

KEYWORD: Financial; Personal Conduct

DIGEST: Forty-five year old Applicant has a history of financial delinquencies commencing in about 1999, when his first account was placed for collection. Other delinquencies followed, and by 2004, there were more delinquent accounts in addition to the eight accounts referred to in the SOR. While he made some superficial efforts to address some accounts not included in the SOR, the other accounts remained largely ignored by him. He never sought financial guidance or counseling. In January 2003, Applicant completed an SF 86 and deliberately falsely answered three questions regarding his financial matters. His actions raise questions and doubts about his security eligibility and suitability, which he has failed to mitigate. Clearance is denied.

CASENO: 04-10914.h1

DATE: 04/25/2006

DATE: April 25, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-10914

DECISION OF CHIEF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esquire, Deputy Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Forty-five year old Applicant has a history of financial delinquencies commencing in about 1999, when his first account was placed for collection. Other delinquencies followed, and by 2004, there were more delinquent accounts in addition to the eight accounts referred to in the SOR. While he made some superficial efforts to address some accounts not included in the SOR, the other accounts remained largely ignored by him. He never sought financial guidance or counseling. In January 2003, Applicant completed an SF 86 and deliberately falsely answered three questions regarding his financial matters. His actions raise questions and doubts about his security eligibility and suitability, which he has failed to mitigate. Clearance is denied.

STATEMENT OF THE CASE

On July 22, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons under Guideline F (financial matters) and Guideline E (personal conduct) why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn, written statement, dated August 9, 2005, Applicant responded to the SOR allegations and requested a hearing. Department Counsel indicated the government was ready to proceed on January 17, 2006, and the case was assigned to me six days later. A notice of hearing was issued on February 1, 2006, and the hearing was held, as scheduled, on February 21, 2006. During the hearing, five Government exhibits, two Applicant exhibits, and Applicant's testimony were received. The transcript (Tr.) was received on March 1, 2006. At Applicant's request, the record was

kept open until March 6, 2006, to enable him to supplement the record. Applicant timely submitted one additional exhibit, consisting of six separate documents. They were admitted without objection.

FINDINGS OF FACT

Applicant admitted nearly all of the factual allegations pertaining to financial matters under Guideline F (subparagraphs 1.a. through 1.f., and 1.h.) and personal conduct under Guideline E (subparagraphs 2.a. through 2.c.). Those admissions are incorporated herein as findings of fact. He denied subparagraph 1.g. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 45-year-old employee of a defense contractor and he is seeking to obtain a secret security clearance.⁽¹⁾ He had previously been granted a secret security clearance in 1983, while serving with the military.⁽²⁾ He has been employed by the same government contractor since September 2000,⁽³⁾ and currently serves as a computer analyst.⁽⁴⁾ The quality of his work performance has not been discussed. He retired in August 2000, after six years enlisted service with the U.S. Army National Guard, followed by 15 years service as a warrant officer with the U.S. Army Reserve.⁽⁵⁾ He was married in June 1982, had three children (ages 23, 21, and 19), and was divorced in December 1997.⁽⁶⁾

Applicant's finances were apparently unremarkable until about 1999,⁽⁷⁾ although he contends his financial difficulties started, and "the whole thing unraveled" at the end of 2001.⁽⁸⁾ Following his divorce, there were some problems regarding child support payments, attributed by Applicant to his ex-wife's failure to cash his support checks, all of which resulted in a freezing of his bank account and a levy by the state in 2000.⁽⁹⁾ It took about eight months to settle the matter.⁽¹⁰⁾ For reasons not fully explained, his accounts became delinquent. Although the SOR identified eight delinquent accounts, in March 2004, he had an unspecified number of other debts, most of which he satisfied by the time the SOR was issued.⁽¹¹⁾ The eight accounts in the SOR, and their current status, are described below:

SOR ¶	TYPE DEBT	AMOUNT	CURRENT STATUS
¶1.a.	collection account (original creditor not identified) - placed for collection in October 1999 ⁽¹²⁾	\$940. ⁽¹³⁾	Applicant purportedly wrote creditor 1½ years earlier but received no response. Debt remains unpaid. ⁽¹⁴⁾
¶1.b.	co-signed automobile loan for a friend - repossession deficiency charged off in January 2001 ⁽¹⁵⁾	\$13,400. ⁽¹⁶⁾	Made \$1,675 payments in 2001. Unpaid. Balance of \$11,246 remains unpaid. ⁽¹⁷⁾

¶1.c.	bank credit card - charged off in September 2000 ⁽¹⁸⁾	\$3,309. ⁽¹⁹⁾	In December 2004, Applicant indicated a payment plan would start January 2005. ⁽²⁰⁾ At the hearing, he indicated his preference for payments was rejected by creditor in favor of a \$1,600 lump sum payment. ⁽²¹⁾ Balance remains unpaid. ⁽²²⁾
¶1.d.	collection account (original creditor not identified) - placed for collection in September 2000 ⁽²³⁾	\$848. ⁽²⁴⁾	Applicant contends this debt and 1.a. are the same bank credit card, but offered no proof to corroborate his contention. ⁽²⁵⁾
¶1.e.	daughter's cell phone account - charged off in March 2001 ⁽²⁶⁾	\$479. ⁽²⁷⁾	Applicant promised to pay entire balance by December 15, 2004. ⁽²⁸⁾ Debt remains unpaid. ⁽²⁹⁾
¶1.f.	bounced check to department store - placed for collection in May 2001 ⁽³⁰⁾	\$136. ⁽³¹⁾	Entire balance paid off January 14, 2005 - over one year before the hearing. ⁽³²⁾
¶1.g.	military exchange credit card - charged off as a bad debt, date unknown ⁽³³⁾	\$1,576. ⁽³⁴⁾	In December 2004, Applicant indicated a payment plan would start January 2005. ⁽³⁵⁾ At the hearing, he indicated account was satisfied by offsets of his federal and state tax refunds. ⁽³⁶⁾
¶1.h.	department store charge card - placed for collection prior to February 2003 ⁽³⁷⁾	\$595. ⁽³⁸⁾	At the hearing, he indicated the debt had been paid in full. ⁽³⁹⁾ He could not furnish documentation confirming his payment. ⁽⁴⁰⁾

Applicant's intentions are to pay off his delinquent debts. ⁽⁴¹⁾ He considered bankruptcy but rejected it as "the lazy man's way out." ⁽⁴²⁾ At the time of his divorce in 1997, Applicant started paying monthly child support for his three children in the amount of approximately \$1,350.00. ⁽⁴³⁾ That amount was eventually reduced as each child reached his or her majority. His payments ceased when his youngest child became 18 years old, in January 2005. ⁽⁴⁴⁾ Applicant realizes about \$1,400.00 in monthly military retirement income. ⁽⁴⁵⁾ His current annual salary is about \$49,000.00. ⁽⁴⁶⁾ He currently has about \$5,000.00 in his 401(k). ⁽⁴⁷⁾

On January 23, 2003, Applicant completed a Security Clearance Application (SF 86). ⁽⁴⁸⁾ In that SF 86 there were three questions of particular significance pertaining to financial matters. Question 35 asked: "In the last 7 years, have you had any property repossessed for any reason?" ⁽⁴⁹⁾ Question 38 asked: "In the last 7 years, have you ever been over 180 days delinquent on any debt(s)?" ⁽⁵⁰⁾ Question 39 asked: "Are you currently over 90 days delinquent on any debts?" ⁽⁵¹⁾ He responded "no" to all three questions, ⁽⁵²⁾ and certified that his responses were true, complete, and accurate. They were not. He subsequently admitted he had deliberately failed to disclose the true facts for each of those questions. ⁽⁵³⁾ During the hearing, however, Applicant seemed to hedge a bit by attributing his responses to the facts that he had not reviewed his credit reports for some time and he was still upset over the repossession of the automobile. ⁽⁵⁴⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E.2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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

Financial Considerations - Guideline F: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

Personal Conduct - Guideline E: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, pertaining to both adjudicative guidelines are set forth and discussed in the Conclusions section below.

Since the protection of the national security is the paramount consideration, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security" ⁽⁵⁵⁾ or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded all of the standards are the same. In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences that are grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of credibility, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

The government has established its case under Guideline F. Applicant's finances have generally been in disarray since about 1999, when his first account was placed for collection. Matters deteriorated further in 2000, when other accounts were either charged off or placed for collection. Other delinquencies followed, and by 2004, there were delinquent accounts in addition to the eight accounts referred to in the SOR. In addition, in one instance, Applicant issued a dishonored check. Applicant's actions in failing to satisfy his outstanding financial obligations and in issuing a bad check, give rise to Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. (*history of not meeting financial obligations*); FC DC E2.A6.1.2.2. (*deceptive or illegal financial practices such as embezzlement, employee*

theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust), and FC DC E2.A6.1.2.3. (inability or unwillingness to satisfy debts).

Applicant's financial difficulties remain largely unexplained, except for his references to some child support difficulties and the temporary freezing of his bank account. Throughout the entire period, he continued to receive both his current salary and his military retirement. Quite noticeable by their absence is any effort by Applicant to seek financial guidance or counseling, or to expend a reasonable, timely effort to resolve his outstanding financial obligations. In these circumstances, I find 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), or 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)* does not apply. Applicant eventually voluntarily resolved some of his delinquent debts, including those not identified in the SOR and one account identified in the SOR (subparagraph 1.f.). One identified account (subparagraph 1.g.) was resolved involuntarily when his federal and state income tax refunds were applied to offset the delinquencies. However, regarding the remaining accounts, for which there is no evidence to confirm Applicant's contention that they have been satisfied, or the others which have clearly not been addressed, Applicant's clear, continuing inaction negates the application of FC MC E2.A6.1.3.6. *(the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts)*. Applicant has, through evidence of extenuation and explanation, successfully mitigated or overcome the government's case as it pertains to allegation 1.f., and that allegation is concluded in favor of Applicant. However, as to the remaining allegations, Applicant has failed to mitigate or overcome the government's case. The evidence leaves me with doubts as to Applicant's security eligibility and suitability. Accordingly, allegations 1.a. through 1.e., 1.g. and 1.h. of the SOR are concluded against Applicant.

The government has established its case under Guideline E. In January 2003, Applicant completed an SF 86, and falsely answered three questions regarding his financial matters. He admitted he had deliberately failed to disclose the true facts for each of those questions. Examination of his actions reveals conduct involving questionable judgment, untrustworthiness, unreliability, and lack of candor. It falls 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)*. No Personal Conduct Mitigating Condition applies. Under these circumstances, Applicant has failed to mitigate or overcome the government's case. The evidence leaves me with doubts as to Applicant's security eligibility and suitability. Accordingly, allegations 2.a. through 2.c. of the SOR are concluded against Applicant.

For the reasons stated, I conclude Applicant is not suitable for access to classified information.

FORMAL FINDINGS

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

Paragraph 1., Guideline F: 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.: For Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Paragraph 2., Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: 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 a security clearance for Applicant. Clearance is denied.

Robert Robinson Gales
Chief Administrative Judge

1. Tr. at 26.
2. Government Exhibit 1 (Security Clearance Application, dated January 23, 2003) at 8.
3. *Id.* at 2.
4. Tr. at 25.
5. Government Exhibit 1, *supra* note 2, at 2, 5.
6. Tr. at 21-22.
7. Tr. at 49.
8. Tr. at 57.
9. Tr. at 47-48.
10. Tr. at 48.
11. Government Exhibit 3 (Interrogatories, dated December 3, 2004) at 4.
12. Response to SOR, dated August 9, 2005.
13. Government Exhibit 4 (Credit Report, dated June 13, 2005) at 2.
14. Tr. at 28-29.
15. Response to SOR, *supra* note 12.
16. Tr. at 31.
17. Tr. at 31; Government Exhibit 3, *supra* note 11, at 2; Government Exhibit 4, *supra* note 13, at 2.
18. Response to SOR, *supra* note 12.
19. Government Exhibit 2 (Credit Report , dated February 18, 2003) at 7.
20. Government Exhibit 3, *supra* note 11, at 2.
21. Tr. at 32.
22. Tr. at 32.
23. Response to SOR, *supra* note 12.

24. Government Exhibit 2, *supra* note 19, at 4.
25. Tr. at 33. To the contrary, there are two separate credit report entries for this creditor and another entry for a bank credit card, all with differing accounts numbers, opening dates, and amounts. *Id.* at 3-4.
26. Tr. at 34.
27. Response to SOR, *supra* note 12.
28. Government Exhibit 3, *supra* note 11, at 3.
29. Tr. at 34.
30. Tr. at 34.
31. Response to SOR, *supra* note 12.
32. Applicant Exhibit C-2 (Bank Check, dated January 14, 2005).
33. Tr. at 35; Government Exhibit 2, *supra* note 19, at 4.
34. Government Exhibit 2. There are apparently two separate accounts with this creditor, with one in the amount of \$1,576.00 (identified in subparagraph 1.g. of the SOR), and the other in the amount of \$1,790.00 (referred to in Government Exhibit 3). Both accounts are listed in Government Exhibit 2.
35. Government Exhibit 3, *supra* note 11, at 2.
36. Tr. at 35; Applicant Exhibit C-5 (Department of the Treasury letter, dated April 15, 2005); Applicant Exhibit C-6 (State Department of Revenue Notice of Change in Tax/Notice Assessment, dated March 30, 2005).
37. Response to SOR, *supra* note 12.
38. Government Exhibit 2, *supra* note 19, at 6.
39. Tr. at 35.
40. Applicant Exhibit C-1 (Statement, dated March 3, 2006).
41. Tr. at 50.
42. Tr. at 51.
43. Tr. at 43.
44. Tr. at 50, 52.
45. Tr. at 52.
46. Tr. at 53.
47. Tr. at 55.
48. Government Exhibit 1.
49. *Id.* at 8.

50. *Id.*

51. *Id.* at 9.

52. *Id.* at 8-9.

53. Response to SOR, *supra* note 12.

54. Tr. at 40-43.

55. The Directive, as amended by Change 4, dated April 20, 1999, uses "clearly consistent with the national interest" (Sec. 2.3.; Sec. 2.5.3.; Sec. 3..2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1.; Sec. E3.1.2.; Sec. E3.1.25.); Sec. E3.1.26.; and Sec. E3.1.27.), "clearly consistent with the interests of national security" (Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (Enclosure 2, Sec. E2.2.2.).