

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant fell behind in his financial obligations due to a job layoff and low wages. By 2002 he owed a total of about \$11,000 in delinquent debt to 10 creditors. He made progress toward resolving this debt after he was rehired by a defense contractor in November 2002, only to be laid off again in October 2004. Due to his low wages working as a cleaner at a local gambling casino, Applicant was again falling behind as of August 2005. Financial considerations are mitigated by his efforts to resolve his debts when he had the income, but personal conduct concerns persist where he was not candid on his security clearance application about his indebtedness. Clearance is denied.

CASENO: 03-19339.h1

DATE: 01/20/2006

DATE: January 20, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-19339

**DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

**APPEARANCES**

**FOR GOVERNMENT**

Daniel F. Crowley, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant fell behind in his financial obligations due to a job layoff and low wages. By 2002 he owed a total of about \$11,000 in delinquent debt to 10 creditors. He made progress toward resolving this debt after he was rehired by a defense contractor in November 2002, only to be laid off again in October 2004. Due to his low wages working as a cleaner at a local gambling casino, Applicant was again falling behind as of August 2005. Financial considerations are mitigated by his efforts to resolve his debts when he had the income, but personal conduct concerns persist where he was not candid on his security clearance application about his indebtedness. Clearance is denied.

**STATEMENT OF THE CASE**

On January 7, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons under Guideline F, financial considerations, and Guideline E, personal conduct, 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. [\(U\)](#) Specifically, the government alleged Applicant owed delinquent debt totaling \$11,056 to 11 creditors and falsified his November 2002 security clearance application (SF 86) by denying any debt currently delinquent over 90 days or, within the last seven years delinquent over 180 days, as well as any unpaid judgment debts within the last seven years.

On January 20, 2005, Applicant answered the SOR, admitting the indebtedness alleged but not responding to the falsification allegations. He requested a hearing and the case was assigned to me on June 27, 2005. On July 20, 2005, I scheduled a hearing for August 8, 2005. At the hearing, Applicant was requested to respond to the alleged falsification of his SF 86. Applicant's response, "It was an accident" ( Tr. 18), was taken as a denial. Five government exhibits were admitted without objection. Applicant testified and submitted six exhibits, as reflected in a transcript received on August 22, 2005.

## FINDINGS OF FACT

After a thorough consideration of the evidence of record, I make the following factual findings:

Applicant is a 37-year-old married father of two children (daughter born in 1996 and son in 2000) who are in foster care. He has a stepson born in 1989 who has autism and lives with him and his spouse. He was employed by a defense contractor from mid-November 1987 until mid-August 1997 when he was laid off due to lack of work. In late 2002, Applicant returned to work for the defense contractor. In October 2004, he was laid off, but is subject to recall should he be granted the clearance requested.

A graduate of his local vocational-technical high school, Applicant started working as a carpenter, second shift, for a defense contractor in mid-November 1987 at \$8.71 an hour. His hourly wage gradually increased over time to \$15.75. In August 1997, Applicant got married. The following week, he was laid off from his job due to lack of work. The only employment he could find was as a cleaner at a local casino where he was paid much less than the defense contractor paid. Applicant was unable to meet all of his financial obligations in a timely manner. A credit card account opened in March 1997 was cancelled by the credit grantor in June 1997 when it reached \$379 past due (SOR ¶ 1.a.). A revolving charge on which he was listed as a co-maker was charged off that June with a balance owed of \$2,939 (¶ 1.b.). In October 1997, a lender (¶ 1.c.) sold Applicant's revolving charge account with a delinquent balance of \$1,706, to another lender. In December 2000, a collection agency obtained a judgment of \$1,766 in December 2000 (¶ 1.g.). That debt was satisfied by garnishment of Applicant's wages in or before February 2004. <sup>(2)</sup> Applicant's lawnmower tractor, which he purchased on credit for \$2,875 in March 1997, was repossessed and the loan balance of \$2,375 was placed for collection in February 1998 (¶ 1.d.). Applicant's revolving charge with a department store became \$1,325 past due and was charged off in February 2000 (¶ 1.e.). Utility services debts of \$67 (¶¶ 1.j. and 1.k., same debt <sup>(3)</sup>), \$104 (¶ 1.i.), and \$129 (¶ 1.f.) were placed for collection. A \$199 debt, the balance owed for a computer, was sent for collection in June 2001 (¶ 1.h.).

In November 2002, Applicant left the casino's employ and a few weeks later, returned to work for the defense contractor at an hourly wage of \$18.75. For his defense contractor employ, Applicant executed a security clearance application (SF 86) on November 8, 2002. Aware he had several unpaid delinquent debts, Applicant responded negatively to the financial record inquiries, including whether when had been over 180 days delinquent on any debts in the last seven years (question 38) and whether he was currently over 90 days delinquent on any debts (question 39) because he wanted to get his clearance. A check of Applicant's credit on November 13, 2002, revealed the bad debts noted above.

On July 23, 2003, Applicant was interviewed by a special agent of the Defense Security Service (DSS) about his

delinquent credit obligations and his failure to disclose his debts on his SF 86. Applicant admitted the indebtedness, with the exception of one debt of \$294 that had been reported as a bad debt but with a zero balance owed on his November 2002 credit report. He expressed his intent to first obtain a copy of his credit report and then start making payments to his creditors. Applicant indicated he had no knowledge of why none of the debts were listed on his SF 86.

In February 2004, the judgment debt alleged in ¶ 1.g. was satisfied. In response to DOHA interrogatories, Applicant indicated on March 5, 2004, he would contact his other creditors and start making payments to each of \$10 per week. Asked to list other debts, Applicant disclosed a \$200 payment on his automobile loan, which was current with a balance of \$2,924.

Applicant attempted without success to enter into a repayment arrangement on the debt in ¶ 1.d. The creditor has not pursued the debt. Applicant worked overtime to obtain the funds to satisfy his delinquent debt. In March 2004, Applicant paid the debt alleged in ¶ 1.i. In early April 2004, Applicant satisfied the debts alleged in ¶¶ 1.f., 1.h., and 1.j. (same as 1.k.). The debt alleged in ¶ 1.b. had been paid in full on or before October 4, 2004. Between July and October 2004, he made 10 payments of \$50 each on the debt in ¶ 1.a. He also made a \$50 payment on the debt in ¶ 1.c. He made no payments on the \$2,691 balance owed on a department store credit card (¶ 1.e.).

In October 2004, Applicant was laid off from his job with the defense contractor. For the next six months, he collected unemployment compensation of \$475 weekly. In May 2005, he returned to work as a cleaner at the local casino, but at an hourly wage of \$8.41 (take-home pay \$308 weekly), he could not afford to resume the \$50 payments on the debt in ¶ 1.a. He continued to make his car loan payments and paid off the loan in about July 2005. He financed the purchase of a 2003 model year van for his spouse, taking out a loan of \$11,000 in March 2005. A check of Applicant's credit on June 20, 2005, revealed two accounts with past due balances: a medical debt past due in the amount of \$150 and a \$38 balance for telephone services.

Applicant's spouse works as a newspaper carrier. With her take-home pay of \$130 a week on average, they got behind financially after he lost his job at the defense contractor and were living paycheck to paycheck. In early August 2005, Applicant and his family moved to another apartment to reduce their monthly rental obligation from \$1,100 to \$850. They borrowed funds from his spouse's aunt for the move. For the past two years, they have rented their furniture at a cost to them of \$84 per week on average. Applicant's stepson's monthly social security benefit of \$430 goes to their car loan and other household expenses. Applicant and his spouse have Direct TV which cost them \$67 per month, but they were planning on switching to cable television to reduce that expense to \$55 per month.

## POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

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

**Financial Considerations.** 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.)

**Personal Conduct.** 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.A5.1.1.)

## 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 and E:

Under Guideline F, financial considerations, 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 delinquent debt (¶¶ 1.a. and 1.b.) predating his job layoff in August 1997. His financial problems were exacerbated by insufficient income as a cleaner for the casinos. By the time he was recalled to work for the defense contractor, he owed about \$9,084 in delinquent debt. Disqualifying conditions ¶ E2.A6.1.2.1. *A history of not meeting financial obligations*, and ¶ E2.A6.1.2.3. *Inability or unwillingness to satisfy debts*, apply.

After the unforeseen job layoff in August 1997, Applicant obtained work that paid little more than half of what he had been making with the defense contractor. Mitigating condition ¶ 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)* applies, but an unacceptable risk of financial pressure may persist where debts remain unresolved.

On his return to work with the defense contractor in late 2002, Applicant earned \$18.75 per hour. In July 2003, he told a DSS agent he would obtain a credit report and begin to repay his indebtedness. While he delayed in doing so until February 2004, he is credited with satisfying several of his delinquent accounts thereafter (¶¶ 1.b., 1.f., 1.g., 1.h., 1.i., 1.j.) as well as making ten \$50 payments on the debt in ¶ 1.a. and one \$50 payment on the debt in ¶ 1.c. He worked overtime to obtain the funds to repay his debts. MC ¶ E2.A6.1.3.6., *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*, applies. Applicant has made no payments on the debt in ¶ 1.d., but the creditor had repossessed the lawnmower and had not pursued him for the loan balance. His failure to make any payments on the debt in ¶ 1.e. or to continue his \$50 payments on the debts in ¶¶ 1.a. and 1.c. are due to lack of income as he was again laid off in October 2004.

As of August 2005, Applicant was living from paycheck to paycheck because of his low income as a cleaner at the casino. Yet, a recent credit check revealed no over reliance on credit. His financing of a 2003 model year vehicle (loan of \$11,000) in March 2005 was financially responsible, given his spouse needs the car for her job delivering newspapers. In his favor, Applicant and his family moved in August 2005 to reduce their living expense. After considering all the facts and circumstances, I am persuaded Applicant would continue to resolve his financial issues if he had the income to do so. Guideline F ¶¶ 1.a. through 1.k. are resolved in his favor, notwithstanding those debts in ¶¶ 1.a., 1.c., 1.d., and 1.e. have not yet been satisfied.

However, Applicant's deliberate omission of relevant and material financial delinquencies from his November 2002 SF 86 continues to raise security significant personal conduct concerns (*see* ¶ 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.*) He responded "No" to questions 38 (financial delinquencies over 180 days within the last 7 years) and 39 (financial delinquencies currently over 90 days) because he wanted to obtain his security clearance. The government also alleged Applicant

falsified his SF 86 by failing to list the judgment awarded in December 2000, which the credit bureaus report was satisfied in February 2004, well after he signed the SF 86. While Applicant has testified that his wages were garnisheed when he was employed by the casino before he returned to the contractor, he also testified the garnishment of the judgment debt in ¶ 1.g. took place April 9, 2004, when he was working for the defense contractor. (Tr. 89-90) He presented no evidence to corroborate that the debt had been paid before 2004. Applicant has a heavy burden of overcoming the negative inferences for his judgment, reliability, and trustworthiness raised by his failure to disclose his delinquent debts to the government.

The government must be assured that those granted access can be counted on to fulfill their obligations of full candor. When interviewed by the DSS agent in July 2003, Applicant admitted owing several delinquent debts (¶¶ 1.a., 1.b., 1.d., 1.e., 1.h., 1.j., 1.k.). MC ¶ E2.A5.1.3.3. *The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*, is inapplicable where the correction was not reasonably prompt. Applicant undercut his case in reform, moreover, by falsely claiming during his DSS interview that he did not know why none of the debts were listed on his SF 86 and during cross examination at his hearing that he had forgotten all of his debts ("I forgot all of them. I didn't have all this information. I didn't have no credit cards to list of what I owed, because I didn't have a copy of the credit report since I went back." Tr. 94). Applicant subsequently admitted he had lied on his SF 86 because he wanted the clearance ("I made a mistake. I lied on the application. I know I lied." Tr. 95). Applicant has not shown that his representations can be relied on. SOR ¶¶ 2.a. and 2.b. 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: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: For the Applicant

Subparagraph 1.i.: For the Applicant

Subparagraph 1.j.: For the Applicant

Subparagraph 1.k.: For 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. Clearance is denied.

**Elizabeth M. Matchinski**

**Administrative Judge**

1. '

2. Applicant's credit report of June 20, 2005 indicates the judgment debt was satisfied in February 2004. (Ex. 5) Applicant testified that his wages were garnished to recover the judgment debt before he returned to work for the defense contractor. He provided no document to corroborate his claim, although it is possible there was a delay in reporting the debt satisfaction to the credit reporting agency.

3. Applicant's January 20, 2004 credit report confirms the creditor alleged in ¶1.k. is the collection agent for the debt in ¶1.j. (*see* Ex. 4).