

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant owed about \$3,650 in delinquent debt that she intentionally did not report when she completed her security clearance application in October 2003. Nor did she disclose criminal drug charges filed against her in January 1997 that were subsequently not prosecuted. A single mother with three young children to support, Applicant candidly admitted to a government investigator in 2005 that she had lied to protect her job. She has expressed deep remorse for the SF 86 falsifications, settled or paid in full most of her delinquent debts, and has not incurred any recent delinquency. Clearance is granted.

CASENO: 06-09513.h1

DATE: 05/29/2007

DATE: May 29, 2007

In re:)	
)	
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-----)	ISCR Case No. 06-09513
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
ELIZABETH M. MATCHINSKI**

APPEARANCES

FOR GOVERNMENT

Fahryn Hoffman, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owed about \$3,650 in delinquent debt that she intentionally did not report when she completed her security clearance application in October 2003. Nor did she disclose criminal drug charges filed against her in January 1997 that were subsequently not prosecuted. A single mother with three young children to support, Applicant candidly admitted to a government investigator in 2005 that she had lied to protect her job. She has expressed deep remorse for the SF 86 falsifications, settled or paid in full most of her delinquent debts, and has not incurred any recent delinquency. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on June 12, 2006, detailing the basis for its decision—security concerns raised under Guideline F (financial considerations) and Guideline E (personal conduct) of the adjudicative guidelines (AG). Applicant answered the SOR on June 23, 2006, and elected a determination on the written record without a hearing.

On February 15, 2007, the government submitted a File of Relevant Material (FORM) consisting of eight exhibits (Items 1-8). By letter of February 20, 2007, DOHA forwarded a copy of the FORM to Applicant and instructed her to respond within 30 days of receipt. On March 24, 2007, Applicant filed her rebuttal to the FORM. Department Counsel did not object to her response, and on April 16, 2007, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

FINDINGS OF FACT

DOHA alleged under Guideline F that Applicant owed unpaid judgment debts of \$294 (SOR ¶ 1.a) and \$507 (¶ 1.b), three debts in collection totaling \$2,941 (¶¶ 1.c, 1.e, and 1.f), and one charged off consumer credit debt of \$969 (¶ 1.d), and that her monthly expenses exceeded her net income as of April 14, 2005 (¶ 1.g). Applicant was alleged under Guideline E to have deliberately falsified her October 29, 2003, security clearance application (SF 86) by responding negatively to questions about any unpaid judgments in the past seven years (¶ 2.a), any debts over 180 days delinquent in the past seven years (¶ 2.b), and any debts then over 90 days delinquent (¶ 2.c). DOHA also alleged she intentionally did not disclose her arrest in January 1997 for disorderly conduct, possession of marijuana, and possession of drug paraphernalia, in response to police record inquiry question 23d (¶ 2.d).¹ DOHA also alleged under Guideline E that Applicant had stated under oath during an interview of April 14, 2005, that she was aware of her delinquent accounts when she completed her SF 86 and that she chose to not list them as she feared she would lose her job (¶ 2.e).²

In her Answer, Applicant admitted she still owed the delinquent debts, that her monthly expenses exceed her income, and that she had falsified her SF 86 as alleged. A single mother with three children and on public assistance at the time, she explained that she needed the job and was afraid to disclose the indebtedness and the arrest. Applicant's admissions are incorporated herein as facts. After a thorough review of the evidence before me for consideration, I make the following findings of fact.

¹In the SOR, DOHA cited the police record inquiry only by its number and did not include the specific question Applicant was alleged to have falsified. The specific language of question 23d is as follows: "Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?" (Item 4)

²SOR ¶ 2.e does not represent a separate incident of falsification. Rather, DOHA alleged the evidence upon which the government relies to prove the knowing and willful concealment of her delinquent accounts from her SF 86.

Applicant is a 33-year-old single mother with three children aged 13, 11, and 10. A high school graduate who is employed by a defense contractor, she seeks a security clearance for her duties.³

Applicant earned her high school diploma in 1992. It is not clear in the record whether she was employed before she began attending a local vocational/technical school in the late 1990s. She completed her training in July 1999. The following October, she started working as an administrative assistant for a staffing services agency. Unemployed from March 2001 to May 2002, she secured employment as an administrative assistant at a local hospital, but stayed only a few months. In September 2002, she began working for her sister as a hairstylist. There is no record information about her income from these jobs.

Applicant applied to work for a defense contractor in about October 2003. She was on public assistance at the time. In conjunction with her application, Applicant executed a Questionnaire for National Security Positions (SF 86) on October 29, 2003. She responded negatively to inquiries concerning whether she had a police record, including question 23d. "Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?" Applicant also answered "No" to questions about her financial record and any delinquencies, including 27d. "In the last 7 years, have you had any judgments against you that have not been paid?," 28a. "In the last 7 years, have you been over 180 days delinquent on any debt(s)?," and 28b. "Are you currently over 80 days delinquent on any debt(s)?"

An investigation of Applicant's background revealed that Applicant had been arrested in January 1997 for disorderly conduct, possession of marijuana, and possession of drug paraphernalia, but the charges had been nolle prossed in May 1998. A June 11, 2004, credit check disclosed she was delinquent on some financial accounts. A cable television debt of \$294 had been in collection since November 2001 (¶ 1.a).⁴ A department store revolving charge debt of about \$860 fell more than 120 days past due and was sold or transferred in August 2000. As of August 2002, the account was in collection with a balance of \$1,136 (¶ 1.c and 1.f, same account).⁵ A medical debt of \$150 had been in collection since November 1998 (¶ 1.e). A VISA card account held since March 2000 was placed for collection in August 2000 in the amount of \$969. As of May 2004, the assignee reported a past due balance of \$1,012 (¶ 1.d). An overdue retail charge account balance of \$594 was sold in August 2000 to this same assignee who reported a debt balance of \$653 as of May 2004 (not alleged). A \$507 judgment had been awarded a department store in November 2001 on a debt that had been in collection since June 2000 (¶ 1.b). Applicant was reportedly making her \$50 monthly payments on a student loan of \$5,061 that she had taken out in January 1999. The loan balance was \$5,025 as of

³There is nothing in the record indicating what job Applicant holds with the defense contractor or what level of clearance she requires for her duties.

⁴As noted by the government in the FORM, the account went to collection. There is no evidence that the creditor was awarded a civil judgment.

⁵From the account history, it appears that it was a Sears account with a high credit of \$860 that was sold or transferred in August 2000. By April 2001, the holder of the account (listed as RSKMGTLRP) had placed it for collection in the amount of \$1,136. From the most recent credit report, it appears it was placed with 1st Select in March 2001. In December 2002, it was picked up by Associates, which then placed it for collection with CREDRECINC by May 2003 with a balance of \$1,333. By January 2007, the balance of the debt was \$1,785.

May 2004. A second student loan of \$1,392, taken out in September 2001, was too new to rate as of November 2001 and no new information had been obtained on the account.

In January 2005, the collection agency handling the \$1,012 (¶ 1.d) and \$653 (not alleged) debts agreed to settle for lump sum payments of \$528.02 and \$338.70. Payment due dates were February 9, 2005, and February 17, 2005, respectively. On February 14, 2005, Applicant paid \$530 and \$340 by postal money order to settle the two accounts.

On April 14, 2005, Applicant was interviewed about her financial situation and her failure to list her delinquent accounts on her SF 86. Applicant admitted that she had been aware of her delinquent accounts and that she should have listed them on her security clearance application, but that she feared she would lose the job she needed if she disclosed them. Applicant explained that her monthly expenses and payments exceeded her net monthly income.

A check of Applicant's credit on May 8, 2006, revealed she had been making her student loan payments. She had reduced the balance of the \$5,061 loan to \$4,268 and had paid off the other, but had made no progress toward resolving the \$294 cable television debt in collection (¶ 1.a), or the \$507 judgment debt (¶ 1.b). Applicant was also reportedly past due on the debt in ¶ 1.f (¶ 1.c same debt). Her credit report showed no new credit card accounts and no recent reliance on credit.

In about June 2006, the collection agency that had purchased her defaulted medical debt of \$150 (¶ 1.d) offered three settlement plans. Applicant could pay \$60 in a lump sum payment, three equal consecutive monthly payments totaling \$105 within 90 days, or the full balance in affordable monthly installments. Applicant paid \$60 by debit card from her bank account on July 5, 2006.

A check of her credit on February 15, 2007, continued to show as unpaid the cable debt as in collection (¶ 1.a), and a \$1,758 balance owed on ¶ 1.f (¶ 1.c same debt). It provided no updates information about the status of the \$507 judgment debt (¶ 1.b).

In an effort to address the government's concerns about her failure to pay her delinquent obligations, Applicant paid \$432 on March 23, 2007, to the creditor now owed the debt in ¶ 1.b. She relied on consumer credit to pay the \$294.50 owed the cable television company (¶ 1.a). Applicant presented a portion of a recent credit report showing that her student loan was in good standing with a balance of \$4,175.

In her rebuttal to the FORM, Applicant "deeply" apologized on March 24, 2007, for having been untruthful on her SF 86 about her credit history and police record. Referring to her submitted evidence of payments, some for less than full balance in settlement, Applicant indicated that the balance of the debt in ¶ 1.f (¶ 1.c same debt) would be resolved soon and that she intended to "continue working hard at keeping a good credit record." As for her arrest, Applicant explained that she had been "at the wrong place at the wrong time"; that she had on a friend's coat that night ("please believe if I knew what was inside I would not have put the coat on before ask [sic] to get out of the car by the police."). She indicated that she no longer associated with anyone who presented danger or a risk.

POLICIES

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.” *Id.* at 527. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

The adjudicative guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline F—Financial Considerations

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. AG ¶ E2.A6.1.1. Applicant’s June 2004 credit report listed unpaid judgment debt of \$507 awarded against her in November 2001, and other outstanding debt totaling \$3,245 incurred in or before August 2000. As a single mother with three minor children, Applicant faced significant financial pressures even after she started working for the defense contractor. As of April 2005, her income was insufficient to cover her expenses. Disqualifying conditions (DC) ¶ E2.A6.1.2.1, *A history of not meeting financial obligations*, and ¶ E2.A6.1.2.3, *Inability or unwillingness to satisfy debts*, apply.

Applicant did not persuasively establish that the delinquent debt was incurred due to unforeseen circumstances of the type contemplated in mitigating condition (MC) ¶ E2.A6.1.3.3, *The conditions that resulted in the behavior were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)*. Only \$150 of the debt was medical; the rest was consumer credit debt incurred by choice. However, Applicant’s unemployment from March 2001 to May 2002 is a factor that could mitigate her failure to make any payments toward her debts after they became delinquent. While it is not clear whether she was laid off from her job with the staffing agency or she resigned, she lacked the income to satisfy her old debts, as evidenced by her acceptance of public assistance.

Applicant has taken sufficient steps to address her indebtedness since 2005 to apply mitigating condition (MC) ¶ E2.A6.1.3.6, *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*, in her favor. After she completed her SF 86, but before

her subject interview, she paid \$870 by postal money order in February 2005 to settle two of her debts, including the debt in ¶ 1.d. It is not clear whether she had saved the funds or borrowed them, but there is no evidence that she incurred new delinquent debt despite her monthly payments exceeded her income as of that April. She is also credited with settling the medical debt in ¶ 1.a in July 2006, and with making regular payments on her student loans. More recent payments in March 2007 of \$432 (¶ 1.b) and \$294.50 (¶ 1.a) have brought those accounts current, although to the extent that Applicant relied on credit to make the payment, she is still in debt, albeit to a different creditor.

As of late March 2007, Applicant had not made any payments on the debt in ¶ 1.f (¶ 1.c same debt), and with interest and/or collection fees the debt had risen to about \$1,785. Yet, the Directive does not require that one be debt free before being granted access. Given her efforts to resolve her delinquent indebtedness, the absence of any new delinquent debt, and her track record of repayment of her student loans, I conclude she can be counted on to continue to address her old accounts provided she has the income to do so. The financial debts that remain are surmountable.

Guideline E—Personal Conduct

Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. AG ¶ E2.A5.1.1. The government contends, and Applicant admits, that she falsified her SF 86 by not disclosing her January 1997 arrest on drug charges in response to question 23d (any drug or alcohol-related charges), the November 2001 financial judgment awarded the creditor in ¶ 1.b in response to question 27d (any judgments in the past seven years that are unpaid), or her delinquent debts in response to questions 28a (debts over 180 days delinquent in the past seven years) and 28b (debts currently over 90 days delinquent). DC ¶ E2.A5.1.2.2, *The deliberate omission, concealment, or falsification of relevant and material 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,* applies.

Applicant elected to not disclose the charges or debts because she feared loss of the job if she did so. Acknowledging the desperate situation that she was in as a single mother supporting three children on public assistance, Applicant's obligation of full candor transcends her personal circumstances, however dire. There is no mitigating condition for necessity. The false statements were isolated to one clearance application more than three years ago, but the DOHA Appeal Board has held that MC ¶ E2.A5.1.3.2, *The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily,* does not apply where the rectification involves the same subject matter as the falsification. (*See, e.g.,* ISCR Case No. 99-0557, App. Bd. Jul. 10, 2000, reaffirmed ISCR Case No. 01-06166, App. Bd. Oct. 25, 2001). Where a case involves disclosures by an applicant that are corrections of an earlier falsification, ¶ E2.A5.1.3.3, *The individual made prompt, good faith efforts to correct the falsification before being confronted with the facts,* rather than ¶ E2.A5.1.3.2 is proper for consideration. On April 14, 2005, Applicant admitted under oath to a government investigator that she had lied on her SF 86 to protect her job. The record does not contain an affidavit or statement from Applicant or a report from the investigator detailing what was discussed. Absent evidence that the omitted arrest and debt information was volunteered by Applicant before confrontation, I am unable to conclude that MC ¶ E2.A5.1.3.3

applies. A rectification in April 2005 of October 2003 misrepresentations cannot reasonably be characterized as prompt. None of the other mitigating conditions are pertinent.

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. ¶ E2.2.1. While financial delinquency and especially deliberate false statements raise very significant concerns about a clearance applicant's judgment, reliability, and trustworthiness (*see* ¶ E2.2.1.1, *The nature, extent, and seriousness of the conduct*; ¶ E2.2.1.3, *The frequency and recency of the conduct*), her life circumstances cannot be ignored. Not yet 20 when she had her first child, Applicant had two more children out of wedlock before she turned 24, whom she had to support. She was out of work for over a year at one point and on public assistance before going to work for the defense contractor. While she was 30 when she falsified her SF 86 (¶ E2.2.1.4, *The individual's age and maturity at the time of the conduct*), and clearly acted in self-interest (¶ E2.2.1.8, *The motivation for the conduct*), Applicant took responsibility for the lies during her interview with the government investigator (¶ E2.2.1.6, *The presence or absence of rehabilitation and other pertinent behavioral changes*). Not only has she twice apologized for her misconduct, but she has taken steps to improve her financial situation by staying on with the defense contractor for over three years, making regular payments on her student loans, settling several of the delinquent debts, some before the SOR was issued, and incurring no new delinquent debt. While her false statements are not condoned, security clearance determinations are not designed to punish applicants, but rather involve an assessment of future risk, and there is likely to be no recurrence (¶ E2.2.1.9, *The likelihood of continuation or recurrence*).

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F:	FOR 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:	For Applicant
Subparagraph 1.g:	For Applicant
Paragraph 2. Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	For Applicant

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Elizabeth M. Matchinski
Administrative Judge