

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a married, 43-year-old employee of a federal contractor. He had several delinquent debts and underpaid \$21,000 in federal income tax for five years. He gave a false answer on his security clearance application. He provided no proof of payments to creditors nor did he provide the result of his offer in compromise to the IRS. He did not mitigate the financial considerations and personal conduct security concerns. Clearance is denied.

CASENO: 04-07747.h1

DATE: 05/31/2006

DATE: May 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-07747

**DECISION OF ADMINISTRATIVE JUDGE
CHRISTOPHER GRAHAM**

APPEARANCES

FOR GOVERNMENT

Kathryn Mackinnon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a married, 43-year-old employee of a federal contractor. He had several delinquent debts and underpaid \$21,000 in federal income tax for five years. He gave a false answer on his security clearance application. He provided no proof of payments to creditors nor did he provide the result of his offer in compromise to the IRS. He did not mitigate the financial considerations and personal conduct security concerns. Clearance is denied.

STATEMENT OF THE CASE

On June 22, 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 alleged facts under Guidelines F (financial considerations) and 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 Applicant's security clearance.

In a written statement dated July 11, 2005, Applicant responded to the allegations in the SOR, and requested a hearing. The case was assigned to me on September 20, 2005. Notice of the hearing was issued October 13, 2005, scheduling the hearing for November 2, 2005. The hearing was held as scheduled. The transcript (Tr.) was received November 23, 2005.

FINDINGS OF FACT

Applicant admitted the allegations contained in SOR ¶ 1.a. and 1.f., and denied the others. After a thorough review of the record as a whole, I make the following findings of fact:

Applicant is a married, 43-year-old employee of a federal contractor.⁽¹⁾ He has two children, completed two years of college, and currently is pursuing a certification from a project manager course.⁽²⁾ He has held a security clearance since 1980.⁽³⁾ Applicant was involved in a contentious divorce proceeding lasting from March 1999 until September 2001.⁽⁴⁾

During his testimony, Applicant admitted owing the delinquent debts listed in the SOR:

SOR ¶	DEBTOR	AMOUNT	CURRENT STATUS
1.a.	County taxes	\$575.00	Paying; \$300 balance ⁽⁵⁾
1.b.	Newspaper	\$156.00	Paying; \$50 balance ⁽⁶⁾
1.c.	Federal income taxes	\$21,404.00	Unpaid; offer in compromise ⁽⁷⁾
1.d.	Cable TV	\$1,360.00	Settlement for \$500; paying ⁽⁸⁾
1.e.	Public library	\$225.00	Settlement for \$100; paying, \$50 balance ⁽⁹⁾
1.f.	Cable TV	\$54.00	Paid ⁽¹⁰⁾
1.g.	Bank	\$838.00	Unpaid ⁽¹¹⁾
1.h.	Telephone service	\$1,002.00	Settlement for \$338; paying ⁽¹²⁾
1.i.	Collection	\$66.00	Paid ⁽¹³⁾

In response to Standard Form 86, Security Clearance Application, **Question 38. Your Financial Delinquencies - 180 Days** In the last 7 years, have you ever been over 180 days delinquent on any debt(s), Applicant answered "No".⁽¹⁴⁾ He believed that if he had started making payments he was no longer considered "delinquent."⁽¹⁵⁾

Applicant's delinquent taxes involve five years of underpayment or under withholding of taxes.⁽¹⁶⁾ He made an offer in compromise to the IRS in an amount of \$6,188.00.⁽¹⁷⁾ The record was held open until December 20, 2005, to give Applicant additional time to file documentary proof that payments were being made to creditors, and to provide evidence of the IRS response to his offer in compromise.⁽¹⁸⁾ He mailed a set of exhibits to department counsel on December 14, 2005.⁽¹⁹⁾ Among the documents are several pages of checks written to creditors, but they are not copies of cancelled checks. Further, the checks are inexplicably out of sequence.

CHECK NUMBER	DATE OF CHECK
582	October 20, 2005
583	October 20, 2005
584	October 20, 2005
586	November 21, 2005
587	November 22, 2005
588	November 19, 2005
589	November 20, 2005
590	November 19, 2005
591	November 18, 2005
592	November 21, 2005
593	November 21, 2005
594	November 21, 2005

Checks number 587 through 591 are out of sequence. [\(20\)](#) The filing contained no new information about his offer in compromise. [\(21\)](#) Several pages showed an inconsistent employment record. [\(22\)](#)

He had not used a credit counseling service. When asked if his employer provided such services, he stated, "I believe that they would have those type of services" and "I'm in the process of working with them." [\(23\)](#)

POLICIES

"[No] one has a 'right' to a security clearance." [\(24\)](#) As Commander-in-Chief, the President has "the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information." [\(25\)](#) The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential coercion, and willingness and ability to abide by regulations governing use, handling, and protection of classified information." [\(26\)](#) Eligibility for a security clearance may be adjudicated using the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and

mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative factors listed in ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information.⁽²⁷⁾ The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability.⁽²⁸⁾

Once the Government establishes a disqualifying condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.⁽²⁹⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽³⁰⁾ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or his own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the Government.⁽³¹⁾ 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, not actual, risk of compromise of classified information.

Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security 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.

Having considered the evidence as a whole, I find the following guidelines most pertinent to an evaluation of the facts of this case:

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;

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.

CONCLUSIONS

Financial Considerations. The government has established its case under Guideline F. Financial considerations disqualifying condition (FC DC) 1 arises where there is *A history of not meeting financial obligations*. Similarly, FC DC 3 applies where the information shows an *Inability or unwillingness to satisfy debts*. The available information demonstrates Applicant has a history of financial problems. While he has had several periods of unemployment, he has accumulated these debts over several years. And the debts were unaffected by his inconsistent employment. Further, his five year period of under withholding of incomes taxes shows irresponsible management of his finances. I conclude that FC DC 1 and FC DC 3 apply.

The only mitigating condition (MC) that could apply is FC MC 6 *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*. Applicant testified that he made payments. When given the opportunity to produce evidence of those facts, he did not provide adequate evidence. The copies of checks made payable to creditors is nothing more than evidence of an intent to pay creditors. The cancelled checks were not produced. I am concerned about the date sequence on the copies he did provide. He offered no proof that the IRS accepted his offer in compromise. There is no evidence of a good faith effort to repay creditors. FC MC 6 does not apply. I conclude Guideline F against Applicant.

Personal Conduct. The government has established its case under Guideline E. Applicant's response on his security clearance application to question 38 falls within personal conduct disqualifying conditions (PC DC 2) (*the deliberate omission, concealment, or falsification of relevant 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*).

Even if Applicant's excuse that since he was making payments on these debts he was not "delinquent" is accepted, the question asked if he had *ever* been delinquent. He had been delinquent, especially underpaying income taxes for five years. His answer that he was no longer delinquent enforces that he knew he had been delinquent for some periods of time. He had not sought the help of a credit counseling service, and offered no proof of his claim that he was beginning to use the assistance of his employer's services. He stated, "I believe that they would have those type of services." That indicates that they were available but that he had not started using those services. If he was working with them, he provided no proof in his December 2005 submission. I find a willful failure to list these debts in his answer to question 38. He did not present sufficient evidence to support any of the Guideline E mitigating conditions. Accordingly, I conclude the SOR allegations under Guideline E against the Applicant.

I have carefully weighed all of the available evidence, and I have applied the appropriate disqualifying and mitigating conditions. Further, I have made a fair and commonsense assessment of the record as required by Directive Section

E2.2.3. This record raises both reasonable and persistent doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a. Against Applicant

Subparagraph 1.b. Against Applicant

Subparagraph 1.c. Against Applicant

Subparagraph 1.d. Against Applicant

Subparagraph 1.e. Against Applicant

Subparagraph 1.f. Against Applicant

Subparagraph 1.g. Against Applicant

Subparagraph 1.h. Against Applicant

Subparagraph 1.i. Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a. Against 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 security clearance. Clearance is denied.

Christopher Graham

Administrative Judge

1. Tr. at 15.

2. Tr. at 15-16.

3. *Id.* at 8; Applicant's Response to Interrogatory 11, dated June 24, 2003, at 2.

4. Tr. at 14,16.

5. Tr. at 18.

6. *Id.*

7. *Id.*

8. Tr. at 19.

9. Tr. at 20-21.

10. Tr. at 21.

11. Tr. at 22.

12. *Id.*

13. *Id.*

14. Government Exhibit 1 (ESPQ version of Standard Form 86, *Security Clearance Application*, dated June 2, 2003) at 10.

15. Tr. at 22-24.

16. Tr. at 31-32.

17. Tr. at 32.

18. Tr. at 64-66.

19. Applicant's Exhibit F (Miscellaneous documents including a monthly income and expense statement, payroll stubs, copies of checks payable to creditors, and a statement by Applicant), dated December 14, 2005.

20. *Id.* at 16-20.

21. *Id.* at 21-22.

22. *Id.* at 2, 4-15.

23. Tr. at 23-24.

24. See *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1998).

25. *Id.* at 527.

26. Exec. Or. 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995).

27. *Egan, supra*, at 531.

28. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

29. See ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

30. *Id.*, at 3.

31. See *Egan*; Directive ¶ E2.2.2.