

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a network engineer for a defense contractor. She has delinquent debts, some which she has satisfied, but others which she cannot verify she has satisfied. Applicant deliberately did not provide correct and accurate information on her security clearance application. Applicant has not mitigated security concerns for financial considerations and personal conduct. Clearance is denied.

CASENO: 02-30276.h1

DATE: 02/13/2006

DATE: February 13, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-30276

**DECISION OF ADMINISTRATIVE JUDGE**

**THOMAS M. CREAN**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

Russell J. Gaspar, Esq.

**SYNOPSIS**

Applicant (U) is a network engineer for a defense contractor. She has delinquent debts, some which she has satisfied, but others which she cannot verify she has satisfied. Applicant deliberately did not provide correct and accurate information on her security clearance application. Applicant has not mitigated security concerns for financial considerations and personal conduct. Clearance is denied.

**STATEMENT OF THE CASE**

On July 8, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on August 9, 2004. The SOR alleges security concerns under Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on September 15, 2004. She admitted nine and denied one of the allegations under Guideline F. She admitted the three allegations under Guideline E, but provided an explanation. She requested a hearing before an administrative judge, and the request was received by DOHA on September 27, 2004. Department Counsel was prepared to proceed with the case on September 21, 2005, and the case was assigned to me on September 22, 2005. A notice of hearing was issued on November 9, 2005, and the hearing convened on December 13, 2005. Five government exhibits, ten Applicant exhibits, and the testimony of the Applicant were received during the hearing. The record was held open for Applicant to submit additional documents, but none were received. The transcript (Tr.) was received on December 28, 2005.

## PROCEDURAL ISSUE

Department counsel moved at the hearing to amend the SOR to add five additional delinquent debts as paragraphs 1. 1 through 1.p. Applicant did not object to the amendment of the SOR and the addition of the five allegations. Applicant basically denied the additional allegations. The SOR was amended as requested. [\(2\)](#)

## FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact.

Applicant is 35-years-old and has been a network engineer for a defense contractor for three years. Prior to employment by her present defense contractor, she had worked for another defense contractor. She has a bachelor's degree in information technology, and certificates for operation of certain software systems. She is married with no children. She served in the U.S. Army for eight years, and held a security clearance since 1991. [\(3\)](#) She presently earns approximately \$77,000.00 per year and, receives a tax free yearly disability payment from the Veteran's Administration of \$5,000.00. She has not incurred any additional overdue debts other than those listed in the SOR. [\(4\)](#) Her monthly net pay is from \$4,200.00 to \$4,600.00 depending on overtime. She purchased a \$39,000.00 car in 2003 and pays over \$900.00 a month in car payments. Her other regular monthly expenses are approximately \$1,200.00. [\(5\)](#)

In 1995, Applicant became the foster parent for a four month old child. In the fall of 1999, she had a relationship with a man who moved into her apartment. At the time, Applicant was attempting to adopt the foster child. The man did not work and stole money from Applicant's purse and used her debit card without her permission. She noticed a bruise on the child and brought the bruise to the attention of day care providers who notified the authorities. The child protective service removed the child from the home for Applicant's failure to protect the child. The man in her home also physically abused Applicant. She obtained a court protection order against the man, and he was occasionally jailed for failure to obey the order. [\(6\)](#) He occasionally returned to her apartment, physically harmed her, and took money from her. Some of his actions caused part of her financial problems. [\(7\)](#)

There are 16 allegations of delinquent debt in the SOR and the amendment to the SOR. SOR allegation 1.a is to a school for tuition of \$2,171.00. SOR allegation 1.f. is to the military exchange system for a credit card debt of \$1,537.00. SOR allegation 1.g. is to a landlord for \$1,732.00 for a returned rent check. Applicant's evidence shows the debt under allegation 1.g. has been satisfied. However, the debt was caused by her live-in boyfriend stealing money from her checking account and the rent check was returned for insufficient funds. SOR allegation 1.h. is for \$287.92 to a

collection agency for an athletic club membership. SOR allegation 1.i. is for a telephone bill of \$717.00. SOR allegation 1.j. is a bill for \$226.00 for a dentist. SOR allegation 1.l. is to a collection agency for \$1,144.00. SOR allegation 1.n. is to a credit card company for a charged off account of \$1,216.00. Applicant presented evidence all of these debts had been satisfied and paid, except for \$10.00 owed on SOR allegation 1.j.<sup>(8)</sup> Applicant stated she paid the \$10.00 remaining on allegation 1.j in 2001, but offered no evidence the debt had been paid.<sup>(9)</sup> Department counsel agreed these debts, except for the \$10.00 under allegation 1.j., were settled and paid.<sup>(10)</sup>

SOR allegation 1.b. is a debt to a credit company for a car loan of \$5,667.00. Applicant purchased the car for approximately \$8,400.00 in 1993. She turned the car in for repossession in 1997, and still owed \$2,100.00 on the loan. She was paying on the loan when she tried to purchase another car and was informed she still owed \$500.00. She disputed this bill but never received a response from the company. She presented no information or documents pertaining to the dispute or any payments.<sup>(11)</sup>

SOR allegation 1.c. is a credit card debt of \$424.00 charged off as a bad debt. Applicant stated she paid off this debt and asked the creditor for a payment letter. They refused to send her one, but she stated she may have a cancelled check to verify payment.<sup>(12)</sup>

SOR allegation 1.d. is a debt to a bank for \$297.00 on a student loan. The loan was transferred from the bank to an education fund. Applicant presented a document from the education fund to show it had been paid in full.<sup>(13)</sup>

SOR allegation 1.e. is a debt to a bank for a credit card debt of \$876.00. There was one credit card listed for this company on a credit bureau report past due over 120 days.<sup>(14)</sup> On the latest credit bureau report, there were three accounts listed for Applicant from this bank.<sup>(15)</sup> Two accounts are listed as current for payment, and the third as closed by credit grantor. The accounts on the latest credit bureau report do not match the account on the first credit bureau report. Applicant presented documents that her debt to the bank for this type of credit card was paid in full.<sup>(16)</sup> However, the payment documents pertain to an account listed as current on the latest credit bureau report which is not the same account listed as 120 days past due on the first credit bureau report and the SOR.

SOR allegation 1.k. is a debt to a dentist for \$150.00. Applicant stated the dentist listed is not her dentist. She did owe a bill to her dentist at one time but it has been paid. She is still a patient of the dentist and she would provide a document from the dentist that the bill was paid.<sup>(17)</sup>

SOR allegation 1.m. is to a bank for \$691.00 on a charged off credit card. Applicant stated she paid this account by a phone deduction from her bank account. She stated she would provide the bank account statement to show the payment.<sup>(18)</sup>

SOR allegation 1.o. is a debt to an on-line university for \$1,200.00 for course tuition. Applicant stated she thought the Veteran's Administration had paid the tuition. She is now paying the tuition at \$100.00 per month starting in November 2005. She did not learn it had not been paid until she tried to take more courses. She stated she could provide documents to verify the agreement. [\(19\)](#)

SOR allegation 1.p. is a debt for \$5,511.00 for a charged off car loan. Her car was repossessed in 2000 after she returned from deployment. She left her boyfriend funds to pay the debt but he made no payments. She originally had an agreement to pay the loan at \$200.00 per month but could not make the payments. She plans to resume payments shortly. [\(20\)](#)

Applicant agreed she could provide documents to show she had paid or was making payment on some of her debts. These debts are SOR allegation 1.c., 1.e., 1.k., 1.m., 1.o., and 1.p. [\(21\)](#) The record was held open for Applicant to provide the documents but no documents were received.

Applicant admitted that at the request of her boyfriend she falsified an application for a health club membership by stating she and her boyfriend were married. She was not married, and received the discount membership rate for married couples. [\(22\)](#)

On her security clearance application, applicant answered "NO" to question 38 asking if in the last seven years she had been delinquent on any debts over 180 days. She answered "NO" to question 39 asking if she was currently more than 90 days delinquent on any debts. [\(23\)](#) In fact, Applicant had delinquent debt past due over 180 days and currently over 90 days as noted above. Applicant stated she was not at work for a few weeks recovering from surgery. When she returned, she was told to complete the security clearance application before leaving that day. She had no records with her, and she could not remember the exact status of her debts. She knew she had debts but did not know for how long the debts were delinquent. Her security manager told her to complete the form as best as possible and the security investigator would consult with her on the answers. She stated she did not knowingly provide false information on the form. After she was questioned by the investigator and he provided her with credit bureau reports listing delinquent debts, she informed him of the debts. [\(24\)](#)

Applicant's job performance has been good, as shown by her performance evaluation from her present employer [\(25\)](#), and her prior employer. [\(26\)](#) Applicant also presented letters of recommendation and character from friends and supervisors. [\(27\)](#) However, I find that Applicant's testimony was contradictory and evasive. She professed ignorance of facts that should have been apparent and known by her. Her testimony is not credible. [\(28\)](#)

## POLICIES

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."<sup>(29)</sup> Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.<sup>(30)</sup>

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.<sup>(31)</sup> An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of recurrence.<sup>(32)</sup>

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.<sup>(33)</sup> 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 present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.<sup>(34)</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.<sup>(35)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."<sup>(36)</sup> "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed<sup>(37)</sup>

therein and an applicant's security suitability." "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." (38)

Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

**Guideline E - Personal Conduct:** A security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information.

**Guideline F - Financial Considerations:** A security concern exists for an individual who is financially irresponsible. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions section below.

## CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

The government has established its case under Guideline F. Applicant's delinquent debts bring the matter within Financial Considerations Disqualifying Conditions E2.A6.1.2.1 (*A history of not meeting financial obligations*), and E2.A6.1.2.3 (*An inability or unwillingness to satisfy debts*). The credit bureau reports presented by the government establish the delinquent debts, even though Applicant only admits some of the debts, and denies others as being paid in full. All of the debts at one time were delinquent. I considered all of the debts, even if now satisfied, as evidence of a history of not meeting financial obligations, or showing an inability or unwillingness to satisfy debts. I conclude the above disqualifying conditions have been established as to all delinquent debts alleged as a security concern in the SOR.

I have considered Financial Consideration Mitigating Conditions E2.A6.1.3.1 (*The behavior was not recent*), and E2.A6.1.3.2 (*It was an isolated incident*), and determine they do not apply. Since some of the debts have not been paid, there is recent debt. There is a variety of debts from banks, credit cards, car loans, and student loans, so they are not isolated. Financial Consideration Mitigating Condition E2.A6.1.3.4 (*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*) does not apply since Applicant has not presented information she has consulted and worked with a counselor like she said she would.

I have considered Financial Consideration Mitigating Condition E2.A6.1.3.6 (*The individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts*), and find it applies to some but not all of the debts. Applicant presented documentation, and the government has agreed, that eight of the delinquent debts have been satisfied. <sup>(39)</sup> Applicant stated she has paid most of the debt in allegation 1.b. but is disputing a portion of the debt. She presented no documents to verify any payments or dispute of this debt. Applicant has presented sufficient information to establish a connection between the satisfaction of a student loan with an education fund and the student loan alleged in SOR allegation 1.d. Applicant has not presented documents showing she has paid in full the debt alleged in allegation 1.e. The document presented is not linked by Applicant to the debt alleged. Applicant stated she either paid or was paying on other debts, and could present documents to verify the status of the debts. <sup>(40)</sup> She has not presented any payment documents or other arrangements on these debts. This includes the \$10.00 still remaining as a debt under allegation 1.j. Applicant's statements alone are not sufficient to meet her burden to establish she initiated good-faith efforts to pay these debts. Applicant has been able to purchase a high priced car with a large car payment. Her income is sufficient to enable her to pay on her debts. However, she has not provided proof of payment on her delinquent debts. Applicant has failed to mitigate the security concerns for financial considerations.

The government has established its case under guideline E. Applicant's false application for a health club membership, and the actions concerning abuse of a foster child brings the matter under Personal Conduct Disqualifying Condition E2.A5.1.2.1 (*Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*). The use of a false application to gain an economic advantage for a membership is unfavorable information. Applicant admitted she filed the false application so the information is reliable. The foster child was taken from Applicant because of her inability to protect the child from an abuse person. The action was taken in the best interest of the child. Applicant's inability to protect the child from an abusive person is not unfavorable information about her. She did not abuse the child herself, and she was also a victim of abuse. The information is not unfavorable to her under the circumstances. SOR allegation 2.b. is resolved in favor of Applicant.

Applicant's answers on her security clearance concerning her debts brings the matter under Personal Conduct Disqualifying Condition E2.A5.1.2.2 (*The deliberate omission, concealment, or falsification of relevant and material facts from the 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*). At the time she completed her application, Applicant knew she had delinquent debt and knew it was long standing. While she may not have known the exact time the debt was delinquent, she knew enough to require her to raise the issue in her application. I find her failure to note debts over 180 past due in the last seven years and currently over 90 days past due on her security clearance application to be deliberate with an intent to deceive.



I have considered Personal Conduct Mitigating Condition E2.A5.1.3.3 (*The individual made prompt, good-faith efforts to correct the falsifications before confronted with the facts*). Lack of honesty in answering questions on a security clearance application has a direct bearing on a determination of a person's judgment, trustworthiness, and reliability. Applicant did not correct the false statements until confronted with the credit bureau reports by the investigators. Applicant has not mitigated the security concerns for her false answers on the security clearance application.

I carefully considered all of the circumstances in light of the "whole person" concept. I have considered Applicant's excellent work performance as shown by performance evaluations. I have considered the letters of recommendations from her supervisors and co-workers. I conclude Applicant is not eligible for access to classified information.

### **FORMAL FINDINGS**

Formal findings for or against Applicant on the allegations in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: For Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: For Applicant

Subparagraph 1.m.: Against Applicant

Subparagraph 1.n.: For Applicant

Subparagraph 1.o.: Against Applicant

Subparagraph 1.p.: Against Applicant

Paragraph 2, Guideline E AGAINST APPLICANT

Subparagraph 2.a. Against Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: Against Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant or continue a security clearance for Applicant. Clearance is denied.

Thomas M. Crean

Administrative Judge

1. Applicant's name on the SOR is JACOBS. After the SOR was issued, Applicant married and her new name is POTTS.
2. Tr. 7-10.

3. Tr. 31-33.
4. Tr. 47-48.
5. Tr. 56-59.
6. Applicant Exhibit J (Court Order, dated Apr. 20, 2001).
7. Tr. 33-39.
8. Applicant Exhibit A (Various documents marked as Applicant Exhibits A 1, A4 to A 10).
9. Tr. 43.
10. Tr. 26-27.
11. Tr.40-41, 59-60.
12. Tr. 41, 60-61.
13. Tr. 42, 61-62; Applicant Exhibit A2 (Letter from Ed Fund, dated Sep. 7, 2004).
14. Government Exhibit 5 (Credit Bureau Report, dated Jul. 28, 2000) at 4.
15. Government Exhibit 4 (Credit Bureau Report, dated Sep. 21, 2000) at 1-2.
16. Applicant Exhibit A3 (Letter from credit card company, dated Aug. 23, 2004).
17. Tr. 42-43.
18. Tr. 43-44, 62.
19. Tr. 44, 62-63.
20. Tr. 45-46, 64.
21. Tr. 82.
22. Tr. 51-52.
23. Government Exhibit 1 (Security clearance application, dated Mar. 30, 2000).
24. Tr.49-51, 70-7; Government Exhibit 3 (Applicant's statement, dated Sep. 7, 2000).
25. Applicant Exhibit B (Performance Evaluation 2005); Applicant Exhibit C (Performance Evaluation 2004); Applicant Exhibit D (Performance Evaluation 2003).
26. Applicant Exhibit E (Performance Evaluation, dated Apr. 25, 2003).
27. Applicant Exhibits F, G, H, I (Letters of Recommendation).
28. *See*, Tr. 63-80.
29. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
30. Directive ¶ E2.2.1.

31. *Id.*
32. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
33. *See* Exec. Or. 10865 § 7.
34. Directive ¶ E3.1.14.
35. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
36. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
37. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
38. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.
39. SOR allegations 1.a., 1.f., 1.g., 1.h., 1.i., 1.l., 1.n.
40. SOR allegations 1.c., 1.j., 1.k., 1.m., 1.o., 1.p.