

KEYWORD: Financial; Criminal Conduct; Personal Conduct

DIGEST: Between 1996 and 2004, Applicant accrued approximately \$9,000 of delinquent debt, and was charged criminally on 18 occasions for bouncing checks. She failed to disclose the criminal charges, as required on her 2004 security clearance application, and offered scant evidence that she has resolved her financial problems. Clearance is denied.

CASENO: 06-08849.h1

DATE: 05/30/2007

DATE: May 30, 2007

In re:	)	
	)	
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SSN: -----	)	ISCR Case No. 06-08849
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
MARC E. CURRY**

**APPEARANCES**

**FOR GOVERNMENT**

Ray T. Blank, Esq., Department Counsel

**FOR APPLICANT**

*Pro se*

**SYNOPSIS**

\_\_\_\_ Between 1996 and 2004, Applicant accrued approximately \$9,000 of delinquent debt, and was charged criminally on 18 occasions for bouncing checks. She failed to disclose the criminal

charges, as required on her 2004 security clearance application, and offered scant evidence that she has resolved her financial problems. Clearance is denied.

### **STATEMENT OF THE CASE**

On November 16, 2006, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) explaining why it was not clearly consistent with the national interest to grant or continue a security clearance. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended. Applicant answered the SOR on January 29, 2007, admitting the allegations listed in Paragraph 1, denying the remainder, and requesting a hearing.<sup>1</sup>

The case was assigned to me on February 22, 2007. DOHA issued a notice of hearing on March 28, 2007, scheduling Applicant's hearing for April 17, 2007. On April 13, 2007, Department Counsel moved to continue the case to April 19, 2007. Applicant did not object, whereupon, I continued the case, and rescheduled it to the requested date. During the hearing, I received four government exhibits, the testimony of a government witness, and Applicant's testimony. At the Applicant's request, I left the record open through May 4, 2007 to allow her to submit additional exhibits. On May 2, 2007, she submitted one additional exhibit which I marked and received as Exhibit A. DOHA received the transcript on May 9, 2007.

### **FINDINGS OF FACT**

\_\_\_\_\_ The SOR admissions are incorporated as findings of fact. In addition, I make the following findings of fact.

Applicant is a 39-year-old woman with two teenage children. She is a U.S. Army veteran, serving from 1986 through her honorable discharge in 1988. She earned a bachelor's degree in computer science in 2003. Currently, she works as a production control clerk.<sup>2</sup>

Between 1996 and 1998, Applicant was charged 18 times with writing bad checks. She wrote 12 of them to purchase food in a cafeteria in the building where she worked at the time. According to Applicant, she postdated the checks anticipating future deposits, and the company that managed the cafeteria would attempt to cash them before her deposits cleared.<sup>3</sup> The charges were consolidated

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<sup>1</sup>Applicant's Answer was unclear with respect to which allegations, if any, she admitted. She clarified her admissions at the hearing (Tr. 25).

<sup>2</sup>Tr. 24.

<sup>3</sup>Tr. 26, 29.

into one criminal proceeding.<sup>4</sup> On December 12, 1998, she pled guilty to each, and paid approximately \$110 in restitution.

On September 4, 1997, Applicant wrote a check to a car dealership for \$1,300 in order to help a family friend purchase a car.<sup>5</sup> She instructed the salesman not to cash the check until her friend gave her the cash to cover the check.<sup>6</sup> Her friend never gave her the money, and when the salesman attempted to cash the check, it bounced. In August 1998, she pleaded guilty to a worthless check charge, was ordered to pay \$1,300 restitution, and sentenced to 12 months probation.

Applicant wrote the remaining bad checks, as listed in Subparagraphs 1.l, 1.m, 1.o, 1.p, and 1.r. of the SOR, to miscellaneous payees. She paid restitution, as ordered, for the checks listed in subparagraphs 1.l and 1.m. The charge listed in subparagraph 1.r was dismissed. The record is unclear with respect to the outcome of the charges listed in subparagraphs 1.o and 1.p.

Applicant attributes her problems with bouncing checks to financial difficulties caused by a marital separation in approximately 1997 followed by a divorce in 2001. During that time, she was receiving no child support.<sup>7</sup> Also, she attributed her problems to an inability to manage her checkbook.<sup>8</sup> Approximately four years ago, she obtained overdraft protection on her checking account.<sup>9</sup> Since that time, she has not written any more worthless checks.

In 2001, Applicant's car was repossessed.<sup>10</sup> After the dealer resold it, Applicant owed a deficiency of approximately \$4,092. In 2004, another vehicle she had purchased on credit was repossessed.<sup>11</sup> She attributes the second repossession to a 15-month period of unemployment she experienced between 2003 and 2004. She owes a deficiency of approximately \$3,605 on the second repossessed vehicle. Currently, both deficiencies remain unpaid.

Applicant owed a cable television company approximately \$551 for some equipment she failed to return after switching providers in 2003.<sup>12</sup> In 2005, the cable company canceled the obligation after she returned the equipment.<sup>13</sup>

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<sup>4</sup>Subparagraphs 1.a-1.j, 1.n, and 1.q.

<sup>5</sup>Subparagraph 1.k.

<sup>6</sup>Tr. 28.

<sup>7</sup>Tr. 25. Her husband began paying steady child support payments in approximately 2001 (Tr. 41).

<sup>8</sup>Tr. 26.

<sup>9</sup>Tr. 31.

<sup>10</sup>Subparagraph 1.z.

<sup>11</sup>Subparagraph 1.aa.

<sup>12</sup>Subparagraph 1.v.

<sup>13</sup>Exhibit A, Customer Equipment Maintenance Documents, dated June 6, 2005.

With respect to the remaining debts listed in the SOR, Applicant either contests them (subparagraphs 1.s, 1.u, and 1.y), or contends they have been satisfied (subparagraph 1.t, 1.w, and 1.x). She offered no evidence to support either contention.

On November 29, 2004, Applicant completed a security clearance application. She failed to list the worthless check charges in response to Question 26 (*In the past 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in modules 21, 22, 23, 24, 25? (Leave out traffic fines of less than \$150 unless the violation was alcohol or drug related.) For this item, report information regardless of whether the record in your case has been sealed or otherwise stricken from the record*). In her answer, she explained that she could not recall them at the time she completed the application. At the hearing, she testified that she was unaware they were criminal charges.<sup>14</sup>

### POLICIES

The adjudicative guidelines, as revised December 29, 2005, and implemented September 1, 2006, apply to the analysis of this case. In addition to brief introductory explanations for each guideline, they 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).

Because the entire process is a 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. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future.

The following adjudicative guidelines are raised:

Guideline F - Financial Considerations: 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.

Guideline E - Personal Conduct: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information.

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<sup>14</sup>Tr. 27.

Guideline J - Criminal Conduct: Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

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

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is "clearly consistent with the national interest."<sup>15</sup> In reaching this decision, I have drawn only those conclusions that are based on the evidence contained in the record.

The Government is responsible for presenting evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the Government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

## CONCLUSIONS

### **Financial Considerations**

Between 1996 and 2004, Applicant accrued approximately \$9,000 of delinquent debt, and was charged criminally on 18 occasions for bouncing checks. Financial Considerations Disqualifying Condition (FC DC) 19(c): *a history of not meeting financial obligations*, FC DC 19 (d): *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 19(e): *consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis*, apply.

Although a divorce and a subsequent 15-month unemployment exacerbated Applicant's financial difficulties, Financial Considerations Mitigating Condition (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* does not apply. Applicant repeatedly wrote worthless checks knowing she had insufficient funds in her checking account. Moreover, her first repossession occurred after her ex-husband had begun making steady child support payments, and before she lost her job in 2003.

I have considered the remaining mitigating conditions, and conclude none apply. Applicant has only resolved one delinquency, and admits that she has taken no action to resolve the two most significant ones. Her contention that the remainders either are in dispute or have been satisfied was unsupported by evidence. Applicant has not mitigated the financial considerations security concern.

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<sup>15</sup>See generally, Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

## **Personal Conduct**

Applicant's omission of the worthless check charges in response to Question 26 of the SOR triggers the issue of whether Personal Conduct Disqualifying Condition (PC DC) 16(a) applies as follows: *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*. Her credibility was undermined by her contradictory explanations for the omissions. PC DC 16(a) applies without mitigation.

SOR subparagraph 2.b alleges that each worthless check charge constitutes a personal conduct security concern in addition to a financial considerations security concern as cross-alleged earlier. Such cross-alleging is redundant and unnecessary. Subparagraph 2.b represents an unmitigated security concern for the same reasons as set forth in the Financial Considerations section of the analysis.

## **Criminal Conduct**

Applicant's succession of worthless check charges and subsequent intentional omission of them from her SF 86 generates a security concern under Criminal Conduct Disqualifying Condition (CC DC) 31(a): *A single serious crime or multiple lesser offenses*. Although Applicant acquired overdraft protection to prevent writing worthless checks approximately four years ago, and has not written one in nearly ten years, her more recent falsification of her security clearance application generates lingering questions about her propensity to resort to criminal conduct when she finds it expedient. None of the mitigating conditions apply.

## **Whole Person Concept**

Applicant deserves credit for returning to college and earning a degree during the same time she was raising her children and going through a divorce. This favorable evidence is outweighed by her falsification of the SF 86, and her failure to take significant steps to address her delinquent financial indebtedness. Clearance is denied.

## **FORMAL FINDINGS**

Paragraph 1 – Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.t:	Against Applicant
Subparagraph 1.u:	For Applicant
Subparagraphs 1.v-1.aa:	Against Applicant
Paragraph 2 - Guideline E:	AGAINST APPLICANT

Subparagraphs 1.a-1.b:

Against Applicant

Paragraph 3 - Guideline J:

AGAINST APPLICANT

Subparagraphs 1.a-1.b:

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.

Marc E. Curry  
Administrative Judge