

DATE: April 12, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-28075

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Nygina T. Mills, Esq., Department Counsel

FOR APPLICANT

Thomas Albin, Esq.

SYNOPSIS

Applicant, who has a history of financial delinquency discharged in an April 1993 bankruptcy, incurred some \$16,244.00 in delinquent debt in 2001. His recent financial problems are attributable to his low wages, subsequent unemployment, and his spouse suffering from serious medical illnesses that left her unable to work for about eleven months. He has settled two of his delinquent accounts and paid another in full. Unresolved delinquencies are not of sufficient concern to deny him access to classified information because they resulted from unforeseen circumstances over which he had no control. While he did not list any debts on his security clearance application, he had no intent to mislead the Government. Clearance is granted.

STATEMENT OF CASE

On August 11, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to 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 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).

On August 25, 2003, Applicant filed his response to the SOR allegations and requested a hearing before a DOHA administrative judge. The case was assigned to me on October 7, 2003, and pursuant to notice of October 8, 2003, a hearing was scheduled for October 29, 2003. At the hearing, held as scheduled, the Government's case consisted of three exhibits. Applicant testified on his behalf and submitted one exhibit. A transcript of the hearing was received November 5, 2003.

The record was ordered held open for ten days following the hearing for Applicant to submit a copy of a handwritten security clearance application that he provided his employer from which Government exhibit 1 was prepared. By letter

dated October 31, 2003 (received November 4, 2003), Applicant's counsel submitted a handwritten Questionnaire for National Security Positions (QNSP) executed on May 6, 2002, and correspondence from two of the creditors listed in the SOR. Department Counsel having no objection, the documents were marked and entered as Applicant exhibits B, C, and D.

FINDINGS OF FACT

The SOR allegations concern Financial Considerations (Guideline F), based on outstanding delinquent debts owed to seven creditors after a 1993 discharge in bankruptcy, and Personal Conduct (Guideline E) because of Applicant's failure to report any qualifying financial delinquency on his May 9, 2002 security clearance application. In his answer, Applicant admitted the bankruptcy alleged in SOR subparagraph 1.a., and owing the debts alleged in SOR subparagraphs 1.c., 1.d., 1.e., and 1. h. He indicated the \$133 for past gasoline purchases alleged in 1.b. and \$704 in delinquent credit card debt alleged in 1.f. (and 1.g.) had been paid. He also denied any intentional falsification of his SF 86. Applicant's admissions are incorporated as findings of fact. After a complete and thorough review of the evidence, I render the following additional findings:

Applicant is a 57-year-old married father of two grown children. In the mid-1970s, he went to work for a defense contractor (company A). In 1974, he was granted a secret clearance for his duties. After ten years as an hourly-wage pipefitter, Applicant became a supervisor. Circa 1992, Applicant lost his salaried, management position during a reduction in force. He was kept on as an hourly-wage trade worker, earning significantly less than he had as a supervisor (from \$42,000.00 to \$23,000.00 per year), only to be laid off due to lack of seniority in the union about seven or eight months later. With his spouse working about 27 to 30 hours per week as a waitress at a local hotel and earning \$14,000.00 or \$15,000.00 per year, their financial obligations were more than they could pay.⁽²⁾ Applicant and his spouse had their debts discharged in a Chapter 7 bankruptcy in April 1993.

Applicant and his spouse relocated to another state, family members having offered to help him find a job in their area. In November 1994, Applicant went to work for the county as a light equipment operator. His spouse subsequently found a job working as a banquet waitress for a local hotel earning between \$13,000.00 and \$15,000.00 per year. In March 1999, Applicant took a job as a roller-man/laborer for a local paving company at \$9.50 per hour. With their two incomes, they managed to keep up with their financial obligations.

In December 2000, Applicant's spouse suffered a heart attack necessitating an emergency operation. In anticipation of her return to work, Applicant financed the purchase of an automobile for her to drive, taking out a vehicle loan of \$18,696.00, to be repaid at \$382.00 per month beginning in January 2001. While she was still recuperating from her heart attack, Applicant's spouse was found to have breast cancer. With more surgery in March 2001 and radiation treatments, she could not return to work. Unable to afford the payments on the car, Applicant asked the lender to reduce the monthly obligation. When the creditor refused, Applicant had the automobile voluntarily repossessed. Unbeknownst to Applicant, he was left with a deficiency balance of \$8,595.00 that was charged off in August 2001 and placed for collection (SOR subparagraph 1.c.; debt #1). Before the lender came to pick up the car, Applicant financed the purchase of a 1997 model year vehicle, taking out a loan in March 2001 of \$14,034.00 with payments at \$233.00 per month. Applicant has been current on that loan.

With his income insufficient to cover their living expenses and his spouse's medical prescription costs, Applicant began to rely heavily on credit. In August 2001, Applicant was laid off from his job with the paving company. Applicant and his spouse came to their old locale to help their daughter following the premature birth of their grandchild, and they stayed for a couple of months. Applicant worked as a custodian at a local college during their stay. In late November 2001, Applicant's spouse returned to her job as a banquet waitress at the hotel. He remained unemployed until February 2002 when he got a job as a mower for a country club. That job lasted only a few weeks before he again became unemployed in March 2002.

Due to the lack of income, Applicant was unable to pay on his credit card obligations and on a medical bill for services incurred by him in April 2001. His revolving charge account, opened in February 1998 (SOR subparagraph 1.e.; debt #2), became 90 days past due on a balance owed of \$3,703.00 as of December 2001. A MasterCard account, opened in September 1998, was 120 days past due with a balance of \$704.00 as of December 2001 (SOR subparagraph 1.f.; debt

#3). In November 2001, Applicant opened a Visa card account with the same bank on which he incurred a debt of \$685.00 and made no payments by January 2002 (SOR subparagraph 1.g.; debt #4). A revolving charge opened in December 1999 was subsequently closed by the credit grantor in April 2002 with \$934.00 owed (SOR subparagraph 1.h.; debt #5). In September 2001, a local hospital placed a \$250.00 medical debt for collection (SOR subparagraph 1.d.; debt #6).

Circa May 2002, company A called Applicant and asked him whether he would be willing to return to work as a pipefitter. As he was still unemployed, Applicant accepted the offer and relocated without his spouse, who had to keep working at her job for the medical insurance pending their eligibility for medical benefits at company A. In conjunction with his rehiring by company A, Applicant completed a Questionnaire for National Security Positions (QNSP) on May 6, 2002. Applicant responded negatively to question 28 concerning any financial delinquencies as he was still actively relying on credit and although he knew he was behind on some obligations, he was unaware of the extent of the delinquency. In the continuation space on the form, Applicant added:

On Dec 2000 my wife had a heart attack and on March of 2001 my wife was operated on to remove cancer from her breast. My wife was out of work from Dec 23, 2000 to Dec 2001. She is doing fine now. But because of these health problems we fell behind on our bills. We are starting to get them back in order.

Three days later, an electronic version of the security clearance application (SF 86) was prepared by an employee of company A from Applicant's handwritten QNSP. Negative responses were entered 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)?"]. In the general remarks section on the form (question 43), no additional remarks were entered. Applicant signed this SF 86 certifying that his statements were "true, complete, and correct to the best of [his] knowledge and belief and [were] made in good faith," knowing his statement that he was behind in his financial obligations had not been included but thinking there must then be no problem with him being behind.

A check of Applicant's credit on May 17, 2002, disclosed a \$9,835.00 balance owed on debt #1, \$3,703.00 on debt #2, \$704.00 on debt #3, \$685.00 on debt #4, \$934.00 on debt #5, \$250.00 on debt #6, as well as \$133.00 owed on a debt in collection since March 1996 (SOR subparagraph 1.b.; debt #7). Some accounts were reported as pays as agreed, including the automobile loan opened in March 2001.

A couple of weeks after he completed his SF 86, Applicant started back to work as a union first class pipefitter in mid-May 2002 at an hourly wage of \$17.60. His spouse returned to the area in August 2002. In September 2002, she got a job working 28 hours per week with no benefits in a middle school cafeteria serving lunches.

On August 28, 2002, Applicant was interviewed by a special agent of the Defense Security Service (DSS) about his previously undisclosed financial delinquencies. Applicant denied any prior knowledge of an outstanding balance on the loan for the repossessed auto (debt #1) or of the \$133 owed on debt #7. Regarding repayment of debt #1, he was going to wait until he was contacted by the creditor in the belief the creditor would then be willing to settle for a lesser amount. He indicated he would satisfy debt #7 by mid-September 2002. Applicant admitted owing the credit card balances (debts #2, #3, #4, and #5), and promised to contact the lenders within the next three months to request a partial payment schedule. Concerning the \$250.00 medical debt in collection (debt #6), Applicant related he had spoken to the hospital in August 2002 and the creditor had agreed to accept \$50.00 per month for five months in repayment. Applicant attributed his financial difficulties to his spouse's medical problems and her inability to work for a time, and his low wage when he was employed during that period. Applicant expected to be able to pay their debts with his income from the defense contractor and her expected income. Applicant explained he had not listed the delinquencies on his SF 86 because he was unaware of them when he completed the application.

On November 1, 2002, an assignee for debt #7 attempted to collect the \$133.00 balance. The collection agency agreed in late January 2003 to settle for a payment of \$106. Applicant paid the amount by money order in February 2003.

With his spouse's car needing a new transmission costing \$1,986.00, Applicant did not make the \$50.00 payments to the hospital. Sometime in early Spring 2003, he bought a 1992 model year vehicle for himself at a cash outlay of \$800.00 after his car died. In September 2003, he forwarded the balance of \$250.00 to the hospital in satisfaction of debt #6.

On March 7, 2003, an agency assigned to collect on the MasterCard debt (debt #3) offered to settle the balance of \$961.94 for a payment of \$384.78 by March 22, 2003. Applicant contacted the collection agency and accepted the offer. On March 19, 2003, he paid the \$384.78 to settle the account.

Circa May 2003, the collection agency for debt #1 contacted Applicant by telephone and offered to settle the \$9,835.00 balance for a lump sum payment of \$6,600.00 cash. Since he did not have the funds available to make that payment and the creditor had not been willing to work with him in the past, he hung up on the collection agency.

After the SOR was issued in August 2003, Applicant remained on the job until October 2003 when his clearance was revoked. Applicant was laid off as of his hearing, but he is subject to recall should his clearance be resolved favorably. Out of work, he had applied for, but was denied, state unemployment benefits. An appeal of the denial was pending. Applicant did not have the funds as of late October 2003 to pay the \$2,200.00 lump sum to settle debt #2 or the \$756.00 he had promised to pay in November 2003 to settle debt #5.

During calendar year 2003, Applicant had \$40,000.00 in earned income (including substantial overtime earnings) from his employment at company A. His spouse brings home \$182.00 per week. Applicant and his spouse's monthly expenses average \$1,960.00. As of late October 2003, Applicant had \$1,600.00 in his checking account and \$380.00 in savings. He has not devoted the extra funds to payment of old delinquencies, preferring to keep some reserves in the case of an emergency expense. Just a week before the hearing, he had to put an alternator in his spouse's vehicle.

Applicant no longer uses any credit cards. He had not engaged in any extravagant purchases or taken a vacation since returning to work at company A in May 2002.

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 restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. 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.

Considering the evidence as a whole, the following adjudicative guidelines are the most pertinent to this case:

Guideline F

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 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.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation);

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

Guideline E

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:

None applicable.

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

None applicable.

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, 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. Due to admitted financial over-extension, Applicant and his spouse could not afford their financial obligations when he lost his supervisory position in 1992 and was forced to take a significant pay cut. In order to get out of debt, they had their debts discharged in bankruptcy in April 1993. With the exception of a minor debt of \$133.00 placed for collection in March 1996, Applicant did fairly well with their finances until 2001, when his spouse was unable to work due to serious medical problems. Over the next year, Applicant began to rely on credit to pay for living expenses and his spouse's prescriptions and he was unable to make the payments on an automobile loan he took out shortly after his spouse had a heart attack in anticipation of her return to work. As of his August 2002 interview with the DSS agent, Applicant owed approximately \$16,244.00 in delinquent debt. 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*, must be considered in evaluating Applicant's current security suitability.

The existence of any financial delinquency, especially following a bankruptcy discharge, warrants close scrutiny, as it could indicate poor judgment and disregard of legitimate obligations. In this case, the debts are attributable to circumstances largely beyond Applicant's control (*see* mitigating condition E2.A6.1.3.3.). With the exception of the \$133.00 debt, which apparently was overlooked, the delinquencies were incurred after Applicant's spouse suffered a heart attack at work in December 2000. While one can debate the wisdom of Applicant taking out an automobile loan of \$18,696.00 in January 2001 in anticipation of her return to work, his spouse's subsequent diagnosis of breast cancer and need for treatment were not foreseeable. Her inability to work for some eleven months when she had significant out-of-pocket prescription costs, his low income when he was working (\$9.50 per hour), and his lack of steady employment from October 2001 until he returned to work at company A in May 2002, negatively impacted the family's financial situation.

To his credit, Applicant has taken steps of late to resolve his indebtedness sufficiently to apply mitigating condition E2.A6.1.3.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.* Debt #3 was settled through payment of a negotiated amount less than the full balance owed in March 2003. Debt #7 was paid in full in February 2003 before he received the SOR. Debt #7 was settled in September 2003 with a payment of \$106 of the \$133 owed. He also arranged to settle debt #5 in November 2003. While he has not made the payments on debt #5, it was not for want of desire but rather because he was laid off due to the lack of security clearance. With his spouse's medical problems, her part-time income with no benefits, and his lack of current income (denial of unemployment compensation), it is reasonable for him to maintain a small amount of savings for emergencies rather than devote all of his extra funds to pay off these old debts. Of those debts remaining, Applicant has contacted the creditor of debt #4 in an effort to determine whether this reported balance of \$685.00 is a separate debt from debt #3. His two largest creditors, debt #1 for \$9,835.00 (a deficiency balance after voluntary repossession) and debt #2 for \$3,703.00, are demanding lump sum payments of substantial amounts to settle (\$6,600.00 and \$2,200, respectively) that Applicant cannot afford in his present circumstances.

The Directive does not require that an applicant be free of debt before he or she can be granted access. Under the "whole person" concept to be applied in security clearance adjudications, a person is to be viewed by the totality of their acts and omissions. Applicant showed after his April 1993 bankruptcy that he could handle his financial matters responsibly. It was not until he was faced with difficult life circumstances not of his making that he began to rely on credit to pay their bills and medically necessary prescriptions for his spouse. Recent financial outlays for other than living expenses have been for automobile repair or to purchase an older model vehicle needed to get to work. After consideration of all the facts and circumstances presented, I conclude Applicant is not likely to engage in illegal or unethical acts to meet his financial obligations. SOR subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., and 1.h. are resolved in his favor.

Security significant Personal Conduct, Guideline E, concerns are raised where an applicant has not been completely candid with the Government about matter relevant and material to his or her personnel security application and investigation. (*See* 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*). The typewritten SF 86 signed by Applicant on May 9, 2002, bears negative responses to the inquiries concerning any financial delinquencies currently over 90 days past due or in the last 7 years over 180 days late. Applicant's May 2002 credit report reflects debt #1 had been charged off in August 2001, and debt #6 had been in collection since September 2001. Having voluntarily surrendered his vehicle, he testified credibly he was unaware he was being held responsible for the balance remaining on his loan until he was interviewed in August 2002. He also did not know that he still owed for medical services incurred before his return to his present locale. With respect to his credit card debt, Applicant knew he was behind. Two of his credit card accounts (debts #3 and #4) were reported as 120 days past due as of May 17, 2002. Nonetheless, I am persuaded Applicant did not act to conceal his debts from the Government.

On his handwritten QNSP, from which his employer prepared the SF 86 Applicant is alleged to have falsified, Applicant indicated under the general remarks section that he and his spouse fell behind on their bills because of her health problems, and they were starting to get them back in order. This statement was not included on the typewritten SF 86 submitted to the Government. Applicant noted its omission, but assumed his explanation must have been sufficient to address any concerns in that regard so he just signed the form. Subparagraph 2.a. is decided in his favor, as Applicant

had no intent to mislead the Government about his financial problems.

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: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: For the Applicant

Paragraph 2. Guideline E: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

DECISION

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

Elizabeth M. Matchinski

Administrative Judge

1. The SOR was issued under the authority of 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).
2. At his hearing, Applicant testified he had been living above his means and he mistakenly thought "the good times [were] going to last." (Tr. 82).