

DATE: July 18, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-29696

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Esq., Department Counsel

FOR APPLICANT

Richard J. Pascal, Esq.

SYNOPSIS

Indebted to several creditors, Applicant owes about \$53,000.00 in total. He is seeking a Chapter 7 discharge in bankruptcy of \$50,650.97 in unsecured debt, which had not been granted as of April 2003. Some of the debt is attributable to lack of income, but it is too soon to safely conclude that his financial problems are safely of the past, notwithstanding a doubling of his personal income in October 2002. Applicant elected not to reveal known financial delinquencies when he completed his application for security clearance, as he feared he would not acquire his defense-related job. His financial irresponsibility and falsification of his clearance application create doubt for his security suitability. Clearance is denied.

STATEMENT OF CASE

On January 23, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) 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. [\(1\)](#) 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), personal conduct (guideline E), and criminal conduct (guideline J).

On February 5, 2003, Applicant, then *pro se*, responded to the SOR allegations and requested a decision based on the written record. Applicant subsequently requested a hearing before a DOHA Administrative Judge, and the case was assigned to me March 14, 2003. Pursuant to formal notice dated March 28, 2003, the hearing was scheduled for, and held on, April 15, 2003. Before the presentation of any evidence at the hearing, the Government withdrew an allegation of an arrest for assault in July 2002 (SOR subparagraph 3.b.), and SOR subparagraph 1.b. was amended to reflect Applicant was at least 30 days delinquent as of January 2002 (vice January 2001) on that debt. Three Government exhibits and 13 Applicant exhibits were admitted into the record. Testimony was taken from Applicant, his spouse, and four coworkers, as contained in a transcript received by DOHA on April 24, 2003. At Applicant's request, I agreed to

take official notice of federal bankruptcy statutes, specifically 11 U.S.C. § 362 and 11 U.S.C. § 727.

The record was held open following the hearing for Applicant to submit additional financial records by April 25, 2003. By facsimile on April 24, 2003, Applicant timely submitted two documents: 1) a letter of December 4, 2000, indicating Applicant had promised to make, and the creditor agreed to accept, \$100.00 monthly payments on an outstanding judgment not alleged in the SOR, and 2) two checks drafted in April 2002 and June 2002 on Applicant and his spouse's joint checking account in partial payment of the debt alleged in SOR subparagraph 1.b. On May 3, 2003, Department Counsel objected to their admission. After consideration of the respective arguments offered by the parties on this issue, the documents were entered as exhibits N and O, respectively. The records are relevant to the issue of determining efforts made by Applicant to address his outstanding delinquencies. [\(2\)](#)

FINDINGS OF FACT

The SOR, as amended, alleges financial considerations because of unresolved indebtedness totaling \$17,194.19 and monthly expenses substantially exceeding his income; personal conduct because of his failure to list his financial delinquencies on his April 2002 security clearance application (SF 86); and criminal conduct related to deliberate falsification of his SF 86. In his Answer, Applicant admitted the debts alleged, but indicated he had filed for bankruptcy and his monthly expenses no longer exceeded his income. Applicant admitted responding "no" on his SF 86 to any financial delinquencies currently over 90 days or ever more than 180 days, attributing his negative responses to shame. His admissions to delinquent debts and deliberate misrepresentation are accepted, and incorporated as findings of fact. After thorough review and consideration of the evidence, I make the additional findings of fact:

Applicant is a 32-year-old carpenter foreman who has worked for his current employer, a defense contractor, since mid-April 2002. He was granted an interim confidential security clearance for his duties which has been withdrawn. Applicant seeks a secret clearance for his duties.

Applicant served in a branch of the national guard from March 1992 to January 1997, where he completed military police school. He held a secret clearance for his military duties. Circa June 1993, Applicant went to work in the civilian sector as a bonded security officer (guard) for a armored car/security company.

In December 1994, Applicant married a divorcee with two young daughters, whom Applicant eventually adopted. Applicant's spouse brought to the relationship debt incurred from her first marriage. Applicant and his new family lived with his parents initially, as finances were tight. Although he remained gainfully employed as a lieutenant for the guard service until April 1998, and his spouse had begun selling cars in about 1995, Applicant fell behind in his financial obligations. A credit card account opened in December 1995 was subsequently charged off in the amount of \$255.00 due to nonpayment (SOR subpara. 1.d.). Applicant stopped making his \$352.00 monthly payments on an automobile loan, and a delinquent balance of \$2,321.00 was placed for collection in January 1997 (SOR subpara. 1.e.). Another auto loan, which was taken out in April 1996, was written off to profit and loss in October 1997 with a \$8,385.00 balance (SOR subpara. 1.f.). A \$462.00 debt for wireless services was placed for collection in October 1997 (SOR subpara. 1.k.). [\(3\)](#)

In June 1997, Applicant took out student loans totaling \$5,384.00 to attend trucking school. [\(4\)](#) Following his completion of the training program, Applicant went to work as a truck driver for a transportation company in April 1998 and his spouse gained employment for a local convenience store business. Circa January 2000, Applicant became a self-employed truck driver, acquiring his own vehicle through a truck lease program. Due to increases in fuel costs and the cost of the truck lease, Applicant began to use money budgeted for the house so that he could deliver his loads. Applicant's spouse, who handled the family finances when he was away, fielded calls from Applicant's creditors, some of whom were unwilling to work with her. Living expenses (housing, food, utilities) were paid for out of her salary, although sometimes in installments rather than in full. In 1998, a food vendor obtained a judgment against Applicant and his spouse for \$8,151.10 when they failed to make payments on their account.

Circa April 2000, Applicant got out of the truck lease, and joined a local carpenter's union. Over the next 20 months, Applicant worked only when jobs were available and without paid benefits. He and his spouse earned \$45,806.73 in joint income for tax year 2000. Work opportunities for Applicant were limited during the summer of 2001 in particular,

and they lived for the most part off his wife's salary. His personal share of the family's income amounted to \$28,818.42 in 2001. He began to accumulate debt that he could not repay. His account with a military exchange service was charged off to profit and loss with a balance of \$3,731.00 (SOR subpara. 1.a.). In October 2000, Applicant incurred medical costs of \$197.00 which he did not pay for. A utility debt of \$170.19 was charged off in December 2000 and referred for collection (SOR subpara. 1.i.). A credit card account opened in October 2000 was written off in July 2001 with \$452.71 owed (SOR subpara. 1.h.). In December 2000, he promised to make \$100.00 monthly payments toward the \$8,151.10 judgment debt owed the food vendor. It is not clear how many payments, if any, he made. ⁽⁵⁾ A credit card account, opened in July 2001, was past in the amount of \$112.00 on a balance of \$738.00 as of April 2002 (SOR subpara. 1.c.). Applicant made no payments on a credit card account with a balance owed of \$1,023.00 as of that November. (SOR subpara. 1.g.). As of January 2002, Applicant's loan for a light truck purchased in October 2000 for \$15,893.00 was \$782.00 past due (SOR subpara. 1.b.). In August 2001, a \$54.00 debt owed a local dentist was placed for collection (SOR subpara. 1.l.). In contrast, Applicant remained current in his student loan payments.

In early 2002, Applicant's spouse took over handling of the family's finances. From January to April 2002, Applicant was unemployed. Needing a steady income and attracted by the paid benefits, Applicant applied for a carpenter's position with his present employer. Before commencing work, Applicant on April 2, 2002, executed a security clearance application on which he responded no to inquiries concerning any unpaid judgments in the last seven years, any financial delinquencies over 180 days in the last seven years, and any current delinquencies over ninety days. Applicant intentionally did not report his financial problems as he needed the job and feared the negative impact of the delinquencies. In mid-April 2002, Applicant started work for the defense contractor at an hourly wage of \$12.59.

With a steady income, Applicant paid off balances owed for utility service and attempted to resolve his outstanding debt on his truck purchased in October 2000 (*see* SOR subpara. 1.b.). In April 2002, Applicant's spouse paid \$394.57 and in June 2002 \$600.00 to the creditor, but nothing thereafter. In November 2002, the vehicle was repossessed, leaving Applicant with a deficiency balance of \$14,347.03. ⁽⁶⁾

On August 14, 2002, Applicant was interviewed by a special agent of the Defense Security Service (DSS) about his financial delinquencies. Applicant estimated he had past due obligations of \$7,600.00, which he was financially unable to repay. He related he had no intent to contact his creditors as he lacked the resources to pay his debt. At the suggestion of the agent that he could file for bankruptcy, Applicant indicated he would consider it. Applicant admitted he had not disclosed his debts on his SF 86 as he did not want anybody to know about them. During the course of his interview, Applicant executed a personal financial statement on which he reported a negative monthly deficit of \$880.00.

Following his interview, Applicant in August 2002 contacted a local attorney regarding a potential Chapter 7 bankruptcy filing. Sometime in fall 2002, Applicant's spouse financed the purchase of a new, model year 2003 automobile, as her old vehicle had become unreliable. She pays for her car from her earnings as a manager for the convenience store business. In October 2002, Applicant was promoted at his job to the position of foreman, having demonstrated during his short tenure at the company a strong work ethic, leadership ability, and willingness to take initiative to get the work done. On his transfer to the salaried ranks, Applicant's income doubled to \$47,500.00 per year. With his raise in income, Applicant and his spouse no longer had a negative cash flow and were able to pay their living expenses (utility costs) in full when due. Circa late January 2003, Applicant filed individually for liquidation of \$50,650.97 in unsecured debt. As of April 2003, he had not yet been granted a discharge.

In February 2003, Applicant was notified he owes back federal taxes of about \$1,440.00 for tax year 2001, due to insufficient withholding when he operated his own truck. Applicant's spouse sent the Internal Revenue Service (IRS) \$100.00 as an initial payment. With the filing in April 2003, of their federal tax return for tax year 2002, Applicant's spouse sent the IRS another \$100.00 toward taxes owed of \$1,000.00.

Several individuals familiar with Applicant's work performance and ethics endorse his application for a security clearance. Applicant has proven to be a skilled craftsman and an asset to his department.

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

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.A6.1.1.)

Conditions that could raise a security concern and may be disqualifying include:

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

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

Conditions that could mitigate security concerns include:

The conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment) (E2.A6.1.3.3.)

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

Personal Conduct

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.

Conditions that could raise a security concern and may be disqualifying also include:

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 untrustworthiness, or award fiduciary responsibilities (E2.A5.1.2.3.)

Conditions that could mitigate security concerns include:

None.

Criminal Conduct

The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and

trustworthiness.

Conditions that could raise a security concern and may be disqualifying include:

Allegations or admission of criminal conduct, regardless of whether the person was formally charged

Conditions that could mitigate security concerns include:

The crime was an isolated incident

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, and having assessed the credibility of those who testified, I conclude the following with respect to guidelines F, E and J:

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 United States 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 or material for financial gain. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. As reflected in his January 2003 petition for a Chapter 7 bankruptcy discharge, Applicant's delinquent indebtedness exceeds that alleged in the SOR. In addition to a recently assessed federal tax obligation of about \$1,435.00 for tax year 2001, he owes fourteen other creditors, including a food vendor who has been waiting for satisfaction of a court judgment since 1998. Potentially disqualifying concerns in this case include E2.A6.1.2.1., a history of not meeting financial obligations, and E2.A6.1.2.3., inability or unwillingness to satisfy debts.

The substantial costs of Applicant operating his own truck and his subsequent underemployment as a member of the carpenter's union over the 2000/01 time frame negatively impacted his ability to timely pay his financial obligations. Whether Applicant's trucking venture failed due to personal naivete, poor business decisions, or a downturn in the economy, the lack of income relative to expenditure was clearly unanticipated by Applicant. The availability of work, or lack thereof, for union carpenters was a factor beyond Applicant's control (*see* mitigating condition E2.A6.1.3.3.,

conditions that resulted in the behavior were largely beyond the person's control). However, Applicant has also made poor financial decisions, which cast doubt on his judgment and reliability. He failed to timely repay a credit card debt and two automobile loans when he was gainfully employed as a lieutenant for the security/armored car company, (7) and those debts remain unpaid as of April 2003. Applicant and his spouse jointly incurred a substantial food service debt in 1998 they are under court order to repay. Although he entered into an agreement with the creditor in December 2000 to repay the \$8,151.10 judgment at \$100.00 per month, there is no proof of payment. He sought discharge of the debt in bankruptcy in January 2003. Over the 2000/01 time frame, Applicant opened new credit card accounts and accrued additional debt when he lacked a steady income.

To Applicant's credit, he made two payments on his delinquent truck loan after he started working for the defense contractor in April 2002. The ameliorative effect of these payments must be considered in light of his inattention until recently to other debts, such as his dental bill of \$54.00 which had been in collection since August 2001. Applicant did not contact the dentist until January 2003. He acknowledged he will have to pay the debt--which is not included on his bankruptcy petition--but he had not done so by April 2003.

In August 2003, Applicant decided to pursue bankruptcy, a legal remedy that may afford him a fresh start. In late January 2003, he filed a petition under Chapter 7 seeking liquidation of unsecured debt totaling \$50,650.97. As of April 2003, the debts had not been discharged. While discharge is not a prerequisite for access, I am unable to conclude that Applicant's financial problems are safely of the past. With the bankruptcy pending, Applicant is not required to make any payments toward the listed unsecured debts. With he and his spouse earning jointly about \$90,000.00 per year, he should have the means to pay his obligations in full. Yet, Applicant and his spouse paid only \$100.00 of the \$1,000.00 in federal taxes owed for tax year 2002. Applicant's spouse testified this was what they could afford. Circa early 2002, Applicant's spouse took over handling of the family's finances when it became clear to her that he did not manage money well. As recently as April 2002, they were behind in their utility payments. Applicant's recent resort to bankruptcy is not a substitute for a sustained record of timely financial payments. Adverse findings are warranted as to subparagraphs 1.a., 1.b. (as amended), 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.i., 1.k., 1.l., and 1.n. of the SOR. Subparagraphs 1.j. and 1.m. are concluded in Applicant's favor, inasmuch as it was not sufficiently established that Applicant ever owed these alleged creditors.

Additional doubts are raised for Applicant's security suitability because of his lack of candor about his indebtedness when he completed his security clearance application on April 2, 2002. A check of Applicant's credit ten days later revealed several debts proven to be Applicant's (those alleged in SOR subparas. 1.a., 1.d., 1.e., 1.f., 1.h., 1.i., 1.j., 1.k. and 1.l.) had been placed for collection or charged off, while other accounts (those alleged in 1.b., 1.c. and 1.g.) were past due.

Applicant intentionally did not reveal his indebtedness as he did not want it to affect his chances of securing employment with the defense contractor. The deliberate omission, concealment or falsification of relevant and material facts from a personnel security questionnaire raises serious personal conduct concerns (E2.A5.1.2.2.).

A knowing and recent concealment of relevant and material financial delinquencies is potentially mitigated where the individual made prompt, good faith efforts to correct the falsification before being confronted with the facts (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.). While Applicant did not deny his indebtedness when interviewed by the DSS agent on August 18, 2002, it is not clear that he volunteered up-front before being asked that had several outstanding debts. Applicant's sworn statement taken during the interview does not include a detailed listing of the debts. Indeed, given the SOR includes only those delinquencies listed in Applicant's April 12, 2002, credit report, it may reasonably be inferred that Applicant did not volunteer the existence of the outstanding judgment debt of about \$8,151.10 awarded in 1998 or the unpaid eye care bill of \$197.00 from October 2000. His efforts at rectification fall short of the full and complete candor required.

Since Applicant's false denials of any qualifying financial delinquencies were made under advisement of 18 U.S.C. § 1001, (8) his conduct falls within guideline J, criminal conduct, as well. The Government must be able to rely at all times on the representations of those granted access to the Nation's secrets. Applicant was given an interim clearance based on false information. Applicant has proven to be an asset to his employer, but it is not enough to overcome the security

concerns engendered by him placing his personal interest ahead of his obligation to be forthright. Subparagraphs 2.a. and 3.a. are resolved against him.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: For the Applicant

Subparagraph 1.k.: Against the Applicant

Subparagraph 1.l.: Against the Applicant

Subparagraph 1.m.: For the Applicant

Subparagraph 1.n.: Against the Applicant

Paragraph 2. Guideline E: 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.: Withdrawn

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. The SOR was issued 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).

2. Applicant offered exhibit N in support of his testimony that he had been making payments on the judgment. Department Counsel opposed the admission on the basis the document proves only that Applicant agreed to make monthly payments and not that the payments were made. The extent of Applicant's compliance with the agreement is not answered by that document, but it does not make the document inadmissible. With respect to the copies of the two checks offered as exhibit O, absent cancellation, they do not independently prove that the payments were made, but there is credible testimony that the payments were made. The subsequent repossession in November 2002 does not necessarily undermine his claim of payments in April and June 2002.

3. Applicant testified someone scanned his phone and he did not make the telephone calls. (Tr. pp. 39-40). The debt appears on his credit report of April 2002 (Ex. 3) and is listed on his January 2003 bankruptcy petition (Ex. D). He presented no record from the creditor to support his claim of no legal liability for the debt.

4. Applicant listed on his January 2003 bankruptcy petition student loan debts of \$11,217.13. (Ex. D).

5. Applicant testified he was making payments on this debt at the time he executed the SF 86 in April 2002. (Tr. p. 82). Yet, his bankruptcy petition indicates the balance of the debt remains \$8,151.10.

6. Applicant's account as to the repossession varies from his spouse's. He testified he contacted the creditor when he decided to file for bankruptcy in August 2002 and told the creditor to come and get the truck which sat in his yard until November. (Tr. pp. 72-73). His spouse testified, "We tried making payments on a Dodge Dakota truck, and they wanted like an outrageous amount of money and there was no way that we could come up with that amount of money, so we tried to offer them another amount and they just came out with another outrageous figure, so they said that they were going to come get the truck." (Tr. pp. 130-31).

7. Applicant's spouse testified Applicant fell sick at one point and was unable to work. (Tr. p. 137). The effect of this illness on their finances was not explored at the hearing. He failed to meet his burden to demonstrate that this unforeseen circumstance affected his financial situation.

8. Title 18, Section 1001 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) makes 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.