksheet from 2001, copied most of the original entries onto the new worksheet, and submitted it to the security office, where it was made into an electronic format.⁽⁴⁷⁾ Because they wanted it "right away," he more or less copied the entries without realizing some of the information was different.⁽⁴⁸⁾ Some time later, he was presented with the printed copy of the electronic version which he signed on June 19, 2003.⁽⁴⁹⁾ Applicant answered the three questions the same way he had answered the module questions on the worksheet, but given the change of financial circumstances from 2001 to 2003, he acknowledged he should have taken the time to be more accurate.⁽⁵⁰⁾

In May 2004, Applicant completed a Personal Financial Statement which reflected \$2,557.00 total net monthly income, \$2,205.00 total monthly expenses, \$1,163.00 total monthly debt payments, and a net remainder of minus \$811.00.⁽⁵¹⁾ With the discharge of his outstanding debts, reduced automobile and medical expenses, better money management, and monetary contributions of his wife towards family expenses, the numbers have been altered and he now has a positive net remainder available for discretionary expenditures. Applicant has rearranged his finances and now maintains a budget.⁽⁵²⁾ He and his wife share expenses⁽⁵³⁾ and he is now current on all his bills.⁽⁵⁴⁾

Applicant has been employed as maintenance machinist by the same government contractor since February 1974.⁽⁵⁵⁾ His colleagues consider him to be honest and truthful and one of the company program leaders has characterized him as a "role model of integrity."⁽⁵⁶⁾

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," [\(57\)](#) 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 2001, when he started using his credit cards for his ill-fated part-time business venture. Rather than being a lucrative venture, it became a failure as he was not able to compete in the marketplace. With his credit card balances becoming overwhelming, and his wife not contributing to the family finances, accounts became delinquent and were charged off, and he was unable to pay his federal income tax for 2002. 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 unexpected business conditions which led his part-time venture to fail, and his step-son's failure to make timely payments on the vehicle loan for which Applicant cosigned, or to advise him of a probable repossession, were conditions over which he had no control for as long as they lasted and impacted the family finances.

Moreover, Applicant's actions in obtaining legal and credit counseling guidance, his 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 was established and followed for as long as he could do so. The Internal Revenue Service was eventually paid off. When available finances were clearly insufficient to satisfy the remaining creditors, Applicant finally resigned himself to seeking relief through bankruptcy. His liabilities were finally discharged and, with a budget in place, and contributions by his wife to the family finances, he has a net monthly surplus and is seemingly current in all of his obligations. The one possible remaining debt is that of the vehicle loan for which he cosigned. As noted above, while Applicant contends that debt was discharged, the bankruptcy file does not contain any reference to the vehicle or loan in question, leaving some doubt that the indebtedness was, in fact, discharged. Nevertheless, even if it was inadvertently omitted from the bankruptcy, Applicant's intentions and efforts should receive some credit. 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 June 2003, nearly two years after he had completed a handwritten worksheet of an SF 86 and submitted it to his supervisor, Applicant was informed that the security office had never received his SF 86. He took his copy of the original worksheet from 2001, copied most of the original entries onto the new worksheet, and submitted it to the security office, where it was made into an electronic format. Because they wanted it "right away," he more or less copied the entries without realizing some of the information was different. Some time later, he was presented with the printed copy of the electronic version which he signed, attesting to its accuracy.

Applicant answered three questions the same way he had answered the module questions on the worksheet, but given the change of financial circumstances from 2001 to 2003, the information was no longer accurate. Examination of his actions reveals conduct involving questionable judgment, but not necessarily untrustworthiness, unreliability, or unwillingness to comply with rules and regulations. Applicant's overall questionable personal conduct--his inattention to detail and inadvertent carelessness, as opposed to deliberate omission, concealment, or falsification--in this regard might otherwise 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*). Applicant obviously furnished incorrect answers to the SF 86 finance-related inquiries, but in doing so, he acknowledged he should have taken the time to be more accurate.

Moreover, considering Applicant's inattention to detail and inadvertent carelessness, there are substantial doubts his actions were deliberate as envisioned in the PC DC. His actions raise the possible application of Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.5. (*the individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*). Under these circumstances, Applicant has, through evidence of extenuation and explanation, successfully rebutted and overcome the government's case. Accordingly, allegations 2.a. through 2.c. of the SOR are 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

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: For the Applicant

Paragraph 2., Guideline E: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: 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. Tr. 57.
2. Tr. 70.
3. Government Exhibit 3 (Applicant's letter to DOHA, dated May 7, 2004, attached to DOHA's Interrogatories and Applicant's Responses, dated May 10, 2004).
4. *Id.*
5. *Id.*
6. Government Exhibit 3, *supra* note 3.
7. *Id.*
8. *Id.*
9. *Id.* The vehicle blew an engine and repairs were not covered by insurance. The stepson made no payments for three months, but did not tell Applicant of the situation until one day before the vehicle was repossessed. Tr. 40-41.
10. Government Exhibit 3 (Personal Financial Statement, undated, attached to DOHA's Interrogatories and Applicant's Responses, dated May 10, 2004).
11. *Id.*
12. Voluntary Petition, dated April 4, 2005, attached to Response to SOR, dated April 12, 2005.
13. Summary of Schedules, undated, attached to Response to SOR.
14. Applicant Exhibit G (Discharge of Debtor(s), dated July 18, 2005).
15. Tr. 30.
16. Tr. 31-327.
17. Government Exhibit 2 (Equifax Credit Report, dated February 22, 2005), at 1.
18. *Id.*
19. Response to SOR, notarized April 12, 2005; Schedule F - Creditors Holding Unsecured Nonpriority Claims, attached to Response to SOR; Applicant Exhibit E (Equifax Credit Report, dated October 26, 2005), at 2; Tr. 53.
20. Tr. 33-35.

21. Government Exhibit 2, *supra* note 17, at 1.
22. *Id.*
23. Response to SOR, *supra* note 19; Schedule F, *supra* note 19; Applicant Exhibit E, *supra* note 19; Tr. 53.
24. Tr. 38-39.
25. Tr. 39-42
26. Government Exhibit 2, *supra* note 17, at 2.
27. Tr. 44, 53, 65-66; Response to SOR, *supra* note 19. The bankruptcy file does not contain any reference to the vehicle in question. Thus, unless the debt was otherwise discharged under Title 11, U.S. Code § 727(b) or other similar provision, there is some doubt that the indebtedness was discharged.
28. Tr. 44.
29. Government Exhibit 2, *supra* note 17, at 1.
30. *Id.*
31. Response to SOR, *supra* note 19; Schedule F, *supra* note 19; Applicant Exhibit E, *supra* note 19; Tr. 53.
32. Tr. 46
33. Government Exhibit 2, *supra* note 17, at 1.
34. *Id.*
35. Response to SOR, *supra* note 19; Schedule F, *supra* note 19; Tr. 53.
36. Government Exhibit 3 (Credit Card Statement, dated April 8, 2004), attached to DOHA's Interrogatories and Applicant's Responses, dated May 10, 2004).
37. *Id.*
38. Response to SOR, *supra* note 19; Schedule F, *supra* note 19; Tr. 53.
39. Tr. 49; Government Exhibit 3, *supra* note 10.
40. Tr. 49.
41. Tr. 50, 53.
42. Applicant Exhibit F (Electronic Personnel Security Questionnaire SF 86 Worksheet, dated August 28, 2001); Tr. 57-58.
43. Module 35.
44. Module 38.
45. Module 39.
46. Tr. 58.

47. Tr. 58-59.

48. Tr. 59.

49. Government Exhibit 1 Security Clearance Application (SF 86), dated June 19, 2003).

50. Tr. 62.

51. Government Exhibit 3, *supra* note 10.

52. Tr. 69.

53. Tr. 69.

54. Tr. 55.

55. Government Exhibit 1, *supra* note 49, at 2.

56. Applicant Exhibit A-1 (Letter from program leader, dated November 3, 2005).

57. 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.)