

DATE: January 27, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-23074

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Nygina T. Mills, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of financial delinquency that he has not yet addressed. With his income barely sufficient to cover his family's living expenses and his spouse mismanaging her income, Applicant is not in a position to repay some \$4,157 in delinquent consumer credit debt placed for collection or charged off due to nonpayment. Embarrassed about his poor credit, Applicant deliberately did not disclose any of his debts when he completed his security clearance application in June 2000. Clearance is denied.

STATEMENT OF CASE

On June 9, 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) and on Personal Conduct (Guideline E).

On July 2, 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 August 12, 2003, and pursuant to formal notice dated August 18, 2003, a hearing was scheduled for September 17, 2003. At the hearing held as scheduled, six Government exhibits were entered into the record and testimony was taken from the Applicant. A transcript of the proceedings was received by DOHA September 29, 2003.

FINDINGS OF FACT

The SOR alleged financial considerations due to unresolved delinquencies totaling \$4,157.42 when he reported a net monthly remainder of \$1,831.00, and personal conduct concerns related to his failure to disclose on a June 2000 security

clearance application debts that were over 180 days delinquent and tax liens filed within the last seven years. In his Answer to the SOR, Applicant admitted owing the debts alleged, but denied deliberate falsification of his security clearance application. After a thorough review of the evidence, and on due consideration of the same, I render the following findings of fact:

Applicant is a 41-year-old technical worker in advanced materials, who has been employed by a defense contractor since May 1989. He seeks to retain his security clearance.

Due to mismanagement of his personal finances, Applicant was about \$10,000 in debt when he married in August 1988. With a settlement his spouse received from an automobile accident, Applicant and his spouse managed to pay off the debt. In August 1994, they purchased a residence by taking out a mortgage. Sometime in 1995, Applicant's spouse had to stop working because of a difficult pregnancy. They managed to remain current in their mortgage obligation, but a credit card account on which they had an outstanding balance of \$840 (SOR subparagraph 1.a.) was charged off to profit and loss in June 1996. Another credit card account, opened with a retail department store in August 1994, and used for household items, was written off in May 1997 in the amount of \$634.42 (SOR subparagraph 1.d.).

Following the birth of their daughter in January 1996, Applicant's spouse did not return to work. Applicant had difficulty meeting their financial obligations on his salary, ⁽²⁾ and in June 1996, the city filed a tax lien against Applicant in the amount of \$1,756 for nonpayment of local real estate taxes. In November 1996, Applicant and his spouse refinanced their mortgage, taking out a loan in the principal amount of \$97,174.65 with a new lender. His back taxes were paid in the refinancing, and the tax lien for \$1,756 was released that December. Yet another tax lien was issued against him in May 1997 in the amount of \$1,816. That lien was released in September 1997. By January 1998, Applicant and his spouse were in default of their mortgage loan. In late April 1998, they settled the debt by conveying the property by deed-in-lieu of foreclosure. A tax lien filed against Applicant in June 1998 in the amount of \$1,979 was released the following month. ⁽³⁾

In September 1998, Applicant and his spouse opened a revolving charge account with a clothing-retailer on which they ran up a \$599 balance (SOR subparagraph 1.b.). Three months later, the debt was written off to profit and loss with neither Applicant nor his spouse having made any payments. An account opened in May 1998 in the amount of \$16,905 became past due in the amount of \$1,088 and was placed for collection. Applicant has made no payment on the debt since October 1999 (SOR subparagraph 1.f.). ⁽⁴⁾

On June 27, 2000, Applicant executed a security clearance application, EPSQ version (SF 86). He responded negatively to inquiries concerning his financial record, including whether in the last seven years he had any property repossessed (question 35), any tax liens (question 36), any debts delinquent more than 180 days (question 38). He also answered "NO" to question 39 regarding whether he was currently over 90 days delinquent on any debt(s). Embarrassed by his financial situation, Applicant deliberately did not disclose that his residence had been taken by deed -in-lieu of foreclosure due to default on his mortgage loan; that tax liens had been filed for nonpayment of local property taxes; and that at least three accounts were in collection or had been charged off due to nonpayment. ⁽⁵⁾

Sometime in 2001, Applicant's spouse returned to work on a part-time basis. In March 2001, a credit card account with a \$250 limit was opened with Applicant listed as an authorized user. They fell behind in their payments in late 2002, and a \$436 balance was charged off in March 2003 when the account fell delinquent more than sixty days for the third time (SOR subparagraph 1.e.).

In December 2001, Applicant and his spouse bought a new home, secured by a mortgage loan of \$137,700. With his spouse working less than 20 hours per week at minimum wage jobs, he withdrew funds from his 401K to purchase the home. As of March 2003, the account was delinquent ninety days, past due in the amount of \$5,148. He managed to bring the account current by September 2003.

Applicant opened a credit card account in January 2002. The account was rated current as of March 2002 with a balance of \$191, but he could not keep up with his payments. As of January 2003, he had a delinquent balance of \$560 which he has made no effort to repay (SOR subparagraph 1.c.).

On April 24, 2002, Applicant was interviewed by a special agent of the Defense Security Service (DSS) about his financial situation and failure to disclose financial delinquencies on his security clearance application. Applicant admitted owing \$840 on a credit card (SOR subparagraph 1.a.) and expressed an intent to contact the creditor to arrange for repayment. He denied any liability for his former residence following the surrender of the home through deed-in-lieu of foreclosure and contested the validity of other debts reported on his credit report, including the \$600 plus debt owed on a credit account with a nationwide retailer (SOR subparagraph 1.d.), and the \$599 owed on a retail clothing-store account (SOR subparagraph 1.b.). Regarding the tax liens listed on his credit report, Applicant expressed his understanding he was responsible only for the liens for the 1994 and 1995 tax years, which were paid. Asked by the agent why he did not list the delinquencies, mortgage deed-in-lieu of foreclosure, or tax liens on his SF 86, Applicant responded he did not think it was important to list the information.

On April 24, 2002, Applicant provided the agent with a personal financial statement on which he reported a net monthly remainder of \$1,831 using estimated figures for his spouse's income based on her former salary. In preparing the financial statement, Applicant failed to account for his actual expenses.

Circa June 2003, Applicant's spouse returned to work full-time. Not aware of the extent of her earnings, Applicant does not count on her income to pay the family's financial obligations as she mismanages her money.

As of September 2003, Applicant's monthly salary was \$3965. He no longer has daycare costs as his youngest child is in second grade. He had not taken any steps to resolve his outstanding delinquencies as he has only \$5 to \$10 per month available after payment of the bills. With his spouse's salary, Applicant submits they have sufficient funds to make payments on the delinquent debts, but they have not come to any agreement as to how to handle the debts. (6) Applicant has no savings as he used the money for a vacation in August 2003.

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 Enc. 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 guideline 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, Enc. 2, Section E2.2.4.

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 criminal acts.

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

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

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

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

E2.A6.1.3.3. 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).

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:

E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

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

None.

Under 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 conduct raising security concerns, 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.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of 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. Applicant has a history of financial difficulties predating his marriage in 1988 and continuing to present. Due largely to financial mismanagement, he was \$10,000 in debt in the late 1980s, which was satisfied with settlement funds his spouse received from an accident. Applicant managed to remain current on his financial obligations until about 1995 when his spouse had to stop working due to a difficult pregnancy. Two credit card accounts were charged off due to nonpayment during the 1996/97 time frame, Applicant defaulted on his mortgage, and he did not timely pay his real estate taxes, which led to the imposition of tax liens by the municipality. While he settled with the mortgagor by agreeing to deed the property in lieu of foreclosure, and the tax liens have been released, he has incurred more than \$2,600 in additional credit card debt since 1999 which remains delinquent. 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 apply in this case.

His spouse's inability to work due to the pregnancy is an unexpected circumstance which negatively impacted their ability to make their credit card, mortgage and tax payments during the mid-1990s (*see* mitigating condition E2.A6.1.3.3., conditions that resulted in the behavior were largely beyond the person's control). Yet, Applicant's financial difficulties are primarily due to financial irresponsibility. Relieved of the burden of the mortgage debt in April 1998, Applicant and his spouse continued to extend themselves on credit, opening new accounts when his spouse was unemployed while disregarding older, delinquent obligations, and then incurring new debt by failing to make payments on these newer accounts. As recently as October 2002, a credit card debt of \$436 was charged off to profit and loss. In March 2003, his new mortgage was 90 days past due, although he has since brought the mortgage loan current. While Applicant testified to a willingness to resolve his old debts, his actions reflect little commitment in that regard. He spent his savings on a family vacation in August 2003 and he has not yet convinced his spouse that they need to work together to satisfy the debts. Although Applicant is not required to be debt free, his persistent financial problems preclude me from concluding that it is clearly consistent with the national interest to grant him access to classified information. SOR subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., and 1.g. ⁽⁷⁾ are resolved against him.

The Government has alleged additional doubts for Applicant's security suitability because of his failure to include on his SF 86 his delinquent debts, including his mortgage which he settled by deeding the property in lieu of foreclosure, and the tax liens. When Applicant completed his SF 86 in June 2000, those debts alleged in SOR subparagraphs 1.a., 1.b., 1.d., and 1.f. were in collection and/or written off to profit and loss due to nonpayment. Applicant had also defaulted on the mortgage loan for his previous residence, and tax liens had been issued against him in 1996, 1997 and 1998, apparently for back taxes owed for 1994, 1995, and 1996. Even though the lender accepted responsibility for the 1996 taxes following seizure of Applicant's home by deed in 1998, Applicant still was required to report the lien for nonpayment of taxes on his SF 86. Applicant admits he did not list his delinquent accounts out of embarrassment. His omission of the liens was also found to have been intentional. The deliberate omission, concealment, or falsification of relevant and material facts from a personnel security questionnaire raises serious Personal Conduct concerns under Guideline E (*see* E2.A5.1.2.2.).

While acts of intentional concealment may be mitigated by a prompt rectification before confrontation (*see* E2.A5.1.3.3.), Applicant claimed when he was interviewed by the DSS special agent in April 2002 that he thought the information was not important enough to list on his SF 86. It was not until his hearing that he admitted he had been too embarrassed to disclose his financial delinquencies on his SF 86. Furthermore, he continues to deny any intentional falsification of the tax lien question, while at the same time admitting he knew tax liens had been filed against him. To Applicant's credit, he testified candidly about the debts and his failure to make payments on them. Yet, when the disclosures come, as here, when one is faced with the adverse credit information, they are not entitled mitigation under E2.A5.1.3.3. Adverse findings are warranted as to subparagraphs 2.a. and 2.b. of the SOR, as he has failed to meet his heavy burden to overcome the doubts for his security worthiness caused by his lack of complete candor with the Government.

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

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.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. The SOR was issued under 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. In addition to his salary, Applicant has had foster parent income to care for a girl he and his spouse have had in their home for the past ten years. As of September 2003, the amount was \$600 plus per month. (Tr. 61).
3. The lender agreed to accept title to the property subject to any real estate taxes due on the lists of October 1, 1996, and October 1, 1997. (Ex. 6).
4. A recent check of Applicant's credit reported the account was opened in May 1998 in the amount of \$16,905. The account was placed for collection with \$1,088 past due. (Ex. 3).
5. When questioned by the Defense Security Service agent in April 2002, Applicant claimed he did not list his financial delinquencies, the mortgage deed-in-lieu of foreclosure, or the tax liens because he did not think it was important enough to list the information. (Ex. 2). At his hearing, he admitted withholding his poor credit information because he was "quite embarrassed and ashamed." (Tr. 32). He testified inconsistently as to whether he had known of the tax liens at the time he completed the SF 86. Initially, he indicated he was not given any statement from the municipality as to the tax liens. (Tr. 53). He subsequently testified when the property was going through foreclosure, all the tax liens were coming up against the house. (Tr. 54). When asked directly by me whether he knew a lien had been filed against his property, Applicant responded, "No, I did. I knew they filed a lien." (Tr. 55-56). He then went on to testify in response to Department Counsel's questions that he knew he owed taxes but was unaware of the lien (Tr. 56). After the surrender of the property, Applicant was no longer responsible for those taxes for October 1996 and October 1997. But it is clear he knew of the liens. He told the DSS agent in April 2002 that two of the liens were for taxes owed for 1994 and 1995.

(Ex. 2).

6. When asked why he had made no effort to pay off his delinquent accounts, Applicant responded, "Well right now we haven't sat down and worked out anything yet, you know, to settle these debts. So but, eventually, we know we're going to sit down and really, and go over what we need to do to pay off these debts." (Tr. 57-58). Applicant subsequently testified he has tried to discuss it with his spouse but was having no success in getting her to see the problem. (Tr. 59).

7. Although Applicant testified persuasively that he did not have \$1,831 in discretionary funds available to him each month, the allegation is resolved against him as he made no effort to resolve his old debts with whatever funds he had available.