

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 53-year-old sanitation technician employed by a federal contractor. He had 17 delinquent debts totaling over \$17,500. Some debts date back over five years. After the SOR was issued, he commenced repayment but only provided proof of two debts that were paid. He deliberately gave false answers to two questions on his security clearance application. He failed to mitigate the security concerns about financial considerations and personal conduct. Clearance is denied.

CASENO: 06-24836.h1

DATE: 08/31/2007

DATE: August 31, 2007

_____	)	
In re:	)	
	)	
-----	)	ISCR Case No. 06-24836
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
_____	)	

**DECISION OF ADMINISTRATIVE JUDGE  
CHRISTOPHER GRAHAM**

**APPEARANCES**

**FOR GOVERNMENT**

J. Theodore Hammer, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 53-year-old sanitation technician employed by a federal contractor. He had 17 delinquent debts totaling over \$17,500. Some debts date back over five years. After the SOR was issued, he commenced repayment but only provided proof of two debts that were paid. He deliberately gave false answers to two questions on his security clearance application. He failed to mitigate the security concerns about financial considerations and personal conduct. Clearance is denied.

## **STATEMENT OF THE CASE**

On May 18, 2006, Applicant submitted a Security Clearance Application (SF 86).<sup>1</sup> The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, DOHA issued a Statement of Reasons (SOR) on February 12, 2007, detailing the basis for its decision – security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. The President issued revised adjudicative guidelines (Guidelines) on December 30, 2005. DoD implemented them on September 1, 2006. Pending official amendment/reissue of DoD Directive 5220.6, the Guidelines are to be used in all cases when the SOR is dated on or after September 1, 2006. Because the SOR was issued after September 1, 2006, DoD policy requires that this case proceed under the revised guidelines.

Applicant answered the SOR in writing on April 9, 2007, and requested a decision without a hearing. Department Counsel submitted a file of relevant material (FORM) in support of the government's case, a copy of which was received by Applicant on June 5, 2007. Applicant was afforded the opportunity to file objections and submit material in refutation, extenuation, or mitigation by July 5, 2007. He filed no response. The case was assigned to me on August 15, 2007.

## **FINDINGS OF FACT**

Applicant admitted the allegations contained in the SOR, but provided explanations for the alleged debts. He admitted providing inaccurate answers on his security questionnaire but denied it was intentional. The admissions are incorporated herein as findings of fact. 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 53-year-old sanitation technician employed by a federal contractor.<sup>2</sup> He was married in February 1990, and separated in July 2005.<sup>3</sup> He has no children.<sup>4</sup> He is a high school graduate.<sup>5</sup> He served in the National Guard from 1972 to 1976.<sup>6</sup> This is his first application for a security clearance.<sup>7</sup>

---

<sup>1</sup>Item 1 (Security Clearance Application (SF 86)(e-QIP version), dated May 18, 2006).

<sup>2</sup>*Id.* at 1, 5.

<sup>3</sup>*Id.* at 10.

<sup>4</sup>*Id.* at 11-16.

<sup>5</sup>*Id.* at 5.

<sup>6</sup>*Id.* at 17.

<sup>7</sup>*Id.* at 21-22.

Applicant had 14 delinquent debts totaling over \$17,500.<sup>8</sup> Many of the debts became delinquent before mid-2002, and remained delinquent up to the date of the FORM. In his answer, he claimed that he had satisfied six of the debts but provided proof as to only two.<sup>9</sup> As of March 12, 2007, he employed the services of a credit counseling agency to assist in consolidating his debts, counseling him, and providing assistance in managing his finances. Even most of the consolidated debts will not be completely repaid until 2010.<sup>10</sup> There is no evidence that his debts were caused by factors beyond his control. Instead, they result from poor money management. He claimed that one of the debts was his wife's obligation, but there is no documentation to substantiate the claim.

Applicant falsified material facts on an Electronic Questionnaires for Investigations Processing (e-QIP), executed by him on May 18, 2006, by answering "No" to the following questions: "**Section 28: Your Financial Delinquencies a.** In the last 7 years, have you been over 180 days delinquent on any debt(s)?" and "**Section 28: Your Financial Delinquencies b.** Are you currently over 90 days delinquent on any debt(s)?"<sup>11</sup> He deliberately failed to list the information set forth in SOR subparagraphs 1.a through 1.m. He claimed these were oversights and that he did not deliberately try to deceive the government.<sup>12</sup>

## POLICIES

In an evaluation of an applicant's security suitability, an administrative judge must consider the "Adjudicative Guidelines for Determining Eligibility For Access to Classified Information" (Guidelines). In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into Disqualifying Conditions (DC) and Mitigating Conditions (MC), which are used to determine an applicant's eligibility for access to classified information.

These guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. Guideline ¶ 2. An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge considers all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. Guideline ¶ 2(c).

Specifically, an administrative judge should consider the nine adjudicative process factors listed at Guideline ¶ 2(a): "(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)

---

<sup>8</sup>SOR subparagraphs 1.a through 1.m; Items 5 and 6 (Credit Reports, dated May 31, 2006 and December 22, 2006, respectively).

<sup>9</sup> Item 3 (Applicant's Answer to the SOR, dated February 12, 2007) at 7-8.

<sup>10</sup>Item 3, *supra*, note 9, at 5-6.

<sup>11</sup>Item 1, *supra*, note 1, at 22.

<sup>12</sup>Item 3, *supra*, note 9, at 3-4.

extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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.”

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” Guideline ¶ 2(b). 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, facts must be established by “substantial evidence.”<sup>13</sup> The Government initially has the burden of producing evidence 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. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to present “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government.<sup>14</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in 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.

The scope of an administrative judge’s decision is limited. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. Executive Order 10865, § 7.

## **CONCLUSIONS**

---

<sup>13</sup>“Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “Substantial evidence” is “more than a scintilla but less than a preponderance.” *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>14</sup>*See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005); “The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluates Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant has met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

## **Guideline F—Financial Considerations**

Guideline ¶ 18 articulates the Government’s concern concerning financial problems. “Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”

Two Financial Considerations Disqualifying Conditions (FC DC) could raise a trustworthiness concern and may be disqualifying in this case: Guideline ¶ 19(a) “inability or unwillingness to satisfy debts,” and Guideline ¶ 19(c) “a history of not meeting financial obligations.”

Five Financial Considerations Mitigating Conditions (FC MC) under Guidelines ¶ 20(a)-(e) are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Based on my evaluation of the record evidence as a whole, I conclude Guidelines ¶ 20(a), (b), and (e) do not apply. The debts continued to be delinquent until recently, there is no evidence of factors beyond Applicant’s control that accounted for the delinquencies, and there is no basis to dispute most of the indebtedness. However, Guidelines ¶ 20 (c) and (d) are at issue. Applicant did seek financial counseling, but only after the SOR was issued, and based on his prior record, the likelihood of successful completion could be in doubt. Because he does not have his finances under control, the mitigating condition under Guideline ¶ 20 (b) is not totally applicable. There is insufficient proof of serious debt reduction to conclude that Applicant has initiated a good-faith effort to repay overdue creditors or otherwise resolve the debts. Therefore Guideline ¶ 20 (d) does not apply.

## **Guideline E—Personal Conduct**

Under Guideline ¶ 15, “conduct involving...lack of candor [or] dishonesty...can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process.” One personal conduct disqualifying condition is particularly relevant and may be disqualifying in this case. Guideline ¶ 16(a) provides, “deliberate omission, concealment, or falsification of relevant 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.”

The concern under Guideline E (Personal Conduct) is that conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the applicant may not properly safeguard sensitive information.”<sup>15</sup> Applicant’s SF 86 (e-QIP version) had incorrect answers to questions, 28 (a) and (b). However, Applicant denied that he intentionally falsified the answers by not listing his delinquent debts. He claimed these omissions were “oversights.” Applicant knew he had a number of delinquent debts when he submitted his e-QIP. He did not adequately explain how an “oversight” caused him to incorrectly answer these basic questions.

Guideline ¶ 17. Conditions that could mitigate security concerns include:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability;

---

<sup>15</sup>Guidelines ¶ 15.

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

None of these conditions apply. I conclude Guideline E against Applicant.

### **Whole Person Analysis**

In addition to the enumerated disqualifying and mitigating conditions, I have considered the general adjudicative guidelines related to the whole person concept under Guideline ¶ 2(a). Applicant has made little progress resolving his debts. He is 53 years old, sufficiently mature to be fully responsible for his obligations.

I considered his age (53), his education, his employment, and what might motivate him to be less than truthful. Applicant supplied false answers on a security clearance application. This is problematic because candor with the government about a person's negatives is the crux of a trustworthiness determination. If a person discloses the adverse information about himself, then he may be trusted with confidential or classified information. Although not alleged in the SOR, these false statements are separate violations of 18 U.S.C. § 1001. The totality of the record raises 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. I conclude it is not clearly consistent with the national interest to grant or continue Applicant's security clearance.

### **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:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant

Paragraph 2. Guideline E:                      AGAINST APPLICANT



Subparagraph 2.a:  
Subparagraph 2.b:

Against Applicant  
Against Applicant

**DECISION**

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Christopher Graham  
Administrative Judge