

DATE: October 31, 2007

In re:

SSN: -----

Applicant for Public Trust Position

ADP Case No. 07-01610

**DECISION OF ADMINISTRATIVE JUDGE
CHRISTOPHER GRAHAM**

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 42-year-old project controller employed by a federal contractor. He married for the second time in 2000. From the outset, his wife had numerous judgments entered against her, wrote several insufficient funds checks, and was totally irresponsible in handling their financial affairs. He filed a Chapter 13 bankruptcy in 2001, which was dismissed in 2003, followed by his filing a Chapter 7 bankruptcy, and having his debts discharged in December 2003. He thereafter incurred over \$30,000 in delinquent debts. He commenced repayment of creditors one month prior to the hearing. He did not successfully mitigate the trustworthiness concerns about financial considerations. Applicant's eligibility for assignment to a sensitive position is denied.

STATEMENT OF THE CASE

On August 3, 2006, Applicant submitted a Public Trust Position Application (SF 85P).¹ The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue his eligibility to occupy an automated data processing (ADP) position designated ADP-I/II/III. 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 May 14, 2007, detailing the basis for its decision – security concerns raised under Guideline F (Financial Considerations) 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 July 5, 2007, and elected to have a hearing before an administrative judge. DOHA assigned the case to me on August 15, 2007, and issued a Notice of Hearing on August 29, 2007. I convened a hearing on September 14, 2007, to consider whether it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Applicant made a knowing and voluntary waiver of the rule requiring 15-days notice of the hearing, because he had actual notice more than 15 days prior to the hearing.² The government offered ten exhibits, marked as Exhibits 1-10. Applicant offered twelve exhibits, marked as Exhibits A-L. All exhibits were admitted without objection. I kept the record open until September 24, 2007, to allow Applicant the time to file additional documents. He filed 26 documents that were marked as Applicant's Post-Trial Exhibits 1-26. The government had no objection and the exhibits were admitted. DOHA received the transcript (Tr.) on September 24, 2007.

FINDINGS OF FACT

Applicant admitted the allegations contained in the SOR except for subparagraphs 1.c. and 1.i. 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 42-year-old project controller employed by a federal contractor.³ He was divorced in 1995, remarried in 2000, and separated in March 2005. He has one child from his first marriage who lives with him. He has completed two years towards a college degree.⁴ He served in the United States Navy for 20 years (1985-2005), retiring as a petty officer first class (E-6), and

¹Government Exhibit 1 (Questionnaire for Public Trust Positions (SF 85P), dated August 3, 2006).

²Tr. at 6.

³Tr. at 14, 20.

⁴*Id.* at 16.

received an honorable discharge. He has a disability claim pending with the Veterans Administration for a service-connected disability.⁵ He has held a security clearance since November 1985.⁶

In August 2001, Applicant petitioned for Chapter 13 bankruptcy. The case was dismissed in April 2003. In September 2003, he filed a Chapter 7 bankruptcy petition, and was discharged from his debts in December 2003. Since that time, he has accumulated \$30,252 in delinquent debts. Applicant's chronological account of his marriage best details his continuing financial problems.⁷

Applicant met his second wife in May 2000. In June 2000, they became engaged, and he became a 50% partner in her cleaning company. They were married August 26, 2000. He wrote several checks to cover wedding expenses, which she promised to pay but did not. In September 2000, several judgments against his wife began to be attached to their bank accounts, freezing access to available funds. This occurred because she signed for many things of value for her former boyfriend (boat, truck, and apartment), none of which he paid. Also in September 2000, she received a litigation settlement check of approximately \$195,000. Applicant was to receive \$30,000, but it was held in her account and the account was frozen. In November, some of the company checks and several of Applicant's personal checks bounced. The financial institution intercepted his paycheck and canceled the checking account. In December 2000, creditors were calling saying they did not get paid, although his wife had told him she had paid them. He questioned her, she apologized, but became verbally abusive and argumentative.⁸

In January 2001, Applicant began having concerns about marrying his wife and having her ruin his credit. In February 2001, she continued lying about paying creditors as he was receiving phone calls from these creditors. She stated she would order a check from the bank to cover all the delinquent debt. However, the check never appeared. In April, more judgments against her were attached to the bank accounts. He asked to take over responsibilities for handling the household expenses, and she refused. In August 2001, he filed a Chapter 13 bankruptcy petition in an effort to keep his house and vehicle. The judgments kept coming and he could not keep up with all of the expenses that were made by his family of six.⁹

In May 2003, he lost his house to foreclosure. The loan was VA guaranteed so he can never obtain a VA loan again. He conceded part of the financial issue was his fault, but placed most of the blame on his wife's mismanagement of funds, excessive judgments, deceptions, and refusal to let him manage the money. He also set up an allotment from his military pay for an apartment for the family to live in.¹⁰

⁵*Id.* at 17-18.

⁶*Id.* at 20.

⁷Applicant's Post-Trial Exhibit 22 (Chronological Account of Marriage, dated September 2007) at 1-6.

⁸*Id.* at 1.

⁹*Id.* at 2.

¹⁰*Id.* at 3.

In May 2004, his wife gave the apartment manager a bad check, the lease came to an end, Applicant stopped his allotment, and he was taken to court by the landlord. He was allowed to stay for 30 days, pay a late fee, and the amount of her insufficient funds check. During this time he and his wife were attempting to purchase a house. Every time it approached settlement, she would not have a check from the bank, making up various lies and excuses. This happened three times. In July 2004, she applied to lease a two-bedroom apartment, using his military status to get the apartment. She later told him that she rented the apartment so that her mother, two nieces, and two nephews could live there since they were homeless. She promised to pay all rent, and he trusted her again. She and her mother and the grandchildren parted ways leaving her unemployed mother with no means to pay rent. In August 2004, they had to move out of the apartment by court order. His wife went to another state to obtain an apartment for her mother. Even though his credit record was ruined with foreclosure and litigation, he signed this new lease, as he had no place else to go. Later that month, she found a two-bedroom condo and convinced the owner to rent to them. She lived there with their two older children who were high school seniors. In September 2004, she allowed her oldest son and a friend to sublease the unit where her mother was living, which was then in Applicant's name, so he would not be liable for breaking the lease. They paid no rent, had other people living with them, and trashed the apartment. His wife passed another bad check. In October 2004, she had a judgment against her for the bad check. At another apartment complex, his check had bounced and she had promised to get the money out of the bank but never did. He was taken to court, and because funds were frozen at the bank, they were forced to move out of another apartment due to her alleged mishandling of the finances. In December 2004, they were on the verge of eviction from a fourth-place because she did not pay the rent, forcing Applicant to borrow money from his friends. They subsequently were evicted for nonpayment of rent.¹¹

In February 2005, they moved to another condo, and his wife's check for her portion of the rent bounced. (Eventually, they were evicted in August, 2005.) In April 2005, he retired from the Navy, and the only income was his retirement check. After the eviction, they were homeless, and they went to live in an apartment paying \$179 per day. Their vehicle was repossessed, and he had to use a large portion of his retirement check to get the car back. In October 2005, they moved to a five bedroom townhouse. The marriage was deteriorating, they tried counseling, but it was not successful because the counselor told his wife that she should pay Applicant the money she owed him. In December 2005, she wrote Applicant a letter stating she wanted him to move out so she could re-build her self-esteem. He moved out in mid-December. He notified the landlord that he was moving and that his wife was the sole person responsible for rent.¹²

Throughout 2006, Applicant's wife promised to give him money, saying she would pay all the bills that were created during the marriage. She felt responsible for him losing everything he had worked for. She claimed she had filed for divorce, but he found no case on file. In December 2006, she made several threats about never paying him anything and that she could care less what a court might say.¹³

¹¹*Id.* at 3-4.

¹²*Id.* at 5-6.

¹³*Id.* at 6.

Applicant claimed that his wife received over a million dollars in lawsuit settlements, that he never received any money from her, and provided no proof of these settlements.¹⁴ His debts listed in the SOR, and unpaid as of February 28, 2007, were as follows:

SOR ¶	AMOUNT	STATUS
1.c.	\$779	paid ¹⁵
1.d.	\$152	paid ¹⁶
1.e.	\$518	paid 8/27/07 ¹⁷
1.f.	\$7,972	payment plan on 9/11/07, 24 monthly @ \$250/month ¹⁸
1.g.	\$6,393	payment plan on 9/12/07, 26 monthly @ \$250/month ¹⁹
1.h.	\$9,786	payment plan on 9/11/07, 24 monthly @ \$250/month ²⁰
1.i.	\$584	removed from his credit report ²¹
1.j.	\$1,457	payment plan on 9/11/07, 4 monthly @ \$364.16 ²²
1.k.	\$4,126	payment plan on 9/12/07, 16½ monthly @ \$250/month ²³

For the next three months his payments amount to \$1,364.16. After that time they are \$1,000 a month for the next 15 ½ months, etc. In computing the above, at the date of the hearing, giving Applicant credit for the payments made, he still owed about \$28, 370.

POLICIES

¹⁴*Id.* at 33.

¹⁵Applicant's Exhibit B, debt discharged in bankruptcy.

¹⁶Applicant's Exhibit C, debt discharged in bankruptcy.

¹⁷Applicant's Exhibit D (Debt Action Tracking Sheet) at 1-2.

¹⁸Applicant's Exhibit E (Debt Action Tracking Sheet) at 1-3.

¹⁹Applicant's Exhibit F (Debt Action Tracking Sheet) at 1-3; Applicant's Post Trial Exhibit 5 (Letter from Collection Agency, dated September 18, 2007) at 1.

²⁰Applicant's Exhibit G (Debt Action Tracking Sheet) at 1-5.

²¹Applicant's Post Trial Exhibit 3 (Letter from Bank, dated September 12, 2007) at 1.

²²Applicant's Exhibit I (Debt Action Tracking Sheet) at 1-2.

²³Applicant's Exhibit J (Debt Action Tracking Sheet) at 1-2.

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.²⁴ 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.²⁵

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) 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."²⁶ 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."²⁷ 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

²⁴Guideline ¶ 2.

²⁵Guideline ¶ 2(c).

²⁶Guideline ¶ 2(b).

²⁷"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 (4th Cir. 1994).

favorable clearance decision.”²⁸ The burden of disproving a mitigating condition never shifts to the Government.²⁹

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.³⁰

CONCLUSIONS

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.”

The government established its case under Guideline ¶ 19. Two Financial Considerations Disqualifying Conditions (FC DC) raise trustworthiness concerns and are disqualifying in this case: Guideline ¶ 19(a) “inability or unwillingness to satisfy debts” and Guideline ¶ 19(c) “a history of not meeting financial obligations.” Applicant has a history of not meeting debts, as set forth in the SOR and government exhibits.

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;

²⁸Directive ¶ E3.1.15.

²⁹See 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 the 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).

³⁰Executive Order 10865, § 7.

(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), (c), and (e) do not apply. The debts continued to be delinquent until the time of the hearing, he has not sought financial counseling, and there is no basis to dispute most of the indebtedness. However, Guidelines ¶ 20 (b) and (d) are at issue.

Applicant blamed his wife for most of his financial problems. His statements revealed a history of judgments against his wife, numerous insufficient funds checks written by her, and numerous situations where he had to make payments to salvage assets or find housing for his family. He also claimed that his wife received over \$1 million in lawsuit settlements. This argument lacks credibility. I seriously doubt she ever received any such settlements. If she had access to that amount of money, it is inconceivable that she would have all of the various judgments entered against her, or bounce numerous checks, and would have provided for her mother and other family members if they were in need. As early as 2001, he was questioning the wisdom of his marriage due to his wife's financial irresponsibility. Yet for the next five years, he continued to live in financial exigency. This is not a pattern of events beyond his control. He filed Chapter 7 bankruptcy and had his debts discharged in December 2003. Yet for another three years, he accumulated over \$30,000 in delinquent debts. Further, he only started making payment plans with his creditors a month or less prior to the hearing. This is not a good-faith effort at resolving indebtedness, because he just started. He has established no track record to show that his efforts have been successful. By allowing himself to get in this financial situation, he has demonstrated poor judgment and a lack of responsibility and trustworthiness. I find that no mitigating conditions are applicable and I conclude Guideline F against Applicant.

Whole Person Analysis

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance."³¹ "Available, reliable information about the person, past and present, favorable and unfavorable, should be

³¹Directive ¶ E.2.2.1.

considered in reaching a determination.”³² In evaluating Applicant’s case, in addition to the disqualifying and mitigating conditions, I also considered the “whole person” concept in evaluating Applicant’s risk and vulnerability in protecting our national interests.³³ I considered his age (42), his education, his employment, his military service, and the causative factors of his financial delinquencies. He had financial problems from the outset of his marriage in 2000. Even after having his debts discharged in bankruptcy, he allowed himself to incur unpaid debts. He recognized there was a problem in 2001, and yet continued to live in the same manner for the next five years. While it might be easy to assess blame to his wife, he used poor judgment in not stepping in and correcting the problem a long time ago. This raises questions about his reliability and judgment. 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 that Applicant is not entitled to a favorable eligibility determination.

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:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the interest of national security to grant Applicant’s eligibility for assignment to a sensitive position. Eligibility is denied.

³²*Id.*

³³*Id.*

Christopher Graham
Administrative Judge