

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 59-year-old contracts administrator employed by a federal contractor. He has had delinquent debts since 2002. Even though his wife had cancer surgery, and has been unable to work, he made no real effort to resolve his indebtedness until 2007. The documentation he provided was insufficient to mitigate the security concerns about his financial considerations. He gave a false answer on two security clearance applications involving a judgment, and even though he had two subsequent interviews with investigators, he did not disclose the judgment to the government. His financial problems and deliberate omission are aggravated by the fact that he has been a facility security officer (FSO) for over two years. He also has held a security clearance since 1988. He failed to mitigate the security concern about personal conduct. Clearance is denied

CASENO: 07-07247.h1

DATE: 09/28/2007

DATE: September 28, 2007

In re:

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SSN: -----

Applicant for Security Clearance

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) ISCR Case No. 06-07247  
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**DECISION OF ADMINISTRATIVE JUDGE  
CHRISTOPHER GRAHAM**

**APPEARANCES**

**FOR GOVERNMENT**

Eric H. Borgstrom, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

## **SYNOPSIS**

Applicant is a 59-year-old contracts administrator employed by a federal contractor. He has had delinquent debts since 2002. Even though his wife had cancer surgery, and has been unable to work, he made no real effort to resolve his indebtedness until 2007. The documentation he provided was insufficient to mitigate the security concerns about his financial considerations. He gave a false answer on two security clearance applications involving a judgment, and even though he had two subsequent interviews with investigators, he did not disclose the judgment to the government. His financial problems and deliberate omission are aggravated by the fact that he has been a facility security officer (FSO) for over two years. He also has held a security clearance since 1988. He failed to mitigate the security concern about personal conduct. Clearance is denied

## **STATEMENT OF THE CASE**

On March 8, 2005, 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 December 11, 2006, 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 January 10, 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 July 1, 2007. Applicant was afforded the opportunity to file objections and submit material in refutation, extenuation, or mitigation by July 31, 2007. He filed a response which was received by DOHA on August 2, 2007. The case was assigned to me on September 10, 2007.

## **FINDINGS OF FACT**

Applicant admitted the allegations contained in SOR subparagraphs 1.a., 1.b., 1.e., and 1.f. He denied all other allegations in the SOR. 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 59-year-old contracts administrator employed by a federal contractor.<sup>2</sup> He has been employed with this company since 1976, and since March 2005, has served as the facility security officer.<sup>3</sup> He is married with no children.<sup>4</sup> He has a bachelor's degree in building construction. He served in the United States Army from September 1969 to June 1972, and attained the rank of Sergeant (E-5). He was granted a security clearance in 1988.<sup>5</sup>

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<sup>1</sup>Item 3 (Security Clearance Application (SF 86), dated March 8, 2005).

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

<sup>3</sup>*Id.* at 12.

<sup>4</sup>*Id.* at 2.

<sup>5</sup>*Id.* at 2, 4.

Applicant had eight delinquent debts totaling approximately \$79,567.<sup>6</sup> In his answer to the SOR, he provided evidence that a debt of \$26 listed in SOR subparagraph 1.d., and a judgement for \$1,361 listed in subparagraph 1.h. were satisfied. He did not provide evidence of payments or payment arrangements with respect to the debts alleged in subparagraphs 1.a. and 1.f. Subparagraph 1.e. is an amount in excess of \$36,000, of which at least \$4,000 is delinquent,<sup>7</sup> and he provided no evidence of payments. Applicant provided evidence of one payment on debts alleged in subparagraphs 1.b. and 1.g. As to the debt alleged in subparagraph 1.c., he provided evidence of three payments on his mortgage, and that foreclosure proceedings were held in abeyance by the creditor.<sup>8</sup> He also stated that his wife underwent surgery in late 2003. There is no evidence to show how much work Applicant or his wife missed during her recuperation.<sup>9</sup> She is now disabled and unable to work, although there is no doctor's. Applicant does not say whether she has applied for and is/is not receiving social security disability. He was interviewed by Defense Security Services (DSS) in January or February 2005, to review an unfavorable financial credit report.<sup>10</sup> Most efforts at debt reduction occurred in 2007.<sup>11</sup>

Applicant first submitted his security clearance application on October 7, 2003. He subsequently re-signed and re-submitted a security clearance on March 8, 2005. On both submissions, he answered "No" to question 37, which asks whether any judgment had been filed against him in the last seven years.<sup>12</sup> He omitted the judgment listed in SOR subparagraph 1.h. Applicant admitted that a judgment was filed against him in May 2003, but that he only became aware of it in the second week of October 2003. He stated that his wife who received the notice of the judgment but did not tell him about it to "spare me the stress of another creditor demand."<sup>13</sup> Even though he knew about the 1.h. judgment since October 2003, he did not disclose the judgment in his July 2005 security interview, even though he specifically discussed his other financial difficulties including medical expenses and delinquencies.<sup>14</sup> He even amended his earlier answers to questions 38 and 39 on his March 2005 SF 86 submission, but failed to disclose the 1.h. judgment.<sup>15</sup>

## **POLICIES**

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<sup>6</sup>Item 6 (Credit Report, dated November 15, 2006) at 1-4.

<sup>7</sup>Item 7 (Credit Report, dated June 21, 2006) at 3; Item

<sup>8</sup>Response to the FORM, dated July 22, 2007, at 7.

<sup>9</sup>Item 2 (Answer to SOR, dated January 10, 2007) at 1-9.

<sup>10</sup>*Id.* at 9.

<sup>11</sup>*Id.* at 1-9.

<sup>12</sup>Item 3, *supra*, note 1, at 4.

<sup>13</sup>Item 2, *supra*, note 8, at 5.

<sup>14</sup>Item 9 (Personal Subject Interview, dated July 6, 2005) at 1-3.

<sup>15</sup>Item 3, *supra*, note 1, at 4-5.

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) 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>16</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

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<sup>16</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).

favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government.<sup>17</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.<sup>18</sup>

## **CONCLUSIONS**

### **Guideline F—Financial Considerations**

Guideline ¶ 18 articulates the Government’s concern regarding 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) 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.” 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;

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<sup>17</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 decides 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).

<sup>18</sup>Executive 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) and (e) do not apply. The debts continued to be delinquent until recently and there is no basis to dispute most of the indebtedness. However, Guidelines ¶ 20 (b), (c), and (d) are at issue. Applicant did not seek financial counseling. His efforts at debt reduction only became serious in 2007. He was on notice in early 2005 that the government had concerns about his financial situation. He did pay off the \$1,361 judgment (1.h.) and a \$26 phone bill (1.d.). But there is still over \$60,000 of debt, and there is insufficient evidence of payments made to know where Applicant stands in terms of his overall debt repayment. His wife had cancer surgery and is disabled, although there is no doctor's statement or other documentation to verify the impact on their finances. I cannot make an affirmative finding that he has his finances under control. What is required is documentary proof of payments - a cancelled check (both sides), a creditor's statement, a money order, or a doctor's statement, etc. While I do not cast aspersions on Applicant's truthfulness, his saying so isn't the best evidence. His statements must be supported by documents. 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 (b), (c), and (d) do not apply. I conclude Guideline F against Applicant.

### **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. Conditions that could raise a security concern and may be disqualifying include:

(a) 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;

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Applicant's furnished incorrect answers to question 37 on his two security clearance applications in 2003 and 2005. However, Applicant denied that he intentionally falsified the answers by not listing this judgment. Applicant knew he had a judgment against him. He had an interview with DSS agents twice, and knew they were concerned about his financial delinquencies. Yet he did not disclose the judgment to the government. The government established its case under Guideline ¶ 16 (a) and (b).

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; or

(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.

Guideline ¶ 17 (a-c) does not apply. Applicant did not make a timely or voluntary disclosure of his judgment. A false answer on a security clearance application is not a "minor" matter. Truthfulness is at the heart of the security clearance process. There is no evidence to support (b) or (c). As 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 59 years old, sufficiently mature to be fully responsible for his obligations.

I considered his age, his education, his employment, and factors that might motivate him to be less than truthful. Applicant supplied false answers on a security clearance applications. 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 classified information. Applicant admitted to financial problems spanning from



2002 until the present. He has resolved two of the debts. The remaining delinquent debts total over \$60,000. His falsification constitutes very serious misconduct, which is an aggravating factor, given his duties and experience as a facility security officer.

Applicant's wife suffered medical problems, which caused a reduction in household income and an increase in household expenses. However, he provided no documentation to corroborate his claims. Further, the circumstances did not contribute to the falsification issue. The financial difficulties are ongoing. There is no record evidence to suggest that Applicant did not voluntarily incur these debts and commit the falsification. His failure to significantly and responsibly address his delinquent debts for several years is an aggravating factor. He knew over 2 ½ years ago that the government was focused on his financial delinquencies. Yet he waited until the current year to the attempt to make any debt resolution. There is no evidence of his motivation which would operate to mitigate his conduct.

The United States has a duty to protect itself from unauthorized disclosures of sensitive information and place the utmost trust in those persons to whom it grant access to sensitive information. 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:	Against Applicant
Subparagraph 1.h:	For Applicant

Paragraph 2. Guideline E:                      AGAINST APPLICANT

Subparagraph 2.a:                              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