

DATE: November 6, 2002

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 01-13653

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of financial delinquency since 1997. Despite repeated promises to repay his debts, Applicant had made little progress in resolving his financial delinquencies as of October 2002. Although he listed several of his financial delinquencies on his security clearance application (SF 86), he omitted from his SF 86 a 1998 arrest for vandalism, a 1997 financial judgment awarded a former supervisor, and foreign travel to Canada in 1998. In application for a federal position in late Fall 1998, Applicant presented a resume in which he exaggerated his employment qualifications. His inattention to several financial accounts when he had discretionary funds available to him, and his lack of complete candor with the Government reflect an unacceptable tendency to place his personal interests ahead of his obligations. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated May 21, 2002, to the Applicant which 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. 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) because of unpaid delinquencies totaling approximately \$12,603.76 in the aggregate; criminal conduct (guideline J) due to a January 1998 vandalism for which he was ordered to pay \$68.00 in restitution; and personal conduct (guideline E) related to: (1) his failure to disclose on a May 1999 security clearance application (SF 86) [\(1\)](#) the vandalism offense, a 1997 small claims judgment, and his foreign travel to Canada in 1998, (2) his falsification of past employment on a resume presented to a military agency, and (3) his being reprimanded by his employer in August 1999 for failure to coordinate his work absences with his supervisors.

On June 11, 2002, Applicant submitted a response to the SOR in which he admitted the listed delinquent debts (indicating the delinquent account in SOR subparagraph 1.k. had been satisfied), to having misrepresented on his resume the length of time he worked for a listed employer, and to having been reprimanded by his supervisor for "a mistake on [his] time sheet." Applicant also acknowledged he had not supplied the correct information on his security clearance application regarding the vandalism charge, the financial judgment or foreign travel, but he expressed some confusion as to whether reporting was required. Applicant requested a decision in his case based on the written record. Pursuant to E3.1.8., Department Counsel requested a hearing in this matter, and the case was assigned to me on August 14, 2002. (2) Pursuant to formal notice dated August 23, 2002, which was received by Applicant on August 27, 2002, a hearing was scheduled for September 11, 2002.

By facsimile on September 8, 2002, Applicant requested DOHA cancel or postpone the hearing as the status of his financial delinquencies had not changed significantly enough to alleviate the Government's concerns in this regard, and he needed more time to establish a financial plan. Applicant having failed to demonstrate good cause for continuance, he was directed to appear at the hearing as scheduled.

At the hearing held on September 11, 2002, the Government submitted twenty-one exhibits, all of which were entered into the record, and called Applicant as an adverse witness. Applicant tendered two documents, which were admitted as exhibits A and B. A transcript of the proceedings was received on September 23, 2002.

The record was ordered held open following the hearing until October 4, 2002, to allow Applicant to submit additional documentation and for the Government to forward information of any follow-up witness contacts. By facsimile on October 3, 2002, Department Counsel submitted documentation of her post hearing witness contact with Applicant's supervisor as well as copies of six documents submitted by Applicant for inclusion in the record, including a letter of reference from this supervisor. Applicant filed no objection to the post hearing contact by the Government, which was favorable to him. Department Counsel's comments as to Applicant's submissions going to the weight to be given the information therein rather than to their admissibility, the six documents were marked and entered as Applicant exhibits C through H. On October 4, 2002, Department Counsel forwarded additional documentation received by Applicant, consisting of a copy of a facsimile message sent by Applicant to his supervisor and records of a debt consolidation program. The Government having filed no objections thereto, the documents were marked and entered as exhibits I and J, respectively.

FINDINGS OF FACT

After a thorough review of the evidence, and on due consideration of the same, I render the following findings of fact:

Applicant is a 29-year-old electrical engineer who has been employed by a defense contractor (company A) since late May 1999. Applicant held an Interim Secret security clearance for his duties at company A until late August 2002, when the clearance was withdrawn. Applicant seeks a Secret security clearance so that he can continue in his position as an electrical engineer with the defense contractor.

After earning his associates degree, Applicant matriculated in the state university in September 1995. Selected for a summer internship in electrical engineering at a technology company (company B) in 1997, Applicant on reporting for work was lent \$200.00 by his supervisor at company B, which was to be used for commuting costs that summer. Applicant quit the job after only three days as he had some course work at the university to complete. Applicant failed to respond to this supervisor's requests for repayment of the commuting funds, and the supervisor obtained a small claims judgment against him in November 1997, in the amount of \$486.15. Applicant, who received notice of the judgment, had not satisfied it by September 1999.

While socializing with fellow students at the state university on the weekends, Applicant between 1997 and January 1998 consumed alcohol in quantity of four or five mixed vodka drinks or five or six beers per occasion. After drinking to excess on campus on one occasion in January 1998, Applicant engaged in destructive behavior and was arrested by university police for vandalism and obstruction. Applicant subsequently appeared in local district court where the vandalism charge was filed for one year on payment of \$65.00 in restitution. The obstruction charge was dismissed. Following this incident, Applicant moderated his alcohol consumption. During spring break of 1998, Applicant traveled

to Canada for eight or nine days with other students from his university. There is no evidence Applicant got in any legal trouble during that trip.

As a college student, Applicant overextended himself on credit, purchasing consumer goods (such as clothes, electronics equipment) when he lacked the funds to pay for them. Some financial accounts became so seriously delinquent that they were charged off, as follows:

- In December 1996, Applicant opened an individual revolving VISA charge card account with a bank (debt #1, *see* SOR subparagraphs 1.a. and 1.b.). As of August 1997, the account was 180 days late. The following month, an \$895.00 delinquent balance was charged off. ⁽³⁾ By September 1999, Applicant had made no payments toward that outstanding delinquency.
- \$492.33 (debt #2, *see* SOR subparagraph 1.c.). Applicant made no effort to satisfy the debt by September 1999.
- the creditor \$642.56. In December 1998, a collection agency offered to settle the debt on payment in full by Applicant of 60 percent of the balance. Applicant did not respond to the offer of settlement and the debt remained unpaid as of September 1999.
- placed for collection in August 1997. As of September 1999, he had not paid the debt (debt #4), and a collection agent offered to settle the debt on payment by Applicant of 75 percent of the then balance of \$133.97. The collection agency indicated a willingness to discuss a reduced payment amount of \$100.47 to update his account as paid in full. Applicant did not respond to the offer until late July 2001, when he paid the debt. ⁽⁴⁾

In May 1998, Applicant was awarded his bachelor of science degree in electrical engineering. Over the July to late August 1998 time frame, Applicant was employed as an associate engineer designing water purification and filtration systems. That Fall, while pursuing part-time a master of science degree in electrical engineering at the state university, Applicant applied for a position with the federal government at a nearby Navy base. Applicant submitted with his application a resume in which he listed employment as an electrical/electronics engineer I in a summer internship in 1997 at company B, when he had in fact worked at company B for only three days. After his former supervisor at company B informed the Navy that Applicant had lied on his resume by exaggerating the length of his stay at company B, Applicant was informed by someone at the Navy it would be best to decline the offer of employment.

Unemployed until he took a tutoring position at the university in January 1999, Applicant did not pay his rent or his utility bills. By May 1999, Applicant owed at least \$4,000.00 in back rent (debt #5, *see* SOR subparagraph 1.e.). In early April 1999, the local gas company requested payment from Applicant of a \$347.49 balance for utility services rendered (debt #6, *see* SOR subparagraph 1.g.). Applicant did not timely pay his bills for local telephone service, and a \$646.38 delinquent balance was placed for collection (debt #7, *see* SOR subparagraph 1.h.). By letter dated June 11, 1999, the collection agency notified Applicant of the debt balance and requested payment in full. By September 1999, Applicant owed \$600.00 in unpaid telephone charges (debt #8, *see* SOR subparagraph 1.i.). He had also not paid a \$41.00 bill for electricity charges (debt #9, *see* SOR subparagraph 1.f.) incurred in or about February 1999. In May 1999, he was contacted by a collection agency about a delinquent balance totaling \$515.94 (debt #10, *see* SOR subparagraph 1.j.) for telephone entertainment services. In mid-June 1999, a collection agency demanded payment of \$559.44 (debt #11, *see* SOR subparagraph 1.p.) for magazine subscriptions.

Seeking a full-time graduate-based internship in electrical engineering for Summer 1999, Applicant filed an application for employment with defense contractor company A on April 11, 1999. On the application for employment, Applicant responded "No" to whether he had ever been convicted of a crime, other than minor traffic violations, intentionally concealing his arrest in 1998 for vandalism, as he did not want it to affect his chance of being hired. ⁽⁵⁾ Applicant forwarded with the employment application a resume in which he made no reference to the 1997 summer intern program at company B. Applicant was hired for the position of electrical engineer I, effective in late May 1999, at a base salary of \$850.00 per week.

Required to obtain a security clearance for his employment at company A, Applicant downloaded a Security Clearance Application (SF 86), EPSQ version, which he generated on May 13, 1999, and signed on May 24, 1999. Applicant responded "NO" to any foreign travel within the last seven years (question 16) and to any arrests within the last seven years ["26. In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in modules 21, 22, 23, 24, or 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. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607."]. Although he had not yet satisfied the judgment awarded the supervisor who had lent him \$200.00 to commute in 1997, Applicant responded "NO" as well to question 37 regarding unpaid judgments ["In the last 7 years, have you had any judgements against you that have not been paid?"]. Applicant added he had additional debts but he could not locate the paperwork concerning those accounts. In answer to question 38 concerning financial delinquencies over 180 days, Applicant listed as outstanding debts #1, #2, #3, and #5 (as \$3,600.00). As for any debts currently over 90 days, Applicant disclosed utility debts #6 and #9. He added in the general remarks section of the form (question 43), he had a "good number of debts" that had not been paid as he supported himself through college.

The day after Applicant signed the first SF 86, another security clearance application was generated containing the same responses as the earlier form.⁽⁶⁾ Applicant was subsequently granted an Interim Secret security clearance.

In August 1999, Applicant was counseled by his supervisor at company A for violation of timekeeping procedures and failure to coordinate his absences from work with supervisory personnel. On one Friday afternoon, Applicant left work early but failed to ensure that his absence was reflected on his time sheet for that week. For the next year, his supervisor filed his time sheets for him to ensure no recurrence on Applicant's part. Applicant responded positively and cooperatively to corrective action.

Circa June 1999, Applicant commenced repayment of his delinquent rental obligation (debt #5).⁽⁷⁾ On receipt by the collection agent of a recent \$100.00 payment, Applicant owed \$4,070.00 as of late October 1999.

In early September 1999, Applicant entered into an agreement with a debt consolidation company (consolidation company X). In return for payments of \$100.00 per month by Applicant, debt consolidation company X would make payments on debts #1, #2, #3 and #4.

On September 3, 1999, Applicant was interviewed by a special agent of the Defense Security Service (DSS). Applicant acknowledged his arrest for vandalism after acting in a "somewhat destructive manner," but claimed the university officers used excessive force in arresting him. Applicant attributed the omission of this offense from his SF 86 to clicking, in error, the no box instead of the yes box. As for his failure to disclose the offense on his employment application for company A, Applicant indicated he thought the question posed pertained only to felonies. Applicant explained he had forgotten to pay back the supervisor at company B who had given him commuting money, so the supervisor sought a court judgment for \$338.00. Applicant indicated he planned to pay it when he had the extra money, and attributed the omission of the judgment from his SF 86 to misunderstanding of the instructions. Asked about his financial delinquencies, Applicant admitted delinquent debts #1, #2, #3, #4, #5, #6, #8 and #9. He indicated he had been paying his back rent at the rate of \$100.00 per week since June 1999, but still owed approximately \$4,000.00 on debt #5. The unpaid utility debts #6 and #9 he planned to pay when he had extra money. As for the VISA credit card debts #1 and #3, department store credit card debt #2, and dental debt #4, he would be repaying those through a debt consolidation company X, with payments of \$100.00 per month for twenty-five months. Applicant related he was disputing debts #7, #10 and #11. At the request of the agent, Applicant completed a personal financial statement. Having moved back into his parents' home, Applicant paid rent of \$400.00, but he had no grocery expenses. Applicant reported a monthly net income of \$2,539.42, \$1,110.00 in monthly expenses (\$600.00 for miscellaneous expenses), and \$1,320.00 in monthly debt payments (including \$100.00 to consolidation company X), leaving him with discretionary funds of \$109.42.

Applicant furnished the Department of Defense with a letter dated September 2, 1999, in which he denied any intent to withhold pertinent information regarding his arrest or financial judgment, citing the "confusing and rather temperamental" software used to create his security package.

Applicant was reinterviewed by the DSS special agent on October 15, 1999, this time about his past employment activities and foreign travel. Applicant admitted he had traveled Canada in 1998 with French exchange students, but related he did not think it necessary to list travel to Canada on his SF 86. Applicant discussed employment omitted from his SF 86, and indicated he had applied for a position at the local naval base in late 1998, but declined the position when

his former supervisor at company B had informed the Navy that he misrepresented on his resume the extent of time he worked for company B.

Over the 1999/2000 time frame, Applicant applied for new credit cards when other accounts remained in collection, as he was under the impression that he could rebuild his credit by charging and paying off low balance credit card accounts. Applicant only got himself deeper in debt, as follows:

- In June 1999, Applicant opened a credit card account through a bank which had a balance of \$774.00 as of August 5, 1999. In December 2001, the account was charged off with a delinquent balance of \$2,144.00 (debt #12, *see* SOR subparagraph 1.o.). *see* SOR subparagraph 1.l). *see* SOR subparagraph 1.m.).
- In February 2000, Applicant opened a credit card account with a bank. The account was charged off with a delinquent balance of \$640.00 in September 2000 (debt #15, *see* SOR subparagraph 1.k.). balance owed of \$368.00 (debt #16, *see* SOR subparagraph 1.n.). May 2001, the account was placed for collection. As of November 2001, the account had an outstanding balance of \$587.00 (debt #17). [\(8\)](#)

In April 2001, Applicant was given an off-site assignment by his employer. Applicant's supervisor during his nine months on temporary duty was pleased with Applicant's work performance. In late August 2001, Applicant entered into an agreement with another debt consolidation company (company Y). In return for \$185.00 monthly payments, consolidation company Y was to pay off debts #3, #12, #13, #14, #15, #17, as well as one additional account. In contrast to consolidation company X, company Y was to satisfy the creditors one-by-one rather than making small payments to each of the creditors. From August 30, 2001 to January 21, 2002, Applicant paid \$1,110.00 to consolidation company Y, \$570.00 of which was withdrawn by company Y (\$270.00 for retainer fees). In response to inquiry from Applicant, consolidation company Y informed Applicant that all accounts in the debt consolidation program were still pending, as the company had not reached an agreement with any of the creditors.

Applicant returned to his regular duties at company A in January 2002. Through payments, he had reduced debt #5 to \$2,170.00 as of January 2002. On February 2, 2002, Applicant drafted letters to the utility service providers to whom he owed debts #6, #7, and #9, apologizing for his lack of communication with them and expressing an intent to repay the debts but for "financial difficulties due to unforeseen circumstances." Circa early February 2002, Applicant was furnished interrogatories by DOHA requesting update information about his financial status. In response, Applicant on February 13, 2002, indicated his monthly average income, after taxes, amounted to \$2,692.00 and his monthly expenses (including a \$185.00 debt consolidation payment) amounted to \$823.00. Applicant related that he needed more time to take care of all the debts he had acquired, and he provided a copy of his payments to debt consolidation company Y since August 30, 2001.

On May 21, 2002, DOHA issued an SOR to Applicant based on the unpaid delinquent debts #1, #2, #3, #5, #6, #7, #8, #9, #10, #11, #12, #13, #14, #15, and #16; his criminal vandalism in 1998; his omission from his May 1999 SF 86 of that arrest, the judgment awarded supervisor B, and his travel to Canada in 1998; his misrepresentation of his employment qualifications on a resume submitted for federal employment in Fall 1998; and his improper absence from company A in 1999 which led to a reprimand.

On June 11, 2002, Applicant responded to the SOR, admitting most of the outstanding indebtedness alleged, maintaining debt #15 had been paid. [\(9\)](#) Applicant indicated he was contacting some of the creditors (debts #1, #2, #3, #10, and #11) on an individual basis to develop a reasonable monthly payment plan. Given his ongoing payments through automatic deduction of \$100.00 from his paycheck twice per month, Applicant anticipated debt #5 would be paid off by the end of 2002. With regard to the four unpaid utility debts (debts #6, #7, #8, and #9), totaling in the aggregate \$1,634.87, Applicant had inquired about his accounts, but received no responses. [\(10\)](#) Concerning the unpaid balances on debts #11, #12, #13, #14, and #16, Applicant related the accounts were being handled by debt consolidation company Y. [\(11\)](#)

Concerning his 1998 arrest for vandalism and his failure to disclose it on his SF 86, Applicant admitted not supplying the correct information, for the reason "it was ridiculous for the charge imposed, and the case was dismissed upon [his] agreement to pay the restitution." He added, "[a]t the time of the application, I was honestly unaware of the implications of certain questions, etc." He also acknowledged he had not supplied the information about the 1997 financial judgment,

but claimed he did not understand "the process in which legality is represented in certain terms." Applicant indicated further he was "rather confused by a good portion on the terms on the application." As for him not disclosing his trip to Canada in 1998, Applicant related he did not think that trip had to be listed since he only had to show his driver's license when crossing the border. With regard to his misrepresentation to the Navy in 1998 of the extent of time he had worked at company B, Applicant admitted he implied he worked the entire summer of 1997, as he was motivated to acquire the federal position and "couldn't substantiate 4 days or so." Applicant acknowledged his supervisor at company A had reprimanded him for "a mistake on [his] time sheet, as a result of two hours charged." He apologized for his failure to follow his employer's reporting procedures.

Sometime prior to September 11, 2002, the delinquent balance on debt #17 was transferred to a new VISA card account. As of the hearing, this VISA card account was Applicant's only active credit card account.

On September 11, 2002, Applicant testified he had cancelled the debt consolidation agreement with consolidation company X as his payments went to coaching and retainer fees rather than his creditors. As for his experience with debt consolidation company Y, Applicant expressed his dissatisfaction, as only one account (debt #15) had been paid and he was still receiving bills from the creditor. (12) Because of his problems with debt consolidation company Y, Applicant made only two of his \$185.00 monthly payments since February 2002. Applicant expressed his intent to settle his debts, but he needed more time to do so. With respect to the omission of the 1998 vandalism charge, the 1997 judgment and 1998 foreign travel from his SF 86, Applicant denied any intent to deliberately withhold the information, but acknowledged it was negligent on his part not to list the 1998 vandalism arrest. He attributed his omission of the 1997 financial judgment to his failure to understand exactly what the word "judgment" meant, and maintained he did not consider the foreign travel question as applicable to his Canadian trip as he was there for "maybe eight days."

While Applicant made no effort to conceal his financial indebtedness from his SF 86, his omission of the 1998 vandalism offense, the 1997 judgment and the 1998 Canadian travel, are found to have been deliberate. The language of question 26 is unambiguous, and it stretches credulity that Applicant, with his level of education, could fail to appreciate that an affirmative response was required. (13) Similarly, with regard to his failure to list the 1997 financial judgment, in his answer to the SOR, Applicant indicated he "didn't understand the process in which legality is represented in certain terms." At the hearing, he indicated he did not know what the word "judgment" meant. Applicant was well aware that a small claims judgment had been awarded against him in 1997, and that he had not satisfied the debt as of May 1999. Indeed, he had not paid it by September 1999 when he expressed his intent to pay it as soon as he had the money. With regard to his failure to list his foreign travel, question 16 does not limit travel to places requiring presentation of a passport or to travel for extensive periods.

Circa early September 2002, Applicant learned he is entitled to financial counseling offered from his employer. Through a credit counseling service at work, Applicant was directed to a new debt consolidation company (consolidation company Z). On October 3, 2002, Applicant contacted consolidation company Y, expressing dissatisfaction with that company's services and asking why he was receiving demands for repayment of debt #15 if the consolidation company had paid that debt. He demanded to know where his payments to consolidation company Y were going. Also on October 3, 2002, Applicant provided to DOHA an updated listing of his outstanding delinquencies, which he estimated to total in the aggregate \$7,728.32 (\$895.00 on debt #1, \$492.33 on debt #2, \$642.56 on debt #3, \$347.49 on debt #6, \$515.94 on debt #10, \$2,144.00 on debt #12, \$510.00 on debt #13, \$1,226.00 on debt #14, \$368.00 on debt #16, and \$587.00 on debt #17). (14) Applicant indicated debts #12, #13, #14, #16, and #17 were either in the debt consolidation program with consolidation company Y or would be transferred to a new consolidation plan with consolidation company Z. With monthly payments of \$300.00 to debt consolidation company Z, and \$200.00 on debt #5, Applicant estimated a monthly net remainder of \$1,190.00.

On October 4, 2002, Applicant entered into an agreement with debt consolidation company Z. Under the debt reduction program, debts #2, #12, #14, and #17, with a listed aggregate balance of \$4,620.24 4, would be paid off in 44 months on payments by Applicant of \$147.00 per month. Applicant had not included all his delinquent credit card accounts in the plan due to the lack of account information.

Applicant's work performance at company A has been very good with no adverse security incidents. Applicant's immediate supervisor has been in a position to closely monitor Applicant's professional performance and personal

reliability over the past three years, with the exception of the nine-month period when Applicant was on temporary duty. Aware that Applicant has had some financial difficulties, the supervisor has seen no evidence that these problems still exist. He considers Applicant to be a responsible, reliable employee and recommends Applicant be granted a Secret clearance. Applicant's supervisor when he was on temporary duty indicates Applicant is determined to resolve his financial matters.

Applicant owes approximately \$30,000.00 in student loans which are currently in deferment. [\(15\)](#)

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. *See* Directive 5220.6, Enclosure 2, Section E2.2.4.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Financial Considerations

E2.A6.1.1. *The Concern:* An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

E2.A6.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A6.1.2.1. A history of not meeting financial obligations

E2.A6.1.2.3. Inability or unwillingness to satisfy debts

E2.A6.1.3. Conditions that could mitigate security concerns include:

E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts

Criminal Conduct

E2.A10.1.1. *The Concern:* A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

E2.A10.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A10.1.2.1. Allegations or admission of criminal conduct, regardless of whether the person was formally charged

E2.A10.1.3. Conditions that could mitigate security concerns include:

E2.A10.1.3.1. The criminal behavior was not recent

E2.A10.1.3.2. The crime was an isolated incident

Personal Conduct

E2.A5.1.1. The Concern: 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.

E2.A5.1.2. Conditions that could raise a security concern and may be disqualifying also include:

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.

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following with respect to guidelines F, J and E:

Applicant has a history of financial delinquencies from 1997 to present. As a college student, he financed the purchase on credit of clothes and electronics equipment, when he lacked the funds to pay for them. A recent college graduate with no job as of late 1998, he owed at least \$2,029.89 in credit card debt and \$92.00 to a local dentist. Due to his failure to timely pay his rent or utility costs from Fall 1998 to mid-1999, Applicant also owed about \$4,000.00 in back rent, \$646.38 in local telephone costs, \$41.00 in electricity costs, and \$600.00 to a long distance telecommunications

company. With his student loans in deferment, Applicant commenced repayment of debt #5, his back rent, after he secured full-time employment with his defense contractor employer in May 1999.

Aware the Department of Defense was concerned over his delinquencies, Applicant in early September 1999 entered into an agreement with debt consolidation company X through which he planned to satisfy his old credit card debts and the dental debt. The ameliorative impact of this effort to his indebtedness is undermined by his failure to ensure that debt consolidation company X was making the promised payments, and more significantly, by his accrual of new debt. Over the 1999/2000 time frame, Applicant opened several new credit card accounts, thinking he could improve his credit status by making his payments on low limit credit accounts. Instead, Applicant mismanaged this new credit. Excluding the delinquent debt for magazine subscriptions which Applicant disputes, he ran up additional delinquencies totaling almost \$6,000.00. By issuance of the SOR, at best only debts #4 and perhaps #15 had been satisfied, (16) while he had a net monthly remainder of \$1,869.00 as of mid-February 2002. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Under guideline F, financial considerations, disqualifying conditions E2.A6.1.2.1., a history of not meeting financial obligations, and E2.A6.1.2.3., inability or unwillingness to satisfy debts, are pertinent to an evaluation of Applicant's security suitability.

Security significant financial considerations are potentially mitigated under the Directive if the behavior was not recent (E2.A6.1.3.1.), it was an isolated incident (E2.A6.1.3.2.), the conditions that resulted in the behavior were largely beyond the person's control (E2.A6.1.3.3.), the person has received or is receiving counseling for the problem, and there are clear indications that the problem is being resolved or is under control (E2.A6.1.3.4.), or the individual initiated a good-faith effort to repay creditors or otherwise resolve debts (E2.A6.1.3.6.). Clearly, his debt was neither remote nor isolated. Several financial delinquencies remain outstanding. There is no evidentiary support for his February 2, 2002, claim, made to at least three creditors, that unforeseen circumstances have led to his financial problems. To Applicant's credit, he has reduced debt #5 through regular payments, and his good faith effort to resolve this debt warrants a favorable finding as to subparagraph 1.e. of the SOR. While there was significant delay in satisfying the minor dental debt #4, Applicant paid it in late July 2001. (17) However, Applicant has made little progress in addressing his other debts in the three years his financial situation has been under Government scrutiny.

Circa September 1999, Applicant entered into an agreement with consolidation company X, to pay off debts #1, #2, #3, and #4. Since the company had not made the promised payments to his creditors, Applicant subsequently cancelled this agreement. In August 2001, Applicant entered into an agreement with a new debt consolidation company. Yet, he included in that new plan only one debt of his older credit card delinquencies. In his favor, Applicant made payments of \$1,110.00 to consolidation company Y between late August 2001 and mid-January 2002, but most of the payments went toward retainer fees. Dissatisfied with the consolidation firm's service, Applicant between February 2002 and September 2002 made only a couple of payments on the plan. Nonperformance on the part of debt consolidation company Y mitigates his failure to abide by the plan, but it does not eliminate his legal responsibility for the debts. Applicant made no direct payments to the creditors in 2002, notwithstanding he was having problems with debt consolidation company Y. His old utility delinquencies are not subject to repayment under a debt consolidation program, and Applicant did little more than write letters to those creditors claiming to have financial problems due to unforeseen circumstances. Just last month, Applicant entered into an agreement with a new debt consolidation company to handle delinquencies #2, #12, #14, and #17. Assuming Applicant makes the \$147.00 monthly payments, other significant debts are not included in that plan or in his agreement with company Y. Notwithstanding a positive monthly cash flow since Fall 1999, most his debts are still outstanding. While the Directive does not require that one be debt free, Applicant's well-documented history of inattention to his debts does not augur favorably for resolution of his financial problems in the near future. Although he claims he has an "extreme desire" to eliminate his debt, his efforts toward that end have been half-hearted. Adverse findings are warranted with respect to subparagraphs 1.a. (and 1.b. as it reflects the same debt as 1.a.), 1.c., 1.d., 1.f., 1.g., 1.h., (18) 1.i., 1.j., 1.k., (19) 1.l., 1.m., 1.n., and 1.o. of the SOR. Subparagraph 1.p. is resolved in his favor because of its disputed status and the lack of clear evidence Applicant is responsible for that debt. (20)

With respect to guideline J, criminal conduct, Applicant was arrested for vandalism as a college student, for which he was required to pay restitution. While Applicant personally regards his arrest as an excessive response by overzealous police, he does not deny that he had a bit too much to drink and may have damaged a gate on campus. Allegations of criminal conduct fall within E.2.A10.1.2.1. However, the conduct has not been repeated and is not likely to recur. The

security concerns raised by this isolated incident are overcome by his law-abiding behavior for the past three years. Subparagraph 2.a. is therefore resolved for Applicant.

Personal conduct (guideline E) concerns are raised by Applicant's intentional failure to disclose on his May 1999 SF 86 this vandalism offense, the 1997 financial judgment awarded a past supervisor, and his 1998 foreign travel to Canada. Deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities raises serious doubts for one's judgment, reliability and trustworthiness (*see* E2.A5.1.2.2.). Moreover, Applicant intentionally exaggerated his qualifications on a resume which he used to apply for a federal position in late 1998, listing a 1997 summer internship when he had in fact stayed on the job only three days.

The doubts engendered by Applicant's false statements may be overcome if the falsification was isolated, not recent and corrected voluntarily (E2.A5.1.3.2.), the individual made prompt, good faith efforts to correct the falsification before being confronted (E2.A5.1.3.3.), or the omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided (E2.A5.1.3.4.). Asked about the SF 86 omissions at different times during the investigation and adjudication of his security clearance eligibility, Applicant has not always been consistent in his responses. In September 1999, he attributed the omission of his arrest to clicking the no box rather than the yes box in error. In his response to the SOR, Applicant admitted the intentional nature of the omission:

I admit to not supplying the correct information regarding the incident at the [state university] which occurred in the year of 1998. The reason being, in my opinion, it was ridiculous for the charge imposed, and the case was dismissed upon my agreement to pay the restitution . . . At the time of the application, I was honestly unaware of the implications of certain questions, etc.

Regarding his failure to list the 1997 judgment, Applicant told the DSS agent in September 1999 that he misunderstood the instructions. In June 2002, he told DOHA, "[a]t the time of the application, I didn't completely understand the process in which legality is represented in certain terms . . . I was rather confused by a good portion of the terms on the application . . ." At the hearing, he claimed not to understand what the term "judgment" meant. As for his undisclosed foreign travel, Applicant has consistently indicated that he did not think it was necessary to list foreign travel to Canada on his application. Clearly, he was aware of his foreign travel and his decision to not list it was intentional, although apparently not with the intent to conceal that foreign travel from the Government. There is no indication he volunteered any of the information omitted before being confronted. Although Applicant has never denied the underlying conduct omitted from his SF 86, he has made excuses for his false answers which cast doubt as to whether his representations can be relied on. Subparagraphs 3.a., 3.b., and 3.c., are concluded against Applicant.

Similarly, with respect to the misrepresentation on his resume, Applicant admitted to the DSS agent in October 1999 that he had exaggerated his position at company B on a resume submitted for a federal position in late Fall 1998. In response to the SOR, Applicant admitted having implied on his resume that he worked at company B the entire summer of 1997 as he was "so motivated" to acquire the position with the Navy. However, at the hearing, Applicant denied that he wanted to imply that he worked there the whole summer. He indicated he just wanted that employment to appear on his resume. Given Applicant only worked at company B for only three days, his listing of the job as a summer internship cannot reasonably be justified. This tendency to place his self-interest ahead of his obligation to be candid with the Government is incompatible with retention of a security clearance and casts serious doubts as to his judgment, reliability and trustworthiness. An adverse finding is returned as to subparagraph 3.d. of the SOR.

Applicant was reprimanded by his supervisor in August 1999 for mishandling his work schedule. As confirmed by his supervisor, Applicant cooperated with the procedures instituted by this supervisor to ensure no further abuse of work reporting rules at company A. Given his three years of subsequent compliance with company A's attendance policies, there is seen little risk of future abuse. Subparagraph 3.e. is resolved in Applicant's favor as he is likely to follow his employer's procedures. [\(21\)](#)

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.: Against the Applicant

Subparagraph 1.e.: For 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.: For the Applicant

Paragraph 2. Guideline J: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Paragraph 3. Guideline E: AGAINST THE APPLICANT

Subparagraph 3.a.: Against the Applicant

Subparagraph 3.b.: Against the Applicant

Subparagraph 3.c.: Against the Applicant

Subparagraph 3.d.: Against the Applicant

Subparagraph 3.e.: For 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.

Elizabeth M. Matchinski

Administrative Judge

1. In the SOR, the Government alleged falsification of a Questionnaire for National Security Positions dated May 24, 1999. The record contains two security clearance application forms completed by Applicant in May 1999-a "Security Clearance Application"(unsigned) generated on May 25, 1999, and a "Security Clearance Application" EPSQ Version 2.1, which was generated on May 13, 1999, and signed on May 24, 1999. While the Government mistakenly identified the May 24, 1999, application as a Questionnaire for National Security Positions, the error is harmless as the Applicant understood the Government's allegations to concern the EPSQ version which he signed on May 24, 1999.
2. The memorandum of assignment indicates Applicant requested a hearing. Applicant and Department Counsel confirmed at the hearing held on September 11, 2002, that the Government requested the hearing.
3. After evaluating all the evidence of record, I find the same debt is alleged in subparagraphs 1.a. and 1.b. It was not clearly established that Applicant had two separate accounts with the same bank.
4. The letter of the collection agency is annotated as paid by check on July 30, 2001. It is not clear how much Applicant paid to satisfy the debt.
5. When asked at the hearing why he did not list the vandalism charge on his application for employment with company, Applicant testified he did not know. (Transcript p. 74). Absent a credible explanation for the omission, I find he deliberately did not report it because he did not want the offense to affect his chance of being hired.
6. It is not clear who generated the second SF 86. Applicant testified at the hearing that he had some difficulties with the electronic form in that his computer shutdown when he downloaded the program so he had to fill out the entire application again. (Transcript p. 63). The SF 86 of record bearing a date of May 25, 1999, contains the employer's request for a national agency security check.
7. On his May 1999 SF 86, Applicant listed the debt as \$3,600.00. In September 1999, he told a Defense Security Service he had been paying \$100.00 per week on the obligation since June 1999, yet he estimated the balance as of September 1999 to be about \$4,000.00. It is difficult to reconcile his claim of \$400.00 monthly payments, even assuming a high interest rate, unless Applicant owed substantially more than \$4,000.00 in back rent.
8. Applicant was asked at the hearing as to the account's present balance. Applicant responded, "I just got the new bill in the mail today, but I wasn't able to open it, because I had to come." (Transcript p. 94).
9. Applicant provided no documentation of satisfaction. Claims of debt payment from consolidation company Y which Applicant indicates he received are undercut by his apparent receipt of letters from the creditor demanding payment.
10. The evidentiary record contains letters written by Applicant on February 2, 2002, on debts #6, #7, and #9. There is no documentation of a similar letter sent to the long distance provider to which he has owed some \$600.00 since 1999.
11. Consolidation company Y, in its listing of the accounts covered under the agreement, does not include debt #16, at least by the name of the creditor referred to by Applicant in his answer and alleged in the SOR.
12. Applicant testified payment in the amount of \$291.00 had been made. The evidence reflects Applicant owed \$640.00 on debt #15. It may well be that consolidation company Y and the creditor had agreed to settle on payment of the lesser amount, although there is no evidence of any settlement in the record.
13. It is noted in this regard that Applicant also did not list the offense on his application for employment at company A.
14. Applicant indicated debts #4 and #15 had been paid, while debts #7 and #11 are in dispute.
15. *See* Transcript p. 118. Applicant's February 2002 credit report reflects only two student loan accounts, federal direct

student loans taken out in July 1997 in the amount of \$1,792.00 and in February 1999 in the amount of \$8,138.00.

16. While Applicant indicates the debt has been paid by debt consolidation company Y, he is apparently still receiving letters from a collection agent demanding payment.

17. The fact that the debt was not alleged in the SOR is indication that the Government accepted his claim of satisfaction.

18. As of October 3, 2002, Applicant disputes the debt. However, on February 2, 2002, he drafted a letter to the creditor in which he indicated he had every intention of paying the outstanding balance.

19. There is no documentation confirming satisfaction of debt #15. Assuming the debt has been satisfied, an adverse finding would still be warranted because of its long delinquent status.

20. While Applicant in June 2002 listed the debt as being handled through consolidation company Y, he disputed the debt in September 1999 and again in October 2002. There is no evidence it has ever been included in a debt consolidation plan and it does not appear on his credit report.

21. It is noted that in describing his conduct, Applicant claimed he did not know he owed two hours of time to his employer when he left work early that Friday afternoon. He indicated when he got in to work the following Monday morning he was busy and did not get a chance to talk to his supervisor. (Transcript p. 60). Given his employer's actions, company A did not consider Applicant's actions to have been in good faith.