

KEYWORD: Financial

DIGEST: Applicant is a 47-year-old employee of a defense contractor. He discharged his debts in a 2001 Chapter 7 bankruptcy, and subsequently incurred significant delinquent debt. He paid the two smallest delinquent debts after receiving notice that his clearance may be denied, but did not meet his burden of mitigating security concerns raised by his history of, and ongoing, financial irresponsibility. Clearance is denied.

CASENO: 06-19547.h1

DATE: 06/14/2007

DATE: June 14, 2007

In re:)	
)	
-----)	
SSN: -----)	ISCR Case No. 06-19547
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
DAVID M. WHITE**

APPEARANCES

FOR GOVERNMENT

Emilio Jaksetic, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 47-year-old employee of a defense contractor. He discharged his debts in a

2001 Chapter 7 bankruptcy, and subsequently incurred significant delinquent debt. He paid the two smallest delinquent debts after receiving notice that his clearance may be denied, but did not meet his burden of mitigating security concerns raised by his history of, and ongoing, financial irresponsibility. Clearance is denied.

STATEMENT OF THE CASE

Applicant applied for a security clearance on August 19, 2005, in conjunction with his employment by a defense contractor. On January 30, 2007, 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 Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended. The SOR detailed reasons, under Guideline F (Financial Considerations), why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance for Applicant, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant responded to the SOR allegations in a notarized letter dated February 22, 2007, admitting the truth of all of the allegations at the time the SOR was issued but denying that he still owed some of the debts, and elected to have his case decided on the written record in lieu of a hearing. Applicant included settlement payment receipts for two of the five debts listed in the SOR, and a letter from a third creditor documenting a repayment plan.¹ He did not submit any other matters for consideration in extenuation or mitigation of his admissions. Department Counsel submitted the government's written case on March 16, 2007. A complete copy of the file of relevant material (FORM)² was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant signed the document acknowledging receipt of his copy of the FORM on March 26, 2007, and returned it to DOHA. He did not submit any further response to the FORM by the April 25, 2007 due date, nor did he request an extension of time to respond. The case was assigned to me on May 24, 2007.

FINDINGS OF FACT

Applicant admitted the truth of the factual allegations set forth in the SOR pertaining to financial considerations under Guideline B (subparagraphs 1.a through 1.f).³ Those admissions are

¹Item 3 (Applicant's letter response to SOR dated Feb. 22, 2007).

²The government submitted eight items in support of the allegations.

³See Item 3. Although he denied that the statements in SOR ¶¶ 1.a, 1.b, 1.c and 1.d were accurate as of the date of his response, he admitted that he had owed each listed debt and said he had made payments, during February 2007, toward these debts as further specified below.

incorporated herein as findings of fact. After 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 47-year-old employee of a defense contractor seeking to obtain a security clearance.⁴ He served on active duty in the Army Reserve from 1978 until 1995 and held a secret clearance.⁵ He is married, for the third time, and has two children, ages 11 and 3, who reside with him.⁶ He owns a home with a 40-year mortgage obtained in July 2006. The mortgage loan balance is about \$584,000 with a monthly payment of \$4,849. This mortgage appears to be a refinancing, since he reported living in this home from May 2004 to present. He and his wife have a net monthly income of \$8,820.⁷

After leaving the Army, Applicant worked as a letter carrier for the Postal Service from 1995 until 2005.⁸ Despite his ongoing and steady employment, Applicant filed for Chapter 7 (dissolution) bankruptcy on December 13, 2000, and the final order discharging his debts to nine creditors was entered on August 23, 2001.⁹ He reported never having been fired from, or leaving a job under unfavorable circumstances,¹⁰ and since he provided no information indicating he was forced to resign, I conclude that he voluntarily left his job with the post office.

For four months (February to June 2005 – between his postal job and his current employment), Applicant was self-employed as a cook, doing business as “Rudy’s Ribs.” In his response to the SOR, Applicant said “I . . . had financial difficulty due to a failed business attempt but I have paid or currently [sic] in the process of paying all of my debts.” He provided no other information concerning this business or how his debts relate to it.

The first delinquent debt, alleged in SOR ¶ 1.a, was to a satellite television company, placed for collection, in the amount of \$180. It became delinquent in May 2005.¹¹ Applicant made a \$90.09 payment to the collection agency on February 7, 2007 in full settlement of this debt.¹²

The second delinquent debt, alleged in SOR ¶ 1.b, was to a bank in the amount of \$685 for

⁴Item 4 (e-QIP security clearance questionnaire, dated Aug. 19, 2005) at 8, 13-14. (Note: Item 4 has 32 pages, variously numbered as “x of 33” (top right), “x/38” (bottom right) and hand-numbered “7” through “38” (bottom right). Only the handwritten numbers cover all of the pages, so they will be used in cites. Item 4 has no pages 1 through 6.)

⁵Item 4 at 27, 31-32.

⁶Item 4 at 17-22.

⁷Item 7 (Applicant’s response to interrogatories) at 3, 5; Item 6 (credit bureau report (CBR) dated Oct 16, 2006) at 2; Item 8 (CBR dated Jan. 23, 2007) at 3; Item 4 at 11. The mortgage interest rate calculates to 9.75%.

⁸Item 4 at 15.

⁹Item 5 (Bankruptcy case history and list of creditors) at 1-2. Applicant also admitted this was true in his response to SOR ¶ 1.f.

¹⁰Item 4 at 29.

¹¹Item 8 at 1.

¹²Item 3 at 1, 3.

credit card debt. It became delinquent in April 2005.¹³ Applicant settled this debt in full, with agreement of the creditor, by making a \$460 payment on February 22, 2007.¹⁴

SOR ¶ 1.c alleged delinquent credit card debt to a collection agency in the amount of \$1,171. This debt, which was \$1,435 in October 2006, became delinquent in August 2004.¹⁵ In December 2006, Applicant agreed to pay \$292, and monthly payments of \$198. As of February 13, 2007, he owed \$977.86 on this debt.¹⁶

SOR ¶ 1.d alleged a \$1,732 debt to a lease financing company for an account that was opened in December 2003 and became delinquent in September 2005.¹⁷ Applicant stated in his response to the SOR that he made a \$1,082 settlement-in-full payment to this company on February 22, 2007, and was awaiting receipt of a confirmation letter. He also included a name and telephone number of a company employee to contact for verification. Despite Department Counsel's comments on this absence of documentation in the FORM discussion and argument,¹⁸ Applicant did not submit a copy of this confirmation letter, or anything else, in response to the FORM.

SOR ¶ 1.e alleged a charged off bad debt for a \$13,797 auto loan from a credit union. This account was opened in June 2004, and became delinquent in February 2005.¹⁹ Applicant admitted he owed an unspecified amount on this account, and said that on February 22, 2007 he had arranged with the credit union to pay \$140 per month toward it. The original monthly payment on this loan was \$497, and with no further interest or penalties it would take more than 8 years to pay it off at the arranged monthly rate.

The three CBRs at Items 6, 7 and 8 of the FORM report that several other debts, that were incurred after Applicant's August 2001 Chapter 7 bankruptcy discharge, are currently "involved in Chapter 13 debt adj," "included in Chapter 13," or "wage earner plan account (Chapter 13)."²⁰ None of these debts are alleged in the SOR, or otherwise addressed by Department Counsel in the FORM.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in

¹³Item 6 at 1; Item 8 at 2.

¹⁴Item 3 at 1, 5.

¹⁵Item 6 at 2; Item 8 at 2.

¹⁶Item 3 at 1, 4.

¹⁷Item 6 at 3; Item 8 at 3.

¹⁸FORM at 5, 10.

¹⁹Item 6 at 3; Item 8 at 3. Of note, the CBRs show this account as charged off with a zero balance due. Applicant provided no further information about this debt, except to admit that he is currently indebted to this credit union.

²⁰See Item 6 at 2, 3; Item 7 at 8; Item 8 at 3.

the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into disqualifying conditions (DC) that may raise security concerns, and mitigating conditions (MC) that may reduce or negate security concerns. Applicable DCs and MCs under Guideline F (Financial Considerations) must be considered in deciding whether to grant, continue, deny or revoke Applicant's eligibility for access to classified information.

An administrative judge need not view the adjudicative guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are intended to be applied in conjunction with the factors set forth in the Adjudicative Process provision of the Directive,²¹ to assist the administrative judge in reaching fair and impartial, common sense decisions.

The entire decision-making 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, in addition to the applicable guidelines, 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 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.²²

Protection of the national security is the paramount consideration, so the final decision in each case must be arrived at by applying the standard that issuance of a clearance must be clearly consistent with the interests of national security. Any doubt as to whether access to classified information is clearly consistent with national security must be resolved in favor of the national security.²³ 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."²⁴ The burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. "Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that

²¹Directive, Enclosure 2, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, dated August 2006, at ¶ 2.

²²*Id.* at ¶ 2(a).

²³*Id.* at ¶¶ 2(b), 2(c).

²⁴"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).

have been controverted.”²⁵ “The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and [Applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”²⁶ Once it has met its initial burden of production, the burden of persuasion (including any burden to disprove a mitigating condition) never shifts to the government.²⁷

A person who seeks access to classified information seeks to enter 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 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. Section 7 of Executive Order 10865 specifically provides that any adverse industrial security clearance decision shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's loyalty or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, 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:

Guideline F (Financial Considerations)

Financial considerations become a security concern when a person has significant delinquent debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, individuals who are financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. 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.²⁸

²⁵Directive ¶ E3.1.14.

²⁶Directive ¶ E3.1.15.

²⁷ISCR 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, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

²⁸Directive, Enclosure 2, *supra* n 20, at ¶ 18.

I have considered all the financial considerations disqualifying conditions (FC DC), and conclude that FC DC 19(a) (“inability or unwillingness to satisfy debts”) and FC DC 19(c) (“a history of not meeting financial obligations”) apply. While his 2001 bankruptcy is a legal method of discharging debt, it also shows that, at that point in time, he was unable to, and did not, satisfy his debts or meet his financial obligations. Within three years he was again delinquent on some of the SOR-listed debts, adding to his history of financial irresponsibility that continues to date. Although he provided proof of resolution of the debts listed in SOR ¶¶ 1.a and 1.b, his uncorroborated statements that he has made payments and resolution agreements since February concerning three of the debts are insufficient to meet his burden of proof. His inability to satisfy those debts is further established by the minimal payments he says he has agreed to make toward what is by far the largest debt addressed in the SOR. No other FC DC applies.

I have considered all the Financial Considerations Mitigating Conditions (FC MC) that might apply to Applicant’s history of not meeting financial obligations, and inability to satisfy debts. FC MC 20(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”) does not apply. Applicant’s financial difficulties are numerous and ongoing. The behavior forms a recent pattern of failing to meet financial obligations, while in his current employment situation. He has not demonstrated that his debt problems are unlikely to recur, particularly in view of his \$4,849 monthly mortgage payment being 55% of the \$8,821 net monthly income of his family of four, and the unlikelihood that he could further refinance the home.

Applicant did not directly assert that financial security concerns should be mitigated under FC MC 20(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”). While he did mention that his brief “Rudy’s Ribs” business had failed, and some of his debts became delinquent during or near this time, he did not show how the debts related to the failed business. His 2001 bankruptcy occurred in the middle of steady employment with the post office. Neither the dates nor the nature of the SOR-listed debts suggest they were in any way related to this business, and his choice to leave his postal job to start “Rudy’s Ribs” was voluntary and totally within his control. Accordingly, Applicant has not shown that FC MC 20(b) applies.

Applicant made no attempt to establish that FC MC 20(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”) applies, and there is no evidence that would support it. FC MC 20(d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”) does not apply either. His uncorroborated assertions, that one debt is paid and he initiated payment arrangements with two other creditors, and his belated resolution of the two smallest delinquent debts only after receipt of the SOR, do not demonstrate sufficient good-faith efforts to mitigate security concerns raised by Applicant’s history of financial irresponsibility and delinquent indebtedness.

Finally, FC MC 20(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”) does not apply. Applicant did not dispute the validity of any of the SOR-listed debts. FC MC 20(f) has to do with unexplained

affluence, and has no application here.

Whole Person Analysis

Applicant's history of, and ongoing financial irresponsibility are significant and pervasive. His pattern of delinquent indebtedness resumed shortly after being completely discharged of debt in a 2001 Chapter 7 bankruptcy. He voluntarily entered into each credit arrangement that he subsequently dishonored, and gave no reason to believe that any of these problems could not have been avoided by making better choices. His irresponsibility is recent and ongoing. He is a fully mature and experienced individual, with about 27 years of combined military service and federal employment, so neither youth nor inexperience can mitigate his conduct. He demonstrated no rehabilitative efforts and gave no indication such problems are unlikely to recur.

Although he did document resolution of the two smallest of the SOR-listed delinquent debts, Applicant submitted neither evidence nor other information from which any mitigating condition or circumstance might be applied to lessen the security concerns raised by the potential for conflict of interest, coercion, pressure or manipulation created by his overall financial considerations. For the reasons stated, I conclude Applicant has not demonstrated that it is clearly consistent with the interests of national security to grant him 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:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	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.

David M. White
Administrative Judge