

DATE: October 1, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-24537

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owes a deficiency balance of \$10,509.02 following the voluntary repossession of his truck. He is also legally responsible for delinquent consumer credit debt of about \$2,906.00 written off by creditors due to nonpayment. Applicant has made no effort to contact his creditors and resolve these debts because of their charged off status. His disregard of these financial obligations raises doubts about whether he possesses the requisite personal responsibility to be entrusted with the Nation's secrets. Although he did not list on his security clearance application the charged off accounts as delinquent debts, he disclosed his truck repossession and two other debts not alleged in the SOR. The omission was not due to an intent to conceal his financial problems, but rather to his failure to appreciate that unsatisfied charged off debts are considered current delinquencies. Clearance is denied.

STATEMENT OF CASE

On February 12, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR) to the Applicant that detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on financial considerations (Guideline F) and on personal conduct (Guideline E).

On March 12, 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 May 6, 2003, and pursuant to formal notice dated May 12, 2003, a hearing was scheduled for June 4, 2003. At the hearing held as scheduled, five Government exhibits and one Applicant exhibit were entered into the record and testimony was taken from the Applicant. A transcript of the proceedings was received by DOHA June 13, 2003.

FINDINGS OF FACT

The SOR alleged financial considerations due to unresolved delinquencies totaling \$13,881.05 and personal conduct concerns related to his failure to disclose on an April 2002 security clearance application debts which were currently over 90 days delinquent. In his Answer to the SOR, Applicant admitted owing four of the five debts alleged, ⁽¹⁾ 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 28-year-old unmarried male, who was employed by a defense contractor as a carpenter from late April 2002 until March 2003 when he was administratively terminated following the withdrawal of his interim secret clearance. ⁽²⁾

For about a year from 1996 to 1997, Applicant was employed as a chip packer for a large snack food company at an hourly wage of \$11.00. For at least part of that time, he had a cohabitant relationship with his then girlfriend. In June 1996, Applicant opened an individual revolving charge with a jeweler on which he either purchased items for his girlfriend or allowed her to use his card. ⁽³⁾ He closed the jewelry account with \$520.00 past due, making no effort to repay the outstanding balance, and in March 2001 a \$777.00 balance was charged off as a bad debt. (SOR subparagraph 1.a., debt #1).

In August 1996, Applicant opened a revolving credit card account with a nationwide retailer. He failed to keep up with his payments, and the account was placed for collection in October 1997, and sold to another creditor. A \$666.00 delinquent balance was written off. In November 1999, the account was sent for collection, allegedly in the amount of \$809.03. (SOR subparagraph 1.c., debt #2). While Applicant now disputes the debt on the basis he cannot recall having an account with that creditor, he admitted in July 2002 during a DSS interview that he had charged some items on the account.

A MasterCard account, opened in November 1995 as a joint account with his mother, fell delinquent during the July 1997 time frame, when it had a balance of about \$1,100.00. (debt #3, not alleged). He managed to make payments to satisfy the debt, and when closed, the account was rated as never late.

In July 1997, Applicant financed the purchase of a new truck through a loan of \$20,008.00. ⁽⁴⁾

Repayment of the loan was at \$333.00 per month. Applicant experienced a brief period of unemployment around the time that he purchased the truck, ⁽⁵⁾ but that September he began working nights in receiving for a discount retailer at an hourly wage of \$9.00. Applicant had a history of late payment on his truck loan from the start, with his account falling delinquent from 30 to 60 days. The truck was voluntarily repossessed due to Applicant's failure to make timely payments. ⁽⁶⁾ A deficiency balance of \$10,509.02 was written off as a bad debt. (SOR subparagraph 1.b., debt #4).

From July 1999 to April 2002, Applicant earned between \$17.00 and \$19.00 an hour, working anywhere from 24 to 40 hours per week as a dealer at a local casino. With his gaming license in hand, he was trusted to handle some \$300,000.00 on a given night. Some accounts fell delinquent despite his employment. In November 1999, Applicant opened an account with the local telephone company. As of May 2000, the account was past due and charged off in the amount of \$1,463.00. (SOR subparagraph 1.d., debt #5). Applicant's credit card account with a bank, opened in March 2000, was charged off in February 2001 when the account was 150 days past due. Although reported to owe a past due balance of \$462.00, the account was subsequently settled, apparently through legal proceedings against the creditor. (debt #6, not alleged).

In 2001, Applicant purchased a membership at a local health club. When he moved from the area, he submits he paid up the account as well as a cancellation fee, but the creditor billed him \$154.00. Applicant settled the debt by payment of \$50.00 in mid-July 2001. (debt #7, not alleged).

Needing a security clearance to work for his current employer, Applicant completed a handwritten security clearance application (not of record) from which an electronic version (SF 86) was generated and signed by Applicant on April

22, 2002. In response to inquiries concerning his financial record, Applicant reported his vehicle repossession, indicating it occurred in June 1998 with \$10,000.00 owed. Applicant listed debts #3 and #7--neither of which were alleged in the SOR--in response to question 38 concerning delinquencies over 180 days in the last seven years. He answered "NO" to question 39 ["Are you currently over 90 days delinquent on any debt(s)?"]. Applicant was aware that credit reports of May 2001 listed charged off balances of \$777.00 on debt #1, \$666.00 on debt #2, and \$1,463.00, on debt #5. (7) He did not include these debts on his SF 86 because they had been charged off, which meant to him he no longer had any legal responsibility to pay them.

On receipt of the SF 86, the Defense Security Service ran a check of Applicant's credit which reported \$777.00 owed on debt #1, \$462.00 on debt #2, \$0 balance on debt #4 because of the profit and loss write off of \$10,509.00, a \$0 balance to the original creditor of debt #2 as the account had been purchased by another lender, and \$1,463.00 owed on debt #5.

One week after he signed the electronic version of the SF 86, Applicant commenced work as a carpenter for the defense firm at an hourly wage of \$12.59. Within six months, he received a \$5.50 per hour raise.

On July 15, 2002, Applicant was interviewed by a special agent of the Defense Security Service (DSS) about the delinquent credit obligations reflected on his April 2002 credit report. During the interview, the agent contacted the original creditor in Applicant's presence and reported to Applicant that a deficiency balance of \$10,509.00 was owed. Applicant maintained that he was unaware of any remaining balance after the voluntary repossession, and that he understood he would not be obligated for any additional amount if he surrendered his truck voluntarily. Regarding debts #3 and #7 which he listed on his SF 86, Applicant advised he had zero balances due on each of these accounts. As for the jewelry debt of \$777.00, Applicant agreed with the amount of the delinquency, but indicated his former girlfriend had promised to pay the debt. He acknowledged having opened an account with the creditor claiming debt #6, but denied any use of the charge card. Applicant indicated a class action lawsuit was pending against the bank. As for the consumer credit debt #2, Applicant admitted credit was extended to him which he was unable to repay due to loss of employment. He was not certain whether the \$809.03 reportedly owed to a collection agency was correct. Applicant did not dispute the \$1,463.00 in unpaid telephone charges accrued in his name, but explained that his brother had incurred the charges. Applicant denied any financial delinquencies beyond those discussed, and he indicated he would contact the creditors for debts #1, #2, #4 and #5 and "request that they accept a settlement or partial payment agreement." With his living expenses being shared by a cohabitant girlfriend, Applicant related he had sufficient funds at the end of his month to make payments on his debts.

At DOHA's request, Applicant on October 18, 2002, executed financial interrogatories in which he acknowledged balances owed on only two accounts, \$777.00 on debt #1 and \$1,463.00 on debt #5. Citing a credit report which he furnished, Applicant indicated he had made no payments toward satisfaction since the debts had been charged off. Current balances of debts #2 and #4 were reported to be zero, as reflected on his May 2001 credit reports. He disclosed that debt #7 was paid through settlement and debt #6 through the lawsuit.

Applicant took advantage of overtime opportunities offered by his defense contractor employer, working on both weekend days three out of four weekends. On Saturdays, he earned time and a half, on Sundays double time. In March 2003, Applicant was administratively terminated from his job with the defense contractor following the withdrawal of his interim secret clearance. At the time of his termination, he was a first class carpenter earning \$18.14 an hour. Since arch 2003, he has been collecting unemployment compensation of about \$267.00 per week.

On the advice of family members, Applicant has made no effort to contact his creditors on the accounts which have been written off to profit and loss, as some of the bad debts will be erased from his credit report in the next year. If he makes any payments, the "whole seven years starts all over" (adverse credit information will be on his record for seven more years). Applicant does not intend to satisfy his old debts.

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, this Administrative Judge finds the following adjudicative guidelines to be 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)

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.

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. The financial documentation presented in this case is not without flaws,⁽⁸⁾ but there is sufficient reliable evidence to find Applicant has neglected legitimate financial obligations. He has had a delinquent debt with a jewelry store since at least April 1997 that he has made no attempt to repay. In July 1997, he financed the purchase of a new truck, taking on a loan with monthly repayments of \$333.00. He fell behind on his loan payments almost immediately, his account becoming sixty days late as of November 1997. Applicant subsequently voluntarily surrendered the vehicle as he could not keep up with the payments, leaving his account with a deficiency balance of \$10,509.00. A consumer credit card account with a nationwide retailer was written off in the amount of \$666.00 and subsequently placed for collection. The outstanding balance of that collection account is alleged to be \$809.03. Applicant disputes any debt to the named creditor, notwithstanding it appears on three separate credit reports. While the evidence is inconclusive as to the precise amount owed, Applicant acknowledged the delinquent account when interviewed in July 2002, expressing uncertainty only as to the amount of the delinquency. Applicant also owes \$1,463.00 in unpaid delinquent telephone charges on his account. Whether he, his brother, or both ran up the charges, the debt remains his responsibility as the account holder. Applicant also had a MasterCard account he fell behind on, and a health club debt since satisfied that were not alleged in the SOR. Potentially disqualifying conditions 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.

Applicant maintains most of his debts were incurred when he was with his former girlfriend, and he was unable to pay on the debts after he lost his job. Loss of income is an unforeseen circumstance that mitigates the incurring of delinquencies (*see* mitigating condition E2.A6.1.3.3., conditions that resulted in the behavior were largely beyond the person's control). Sometime in 1997, Applicant was laid off from his job as a chip packer. The evidence is conflicting as to whether he lost his job that Spring or after he acquired the truck loan in July 1997, but he earned only \$9.00 an hour when he went to work in receiving in September 1997. The lack of income negatively affected his ability to repay the jewelry debt as well as his truck loan. The primary concern in this case is with Applicant's failure to attend to his delinquent debts after his DSS interview in July 2002.

During that interview, Applicant became aware he owed a deficiency balance of \$10,509.00 on the truck,⁽⁹⁾ the agent having telephoned the original lender in Applicant's presence and confirmed a collection agency had been trying to contact Applicant about the debt without success. (Transcript pp. 77-78). Applicant also acknowledged owing \$777.00 on debt #1, a delinquent balance of uncertain amount on debt #2, and \$1,463.00 on debt #5. He expressed his intent to contact these creditors (including the lender on the truck) and "request that they accept a settlement or partial payment agreement"). Circa October 2002, Applicant's hourly wage was increased by \$5.50 per hour. He took significant

advantage of overtime opportunities, so had the funds available to at least make small payments on old debts. Yet, to avoid reactivating the accounts, he has made no effort to contact his creditors. Although there is no evidence of any new delinquencies, his disregard of his old obligations reflects an unacceptable tendency to act in his self-interest. His irresponsible handling of these financial matters raises considerable doubt as to his security suitability. Subparagraphs 1.a., 1.b. (delinquency of at least \$666.00 having been established), 1.c. and 1.d. are resolved against him. Subparagraph 1.e. is found in his favor, as the alleged debt appears on only one of the three credit reports of record and Applicant has questioned its legitimacy.

The Government has alleged additional doubts for Applicant's security suitability because of his failure to include on his SF 86 as accounts currently over ninety days delinquent debts #1, #2, and #5. While 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.), I am persuaded Applicant did not act to conceal his financial problems from the Government. He listed his truck repossession in response to question 35 (any property repossessions in the last 7 years) and unalleged debts #3 and #7 in response to question 38 (financial delinquencies more than 180 days). Applicant exhibited at his hearing a failure to understand that debts charged or written off in the past should have been listed as currently more than 90 days late ("On all the--on the--on all the credit reports, it says that they're all written off, so how am I currently 90 days overdue? And so I misunderstood the question. It doesn't say 'Have you ever been 90 days overdue,' it says 'Are you currently 90 days overdue?'" Transcript p. 43). Subparagraph 2.a. is found for Applicant as his negative response to question 39 was not a knowing and willful falsification.

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.: 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 not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Elizabeth M. Matchinski

Administrative Judge

1. He subsequently testified to having admitted the debt alleged in SOR subparagraph 1.e. only because it appeared on one of his credit reports. Applicant testified to having a current account with that utility. (Transcript p. 82).
2. Based on the representations of the defense contractor that Applicant is subject to recall in the event of a favorable adjudication, a decision was made to conduct the hearing as scheduled.
3. Applicant indicated during his subject interview of July 2002 that it was a joint account with his former girlfriend,

and at the termination of their relationship, she agreed to pay the balance due. (Ex. 2). The credit reports reflect it was an individual revolving charge opened by him. At his hearing, he testified his girlfriend charged some jewelry on the card after they were no longer together. He provided no corroboration for this claim, and could not say for sure whether she signed her name or his, whether she had a second card, whether her name was also on the account, or whether she even charged things without him knowing about it. (Transcript pp. 65-69).

4. When interviewed by a Defense Security Service special agent in July 2002, Applicant indicated he borrowed \$15,500.00 to buy the truck. A May 2001 credit report (Ex. 3), which Applicant submitted to DOHA in response to financial interrogatories, indicates the original amount of the loan to be \$20,008.00.

5. The evidence is inconsistent as to whether Applicant was gainfully employed at the time he purchased the vehicle. At his hearing, he testified he was out of work five or six months following his layoff from the chip company before he went to work for the discount retailer in September 1997. (Transcript p. 89). However, he previously told the DSS agent that he had an accident with the truck and missed time at work, which led to his termination. (Ex. 2). Whether he was unemployed for five months or as little as two months, the evidence reflects he failed to make his truck payments after he returned to work in September 1997.

6. There is conflicting evidence as to the date of repossession. A credit report of May 2001 (Ex. A) reflects Applicant's account was charged off in February 1998 with \$10,509 owed. Balance as of May 1999 was reported to be \$0. A separate credit report, generated that same month, also lists a balance of \$0, following a repossession as of April 1999. (Ex. 3). Applicant testified the vehicle was repossessed sometime in 1998 when he was still employed by the discount retailer (Transcript p. 76). A more recent credit report of April 2002 indicates a \$10,509.00 profit and loss write off in April 1999. (Ex. 4). There is no documentation of subsequent collection efforts.

7. While Applicant now disputes debt #2, it is noted that the account is listed on all three credit reports of record. However, only one of the two credit reports generated in May 2001 (Ex. 3) includes an alleged collection debt of \$323.00 (SOR subparagraph 1.e.). Neither the other report of May 2001 (Ex. A) nor the more recent report of April 2002 record such a delinquency and the Government presented no information from the named creditor documenting the alleged debt.

8. Ex. 3 in particular contains several variations in name and social security numbers, but the employer information is correct. The information reflected therein (with the exception of the \$323.00 utility debt alleged in SOR subparagraph 1.e.) is corroborated by other sources.

9. The credit reports of May 2001 obtained by Applicant prior to that interview contain conflicting information with regard to the status of any balance owed. One credit report (Ex. A) reflects a zero balance owed as of May 1999, but that \$10,509.00 had been written off to profit and loss. The other report (Ex. 3) indicates a zero balance owed as of April 1999, "Repossession/Current, was past due 90 days." Applicant could reasonably have assumed he owed nothing after the repossession until the July 2002 interview.