

KEYWORD: Personal Conduct: Financial: Criminal Conduct

DIGEST: Employed as a layaway clerk for a discount retailer in 1997, Applicant was criminally prosecuted and fired from her job for stealing \$15.00 from a cash box and for helping friends shoplift items from the store. Applicant deliberately omitted from her September 2000 security clearance application (SF 86) the 1997 criminal charges, her involuntary termination from her employment with the store for misconduct, as well as outstanding financial delinquencies totaling \$4,293.00 which she incurred over the 1996 to 1999 time frame. In a June 2001 sworn statement, Applicant falsely denied any involvement in the shoplifting. Her lack of candor with the Government and her failure to attend to her legitimate financial obligations raises serious doubts about her judgment, reliability and trustworthiness. Clearance is denied.

CASENO: 01-27373.h1

DATE: 07/26/2002

DATE: July 26, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-27373

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Employed as a layaway clerk for a discount retailer in 1997, Applicant was criminally prosecuted and fired from her job for stealing \$15.00 from a cash box and for helping friends shoplift items from the store. Applicant deliberately omitted from her September 2000 security clearance application (SF 86) the 1997 criminal charges, her involuntary termination from her employment with the store for misconduct, as well as outstanding financial delinquencies totaling \$4,293.00 which she incurred over the 1996 to 1999 time frame. In a June 2001 sworn statement, Applicant falsely denied any involvement in the shoplifting. Her lack of candor with the Government and her failure to attend to her legitimate financial obligations raises serious doubts about her judgment, reliability and trustworthiness. Clearance is denied.

STATEMENT OF 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 January 25, 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 personal conduct (guideline E) and criminal conduct (guideline J) related to falsification of a September 2000 security clearance application and June 2001 sworn statement; financial considerations (guideline F) due to unresolved indebtedness to four creditors; and criminal conduct because of a 1997 shoplifting offense.

On February 6, 2002, Applicant responded to the allegations set forth in the SOR. Her answer was not considered complete because she failed to indicate whether she wished to have a hearing. On March 22, 2002, Applicant requested a hearing before a DOHA Administrative Judge, and the case was assigned to me on May 21, 2002. Pursuant to formal notice dated May 28, 2002, the hearing was scheduled for June 26, 2002. At the hearing, which was held as scheduled, the Government submitted five documentary exhibits, all entered without any objections, and called Applicant as an adverse witness, Applicant having declined to testify on her own behalf. A transcript of the hearing was received in this

office on July 5, 2002.

The record was held open for two weeks following the hearing for Applicant to submit character reference letters as well as any documentation relevant to the issues raised in the SOR. With no correspondence received from Applicant by July 10, 2002, the record closed on that date.

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 26-year-old female with cosmetology training, who from mid-September 2000 to late February/early March 2002 was a radiological control technician in training for a defense contractor. Laid off from her employ with the company, Applicant is subject to recall should she be granted the Secret clearance requested.

After high school, Applicant in September 1994 enrolled in cosmetology school. Her training was financed through a student loan taken out in March 1995 in the amount of \$2,625.00. On her graduation from the cosmetology program in October 1995, Applicant commenced repayment of the student loan in the amount of \$50.00 per month. [\(U\)](#)

Applicant held various jobs over the 1995 to September 2000 time frame, including as a sales associate at a chocolate store, a layaway clerk for a major discount retailer, a cleaning associate for a cleaning company, a daycare provider at a community center, a medical assistant at a medical center, a tax service employee, a data entry clerk, an optometric technician, and a laboratory technician.

Applicant was involuntarily terminated from her position as the layaway clerk with the discount retailer in April 1997 after she was involved in shoplifting from the store. With Applicant's knowledge, a friend concealed clothes valued at \$111.00 in a comforter box which Applicant processed as a layaway. Two other store layaway clerks, on finding the concealed items, notified the store manager. On being confronted by the manager, Applicant admitted she had tried to conceal the items with the intent of shoplifting them and that the week before, she had permitted a friend to take in the same manner a video game cartridge costing \$49.99. Applicant volunteered she had herself taken \$15.00 cash from a store register. The police were called and Applicant was transported to the station without incident where she was charged with two counts of shoplifting and one count of larceny. Applicant subsequently pleaded nolo contendere to all counts and the charges were filed after payment of court costs, restitution, and a \$200.00 contribution to a crime victim's

fund.

Even with her firing, there was no period until her recent layoff where she had been out of work for as long as three months. A steady income notwithstanding, Applicant failed to make her payments on four accounts, as follows:

- By September 1998, Applicant's student loan payment was 120 days past due. As of May 1999, the outstanding balance on the loan was \$2,997.00.
- In October 1995, Applicant opened a revolving charge account with a major banking institution. High credit on the account reached \$313.00. In or before Summer 2000, a \$31.00 delinquent balance was written off by the creditor.
- In September 1996, Applicant opened a revolving charge account with a department store retailer. High credit on the account reached \$1,502.00. Applicant failed to respond to collection efforts from the creditor, and in September 2000, an outstanding balance of \$1,202.00 was charged off to profit and loss.
- Applicant's insurance policy was canceled in October 1999 after she failed to make timely payments to her insurer. In December 1999, her delinquent account was referred for collection in the amount of \$63.00.

Circa 2000, on learning from her father that his employer was hiring for the position of radiological control technician in training, Applicant applied for a job with the defense contractor. Selected for the position, Applicant was required to apply for a security clearance even before she started work. On or about September 5, 2000, Applicant completed a security clearance application (SF 86), EPSQ version. Embarrassed about her role in the shoplifting from her former employer, Applicant did not list her arrest in April 1997, electing to disclose only a 1997 driving on a suspended license charge in response to question 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."]. With the intent to conceal the shoplifting, Applicant did not list her employment with the discount retailer in response to question 6 regarding employment activities, or her termination from that job in response to question 20 regarding any adverse employment history in the last ten years. Aware her student loan and her revolving charge account with the department store were more than 180 days past due, and she had also made no effort to repay either the \$31.00 bank debt or the \$63.00 owed the insurance company, Applicant responded "NO" to questions 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)?"]. Applicant was granted a company confidential security clearance for the position, which she started in mid-September 2000.

With net take-home pay of about \$1,600.00 monthly from her job with the defense contractor, Applicant had about \$400.00 in discretionary funds available each month. Applicant made no effort to repay her delinquent accounts. In

conjunction with an investigation of Applicant's background for a Secret security clearance, the Defense Security Service (DSS) in April 2001 ran a check of Applicant's credit which disclosed the four outstanding delinquent debts. Applicant was reported to have paid as agreed an automobile loan which she had taken out in July 1997 for \$2,872.00.

On June 7, 2001, a DSS special agent interviewed Applicant about her arrest for shoplifting, and her failure to report on her SF 86 the criminal charges and her delinquent debts. Not candid with the agent about her role in the shoplifting, Applicant claimed she had been wrongly charged as she had been seen in the store with the person (a roommate's friend) who had stolen some electronics merchandise. Applicant indicated she did not list the shoplifting or larceny charges on her SF 86 because the charges had been dropped. Regarding her omission from her SF 86 of the delinquent debts, Applicant related at the time she completed her security clearance application, she was trying to contact her creditors to arrange for repayment. She denied any intentional omission from her SF 86 and expressed a willingness to take a polygraph regarding her arrest.

On July 30, 2001, Applicant was reinterviewed by the special agent. Applicant admitted she had known about her friend's shoplifting, and she had herself taken \$15.00 from a cash box. Applicant expressed remorse for her lack of candor during her first interview, and attributed her lies about the shoplifting incident to being "very embarrassed by the silly, childish, and irresponsible situation [she] was in." Regarding her debts, Applicant related she had contacted the department store creditor and requested a printout of her account so that she could establish a repayment plan. Concerning her student loan debt, Applicant related her income tax refund for tax year 2000 had been intercepted in partial repayment, and her recent one-time tax refund of \$300.00 had been taken in July 2001. Applicant promised to arrange to make payments on her student loan. At the agent's request, Applicant completed a personal financial statement on which she reported a \$103.00 monthly remainder, assuming monthly payments of \$150.00 each on her delinquent student loan and department store charge card accounts-payments which she indicated she could afford but was not in fact making.

On January 25, 2002, DOHA issued a SOR to Applicant alleging personal conduct and criminal conduct security concerns related to deliberate falsification of her security clearance application (failure to disclose her arrest in 1997 for shoplifting and larceny, her termination from her employment for her role in the thefts from her employer, and her four delinquent accounts), and her lack of candor in a signed, sworn statement of June 7, 2001; financial considerations because of the bad debts, which had not been satisfied; and criminal conduct issues because of her knowing facilitation of the shoplifting by friends and her personal larceny of \$15.00 from a cash box. In her response to the SOR, Applicant admitted all the allegations, including the deliberate misrepresentations made on her SF 86 and in a signed statement completed during her initial DSS interview. In late February 2002/early March 2002, Applicant was terminated from her position with the defense contractor due to her failure to obtain a Secret security clearance.

On an unemployment compensation benefit of \$268.00 per week since her layoff, Applicant has managed to pay her share of household expenses to her mother, with whom she resides. Applicant has about \$200.00 in her savings account, but little in discretionary funds available to her each month. As of June 2002, Applicant had made no payments toward any of her four delinquent debts. Her student loan debt had been reduced to about \$1,000.00 through attachment of her income tax refunds. Applicant has incurred no new debt. She no longer uses credit cards and does not have a checking account.

During Spring 2002, Applicant applied for numerous jobs. She has made it clear to the unemployment office she is subject to recall to her position at the defense contractor should her clearance be adjudicated favorably. Her unemployment benefit runs out in August 2002.

At her hearing in late June 2002, Applicant acknowledged she knew about a month or two before they were caught that friends were shoplifting items from the discount retailer in 1997 and she did nothing to stop them. Applicant denied ever personally walking out of the store with items or benefitting from the shoplifting of friends.

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:

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.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination.

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

None.

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.A10.1.2.2. A single serious crime or multiple lesser offenses.

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

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

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:

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 her 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 she 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, and having assessed the credibility of the Applicant, I conclude the following with respect to guidelines E, J and F:

Circa April 1997, Applicant pleaded nolo contendere to two counts of shoplifting and one count of larceny for her role in the theft with friends of merchandise from her employer and for her personal theft of \$15.00 from a cash box. Applicant acted to conceal from the Government her involvement in this criminal activity, by intentionally omitting from her September 2000 SF 86 the criminal charges as well as her involuntary termination from her job as a layaway clerk for misconduct. She also did not report known delinquent debts which should have been disclosed in response to questions 38 and 39 on the security clearance application. The deliberate omission, concealment or falsification of relevant and material facts from any personnel security questionnaire raises significant doubts for a person's judgment,

reliability and trustworthiness. (See E2.A5.1.2.2.). Given the opportunity to set the record straight during a June 2001 interview with a special agent of the DSS, Applicant instead falsely denied any wrongdoing with regard to the shoplifting and any intentional omission from her SF 86 of the adverse criminal, employment and financial record information. E2.A5.1.2.3., deliberately providing false or misleading information concerning relevant and material matters to an investigator . . . in connection with a personnel security or trustworthiness determination, is also pertinent to an evaluation of Applicant's current security suitability.

Furthermore, by deliberately falsifying her responses to questions 20, 26, 38 and 39 on her September 2000 security clearance application, and by misrepresenting in a signed, sworn statement of June 7, 2001, the material facts surrounding her involvement in the shoplifting, Applicant violated Title 18, Section 1001 of the United States Code. (2) Under guideline J, criminal conduct, the fact that Applicant has never been formally charged with a violation of that statute does not preclude its consideration for security purposes, as any criminal conduct is potentially security disqualifying. Her falsifications and employee theft raise very serious criminal conduct issues. (See E2.A10.2.1., allegations or admission of criminal conduct, regardless of whether the person was formally charged, and E2.A10.1.2.2., a single serious crime or multiple lesser offenses).

Personal conduct concerns engendered by intentional 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 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.). None of the mitigating conditions apply to Applicant's benefit. The DOHA Appeal Board reaffirmed in ISCR 01-06166 (decided on October 25, 2001), that where a case involves disclosures by an applicant that are corrections of an earlier falsification, E2.A5.1.3.3. rather than E2.A5.1.3.2. is proper for consideration. Applicant acknowledged when she was reinterviewed in July 2001 that she did nothing to prevent the known shoplifting by friends. Yet, Applicant had already had a very significant opportunity to demonstrate her good faith and correct the SF 86 misrepresentations when she was interviewed in June 2001. Whereas she instead chose to lie to the agent, her July 2001 admission was neither prompt nor before confrontation.

Furthermore, although Applicant expressed remorse to the agent for her lack of candor during the first interview, it is premature to conclude that her representations can be relied on. As reflected in a signed, sworn statement executed during her July 30, 2001 interview, Applicant admitted gaining "a slight benefit" from her friend's shoplifting of some clothing. When asked by Department Counsel at the hearing about her involvement, Applicant denied any benefit from the shoplifting of her friends. At the time of her arrest, Applicant gave a detailed statement to the police wherein she admitted conspiring to shoplift some clothing from the store. Per the police report, Applicant processed as a layaway for her friend a comforter box known by her to contain shoplifted clothing items, and to allowing a video game to be taken in the same manner the previous week. At the hearing, Applicant denied any direct involvement in the shoplifting. ("I knew about it, but I never shoplifted anything. I never took any merchandise out of the store. I did knowingly-I knew about it and I knew people were leaving the store with items, but I personally, never walked out of the store with items." Transcript pp. 31-32). Either Applicant gained a benefit from the shoplifting or she didn't. She conspired with her friend or simply looked the other way. The inconsistent accounts reflect adversely on her credibility. Adverse findings are warranted with respect to subparagraphs 1.a.(1), 1.b., 1.c., 1.d.(1), 1.d.(2), 1.d.(3), 1.d.(4) and 3.a., as Applicant has failed to overcome the personal conduct and criminal conduct concerns engendered by her repeated lack of candor with the Government.

There is no evidence Applicant removed merchandise from the store herself, but she processed as a layaway a comforter box which she knew contained shoplifted clothing, and she stole \$15.00 from a cash box at the store. Since her criminal conduct involved a breach of the trust placed in her by her employer, it has serious implications for whether she can be counted on to protect the Nation's secrets. Inasmuch as five years have passed with no recurrence of shoplifting or larceny, this criminal behavior is not recent. (See E2.A10.1.3.1., the criminal behavior was not recent). Although different in kind, it cannot be viewed in isolation from her more recent criminal false statements on the security clearance application and in a signed, sworn statement presented to a Government investigator. As part of a pattern of criminal activity which creates doubt about Applicant's judgment, reliability and trustworthiness, this shoplifting/larceny continues to engender security concerns. Immature and irresponsible when she engaged in the shoplifting and larceny, Applicant five years later has not shown that she understands the seriousness of her misconduct. As recently as July 2001, she described her misconduct as "silly, childish and irresponsible." Her conduct was first and foremost illegal as well as a serious breach of trust. The police report of the shoplifting incident reflects a greater degree of involvement on Applicant's part than she was willing to admit to at the hearing. Given the lingering doubts for her rehabilitation, subparagraph 3.b. is also resolved against Applicant.

Due to admitted financial irresponsibility, Applicant allowed four accounts to fall delinquent when she had a steady income. As of April 2001, she owed four creditors in the aggregate \$4,293.00. 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, under financial considerations (guideline F) must also be taken into account in assessing whether Applicant can be counted on to adhere to her security responsibilities.

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.). The concern in this case is not with the manner in which the debt was incurred, but with Applicant's failure to timely address her legitimate financial obligations, especially after she went to work for the defense contractor in September 2000. With approximately \$400.00 in discretionary funds available to devote to her indebtedness, Applicant made no payments to her creditors. By her second interview with the DSS agent, Applicant was well aware the delinquencies were of concern to the Department of Defense. She indicated to the agent in July 2001 that the department store retailer to which she owed \$1,202.00 was to send her a printout of her account so that she could establish a monthly payment. She also promised to arrange for repayment of her student loan. With the attachment of her income tax refunds in partial repayment of her defaulted student loan, Applicant's aggregate indebtedness has been reduced to about \$2,293.00. Yet, she has made no arrangements on her own with the creditors.

On unemployment compensation since March 2002, Applicant testified she has little left over at present which she can devote to the delinquencies. With her history of demonstrated disregard of her indebtedness and her lack of funds at present to repay her delinquencies, there is little positive evidence from which one can conclude these debts will be resolved in the near future. Subparagraph 2.a. is concluded against her as well.

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 E: AGAINST THE APPLICANT

Subparagraph 1.a.(1): Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.(1): Against the Applicant

Subparagraph 1.d.(2): Against the Applicant

Subparagraph 1.d.(3): Against the Applicant

Subparagraph 1.d.(4): Against the Applicant

Paragraph 2. Guideline F: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Paragraph 3. Guideline J: AGAINST THE APPLICANT

Subparagraph 3.a.: Against the Applicant

Subparagraph 3.b.: 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.

Elizabeth M. Matchinski

Administrative Judge

1. Applicant testified she could not recall when she made a last payment on the account, although she did not dispute that the account was 120 days past due as of September 1998. (Transcript p. 47).

2. Section 1001 of Title 18 of the United States Code provides in pertinent part:

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully-

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) falsifies or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title or imprisoned not more than 5 years, or both.