

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has a history of financial delinquency since the 1996/97 time frame due to overuse of credit. As of July 2004, he owes approximately \$27,000 in delinquent debt. Financial considerations concerns persist where his efforts to resolve this debt have been minimal to date and he spent \$2,500 on personal vacations instead of devoting the monies to his creditors. Personal conduct concerns exist due to his deliberate falsification of his security clearance application (SF 86) for failing to list his debts and his firing from two jobs in about 1999 for unacceptable conduct. Clearance is denied.

CASENO: 02-10782.h1

DATE: 03/23/2005

DATE: March 23, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-10782

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of financial delinquency since the 1996/97 time frame due to overuse of credit. As of July 2004, he owes approximately \$27,000 in delinquent debt. Financial considerations concerns persist where his efforts to resolve this debt have been minimal to date and he spent \$2,500 on personal vacations instead of devoting the monies to his creditors. Personal conduct concerns exist due to his deliberate falsification of his security clearance application (SF 86) for failing to list his debts and his firing from two jobs in about 1999 for unacceptable conduct. Clearance is denied.

STATEMENT OF THE CASE

On September 10, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. [\(1\)](#) DOHA recommended referral to an administrative judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on financial considerations (Guideline F) and personal conduct (Guideline E).

Applicant filed an initial response to the SOR, which was received by DOHA on October 27, 2003. By letter dated December 2, 2003, DOHA notified Applicant that his response was incomplete for he failed to sign it before a notary and did not indicate whether he wanted a hearing. Applicant subsequently submitted an undated, notarized Answer in which he admitted the allegations of the SOR and requested a hearing before a DOHA administrative judge.

On May 10, 2004, the government moved to amend the SOR to add two subparagraphs under personal conduct alleging that Applicant falsified his July 2000 SF 86 by failing to disclose that he had been fired from two employments in the ten years preceding his security application. The case was assigned to me on May 12, 2004, with the motion pending. Pursuant to my order of May 19, 2004, Applicant was granted 20 days to object to the proposed amendments, or in the alternative to respond to the allegations. Applicant was notified that a failure to respond would be taken as admissions to

the new allegations.

Applicant having failed to respond by the due date, the SOR was amended to add ¶¶ 2.b and 2.c under Guideline E alleging deliberate falsification of his SF 86 for not disclosing his involuntary terminations from employment and Applicant was deemed to have admitted the new allegations. Pursuant to notice of June 18, 2004, a hearing was scheduled for July 9, 2004. At the hearing, five government exhibits were admitted and Applicant testified, as reflected in the transcript received July 21, 2004.

The record was held open until July 30, 2004, for Applicant to submit financial records. Applicant timely submitted a debt repayment plan (payout forecast, client action plan, budget and debt management agreement for his signature). In correspondence of July 30, 2004, Applicant referenced an agreement with a credit card company that was not included, whether due to facsimile error or other cause. By order dated August 4, 2004, the record was held open until August 13, 2004, for Department Counsel to object to the debt management plan documentation and for Applicant to furnish documentation of the credit card debt.

On August 5, 2004, Department Counsel objected to the inclusion of the debt management plan on the basis of relevance, citing the absence of a binding agreement between Applicant and the debt management company. The document was entered over government objection as Exhibit A, as it is relevant to assessing Applicant's financial situation and efforts to address his indebtedness. Also on August 5, 2004, Applicant forwarded an agreed payment order concerning that debt alleged in SOR ¶ 1.d. That document was marked and entered as Exhibit B, the government having no objection thereto.

FINDINGS OF FACT

The SOR as amended alleges 17 delinquent debts with an aggregate outstanding balance of \$39,991, and deliberate falsification by Applicant of a July 2000 SF 86 (knowingly false denials of any financial delinquencies then over 90 days and any adverse employment terminations in the ten years preceding his execution of the form). When he responded to the SOR, Applicant admitted the indebtedness as alleged, but contended he had paid that debt in ¶ 1.e of the SOR, was repaying those debts alleged in ¶¶ 1.c and 1.d of the SOR, and intended to satisfy his other obligations in a debt management plan. In his response, Applicant also admitted he had falsified his SF 86, but at his hearing he denied any willful misrepresentation and claimed he was just trying to submit the application and did not take it as seriously as he should have. After a complete and thorough review of the evidence, I make the following findings of fact:

Applicant is a 30-year-old supervisor in physical security who has been employed by a defense contractor since August 1998. He seeks to retain a secret-level security clearance that was granted to him in March 1999.

A native of Portugal, Applicant immigrated to the U.S. in 1983 with his parents and siblings. The family returned to Portugal in 1986 for about 18 months. Returning to the U.S. permanently in 1988, Applicant attended public high school. He worked as a manager at a local donut franchise for about seven years, while in high school and after graduation in June 1992. In August 1996, he became a naturalized U.S. citizen.

In September 1996, Applicant moved out of the family home into a condominium with his then girlfriend and one of her friends. In September 1997, Applicant began taking classes offered by a local college at satellite locations in his area. While attending college part-time, Applicant worked for about six months in 1998/99 as a store detective for a supermarket. He was fired after leaving work early one night without informing his supervisor or correcting his time card to note his absence. For about three months in 1999, he was employed by the state department of social services as a residential case worker. Applicant was involuntarily terminated from the agency in May 1999 for unprofessional conduct after he threw a bottle of correction fluid at a child he was overseeing.

With rent, car payments, and then college tuition to pay, Applicant began to fall behind on his financial obligations and to overextend himself on credit in the 1996/97 time frame. It got to the point where he "didn't know what was coming and what was going." (Tr. 39.) In June 1999, he moved in with his parents. In exchange for living there rent-free and since he is using his father's vehicle, Applicant pays his father's \$287 car payment each month. Applicant also covers his and his father's automobile insurance costs, which with the car payment amount to about \$400 monthly.

Even with continuous employment with the defense contractor since August 1998, reimbursement by his employer for tuition costs for credit hours after his first 40, and substantial amount of paid overtime hours worked since 2002, accounts were still delinquent as of September 2003, leading DOHA to issue an SOR alleging, in part, financial considerations concerns. The delinquency history and current status of those accounts that have been charged off and/or placed for collection follows:

Debt	Delinquency history	Payment Status as of Aug 04
1.a. Consumer credit debt \$790	Account opened Jul 02; \$790 balance charged off when account \$85 past due; placed for collection Apr 03.	No payment since Aug 02, listed on debt management program (DMP) not yet agreed to by Applicant. Under DMP as proposed payoff date Nov 06.
1.b. Credit card debt with tire company \$666	Account opened Jul 97, \$700 high credit; \$666 balance charged off in Sep 01 and account closed by creditor.	No payment since Apr 01, but claimed in Feb 03 it had been paid. Listed as \$660 debt on unsigned DMP with proposed payoff date Apr 09.
1.c. Credit card debt with retailer \$746	Account opened Jun 95, \$1,239 charged off Jul 01; \$746 owed as of Mar 03 due to payments after charge off.	No payments of record since Mar 03. Not included on DMP.
1.d. Credit card debt \$4,871	Account opened Mar 97, \$5,671 charged off May 01; \$6,537.81 judgment against him in 2002.	In Oct 02, agreed to pay \$100 per month to satisfy judgment. Balance \$4,871 as of May 03. Payments have continued.

1.e. Consumer credit debt \$290	Account opened Apr 96, high credit \$513; \$290 past due balance charged off Jun 01.	Not on DMP. Applicant claims satisfaction but no proof.
1.f. Credit card debt \$1,066	Account opened Oct 99, \$831 balance charged off Feb 01; \$1,066 past due as of Sep 02.	Listed as \$1,204 debt on DMP with proposed payoff date Dec 07.
1.g. Credit card debt \$3,242	Account opened Oct 96; \$3,700 credit limit; \$3,578 balance under partial payment agreement as of Sep 99; \$3,242 charged off Jan 01.	On DMP with proposed payoff date Oct 08.
1.h. Credit card debt \$2,807	Account opened Jun 00; \$2,100 limit; \$2,807 charged off Aug 02 with last payment Jan 02.	On DMP with proposed payoff date Jan 09.
1.i. VISA card debt in collection with assignee \$6,583	Account opened with bank Jan 97; \$5,011 charged off in May 00; for collection Sep 02; \$6,583 balance as of Apr 03.	Applicant claimed in Feb 03 to have paid the debt. Listed as \$5,500 debt on DMP with proposed payoff date Apr 09.
1.j. Bank credit card debt \$4,331	Account opened Mar 96, \$5,800 limit; \$4,331 charged off Jul 00, with last payment May 00.	Applicant claimed in Jan 02 the debt was paid. On DMP with proposed payoff date Aug 08.
1.k. Bank credit card debt \$467	Account opened June 02; \$300 limit; \$467 charged off Jan 03.	On DMP with proposed payoff date Apr 08.
1.l. Personal loan debt \$2,280	Debt consolidation loan of \$4000 taken out with bank Nov 98; \$2,280 balance charged off Jan 01.	On DMP with proposed payoff date Mar 09.
1.m. Credit card charge off balance \$3,371	Account opened Jan 01, listing a \$3,242 balance (see 1.g.); placed for collection (see 1.p.).	Likely the same debt as 1.g., although separately listed on DMP as \$3,170 debt with proposed payoff date Feb 01.
1.n. Credit card debt \$1,002	Account opened Jan 97, \$1,217 high credit; \$1,002 charged off Aug 99.	On DMP with proposed payoff date May 08.
1.o. Collection debt \$179	Account opened Nov 01, \$179 past due balance in collection.	No payments, not included on DMP.
1.p. Collection debt \$3,170	Account opened Jul 01, \$3,170 in collection as of Oct 01 (see 1.m.)	
1.q. Charge off balance \$4,331	Collection agency for debt in 1.j.	

On July 19, 2000, Applicant executed a security clearance application (SF 86) on which he failed to disclose that he had been employed by, and subsequently terminated from his positions with the state social services agency and the supermarket in 1998/99. He responded "NO" to police record inquiries, including any felony arrests, even though he had been fined \$600 for operating to endanger in 1994, and been charged with felony motor vehicle homicide in 1992 (charge dropped to a misdemeanor) after he had been the driver in a collision in which his cousin died. Applicant also answered "NO" to questions concerning financial delinquencies ["38. In the last 7 years, have you been over 180 days delinquent on any debt(s)?" and "39. Are you currently over 90 days delinquent on any debt(s)?"], although he provided under general remarks (question 43): "DUE TO MY GOING BACK TO SCHOOL TO CONTINUE MY EDUCATION, I HAVE FALLEN BEHIND ON A COUPLE OF DEBTS BUT AM TRYING AND WILL SUCCEED VERY SOON TO GET THEM UP TO DATE."

Applicant was interviewed twice by a special agent, the last time on January 8, 2002, about his indebtedness, unlisted employment information, and foreign connections. During his first interview, Applicant told the agent he had not listed his termination from his job with the state social services agency due to "oversight" and the short duration of that job. It was only after being asked several times about unlisted employment that Applicant admitted he had been terminated from his position in supermarket security. Asked why he had not listed that employment information on his SF 86, Applicant claimed he failed to recall it at the time he completed the application. The agent then reviewed Applicant's credit report with him, which reflected several delinquent accounts that he did not dispute (SOR ¶¶ 1.b, 1.c, 1.d, 1.e, 1.f, 1.g, 1.h, 1.i, 1.l, and 1.n.) and also that he had worked for a furniture retailer. Applicant acknowledged he had been a quality inspector for the store, but lasted only three weeks in the job as it wasn't what he wanted to do. Applicant estimated he was \$18,000 in debt as of January 8, 2002, and expressed his hope to have his debts paid off by late 2002. Applicant claimed he had paid those debts alleged in ¶¶ 1.e, 1.j, and 1.n., and was awaiting an acceptable payment plan on ¶ 1.d. Asked by the agent why these delinquencies were not reported by him on his SF 86, Applicant responded, "I can offer no reasonable explanation why the debts were not accurately reflected on my SCA." Applicant denied any intentional falsification of his SF 86, attributing the omissions to oversight and carelessness rather than falsification, and maintained he "had a great difficulty in completing the form."

At his hearing, Applicant acknowledged the omissions of relevant and material adverse employment information and indebtedness from his SF 86, but attributed them to his failure to give a lot of thought to his responses ("So when I submitted the form I just unwillingly jotted down answers to complete the forms.") Applicant's denials of any intentional falsification are not credible. Given the extent of his indebtedness, it is accepted that he did not know how much he owed to each creditor. Yet, he clearly knew his indebtedness was more than just the "couple of debts" he commented about in the general remarks section of the form, and that the accounts were seriously delinquent and required affirmative answers to questions 38 and 39. Furthermore, Applicant's lack of initial candor with the agent when asked about unlisted employment undermines his denial of any intentional concealment of his employment terminations from the social services and supermarket jobs.

During his DSS interview of January 8, 2002, Applicant furnished a Personal Financial Statement indicating a net remainder of \$315 per month after payment of expenses and a few debts, including ¶¶ 1.c and 1.h. In about 2002, Applicant contacted a debt consolidation company for assistance in repaying his delinquent obligations. He did not pursue it as the company wanted a monthly payment from him of between \$400 and \$500. In response to DOHA financial interrogatories of February 19, 2003, Applicant maintained he had paid or was making payments on those debts in ¶¶ 1.b, 1.c, 1.d, 1.e, and 1.i, and was working on a payment plan for the debts in ¶¶ 1.f, 1.g, 1.l, 1.m, 1.n, and 1.q. A check of Applicant's credit in May 2003 confirmed recent payments on ¶¶ 1.b, 1.c, 1.d, and 1.e, but the debt in ¶ 1.i, that he claimed to have paid was listed as having an unpaid balance of \$6,583 in collection.

In or before February 2004, Applicant began working with another company to repay \$27,173 in delinquent debt through a debt management program (DMP). Under that DMP, the company proposed to pay off the accounts listed in return for payments from Applicant of \$640 per month, commencing February 21, 2004. When Applicant failed to respond, the company sent a second proposal to him with the same monetary terms (\$640 per month) on July 30, 2004. Applicant had not yet accepted the proposal as he was hoping to reduce the amount of his monthly obligation.

Taking advantage of regular overtime for the past couple of years, Applicant's annual salary is around \$40,000. As of

July 2004, he had less than \$100 in savings and \$300 to \$400 in a checking account. In the past two years, he took three vacations which cost him a total of \$2,500. Applicant has no active credit cards at present but he has issued at least one insufficient funds check in the past year.

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 has 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). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the 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 that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of the Applicant, I conclude the following with respect to Guidelines F and E:

Under Guideline F, financial considerations, the security eligibility of an applicant is placed into question when the applicant is shown to have a history of excessive indebtedness, recurring financial difficulties, or a history of not meeting his financial obligations. The government must consider whether individuals granted access to classified information are because of financial irresponsibility in a position where they may be more susceptible to mishandling or compromising classified information. Applicant has a history of financially delinquent accounts due to admitted over extension on credit, as reflected in his credit report of May 2003. Eliminating debts that are likely duplications (reported under the original creditor and subsequent assignee or purchaser), Applicant still owes about \$27,000, which is more than half of his annual salary even with overtime earnings. Applicant's failure to timely pay his financial obligations is potentially disqualifying under E2.A6.1.2.1, *A history of not meeting financial obligations*, and E2.A6.1.2.3, *Inability or unwillingness to satisfy debts*, of the financial considerations guideline.

Applicant is to be credited with making payments of \$100 monthly on the debt in ¶ 1.d of the SOR, although the creditor had to resort to court action to obtain its monies. His May 2003 credit report also reflects Applicant had started paying on the retail debt in ¶ 1.c. Yet, he also could have done more to address his debts. While he has attempted over the past two years to arrange for repayment through a debt management plan that he can afford, he had not entered into an agreement by August 2004. Despite significant overtime earnings in the past two years, and a reported \$315 net remainder each month as of January 2002, payments have been sporadic or not at all for the most part. He claimed at various times to have paid those delinquencies in ¶¶ 1.b, 1.j, and 1.n of the SOR, but he now proposes to pay those debts in the debt management program. Over the 2003/2004 time frame, he spent \$2,500 on personal vacations. Such expenditure is difficult to justify when he is so far in debt. Applicant does not have a demonstrated track record of consistent repayment from which one could safely conclude that his financial problems are in the past. Adverse findings are warranted as to ¶¶ 1.a., 1.b., 1.c., 1.e., 1.f., 1.g., (same debt alleged in 1.m. and 1.p.), 1.h., 1.i., 1.j. (same debt as 1.q.), 1.k., 1.l., 1.n., and 1.o. of the SOR. SOR ¶¶ 1.m., 1.p. and 1.q. do not represent additional indebtedness, but do reflect Applicant's failure to satisfy debts even after they were sent for collection. SOR ¶ 1.d. is found in his favor, as his representations of repayment at \$100 per month per court agreement are accepted.

Guideline E, personal conduct, concerns are raised where an applicant engages in conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, as it could indicate that he or she may not properly safeguard classified information. On his July 2000 SF 86, Applicant admitted he had "a couple" of unpaid debts, but responded "NO" to any financial delinquencies currently over 90 days or more than 180 days in the last seven years. He also did not reveal that he had been terminated from two jobs during the late 1990s. Although not alleged, Applicant had been arrested for a felony offense in 1992, and for operating to endanger in 1994, offenses which should have been reported on his SF 86. An omission that is not alleged cannot serve as the basis for an adverse decision, but it shows the extent to which Applicant endeavored to conceal potentially adverse information when he completed his SF 86. 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, as his answers to the employment and financial delinquency questions were knowingly false.

Security clearance determinations involve a careful weighing of a number of variables known as the whole person concept. Among those variables is the presence or absence of rehabilitation and other pertinent behavioral changes. (See E2.2.1.6.) Under Guideline E, reform can be shown where there is a prompt, good-faith effort to correct the falsification before being confronted (E2.A5.1.3.2). Given the opportunity for rectification in a subject interview with a DSS agent, Applicant acknowledged his responsibility for most of the delinquent debts listed on his credit report, but it is not clear

that he volunteered the information up-front before the agent reviewed his credit report with him. Moreover, Applicant had to be asked several times about his unlisted employment before he revealed to the agent the circumstances of his termination from his job in supermarket security. Although the government is now aware of Applicant's indebtedness and the circumstances that led to his termination from two previous jobs, he has failed to provide adequate assurances that his representations can be relied on. At his hearing, he testified to having "unwillingly jotted down answers to complete the [SF 86]." (Tr. 43.) The evidence does not support a finding of inadvertent mistake or good-faith mistaken reliance on the advice of an authorized person that could support a finding of unwilling conduct. SOR subparagraphs 2.a., 2.b., and 2.c. are also resolved against him.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1, Guideline F: AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: For the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: Against the Applicant

Subparagraph 1.g: Against the Applicant

Subparagraph 1.h: Against the Applicant

Subparagraph 1.i: Against the Applicant

Subparagraph 1.j: Against the Applicant

Subparagraph 1.k: Against the Applicant

Subparagraph 1.l: Against the Applicant

Subparagraph 1.m: Against the Applicant

Subparagraph 1.n: Against the Applicant

Subparagraph 1.o: Against the Applicant

Subparagraph 1.p: Against the Applicant

Subparagraph 1.q: Against the Applicant

Paragraph 2, Guideline E (as amended): AGAINST THE APPLICANT

Subparagraph 2.a: Against the Applicant

Subparagraph 2.b: Against the Applicant

Subparagraph 2.c: Against the 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.

Elizabeth M. Matchinski

Administrative Judge