

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant began having financial problems in 1996/97 due to a divorce. While she has a record of timely repayment of her current monthly expenses, two delinquent accounts totaling more than \$12,000 are unresolved with little prospect of settlement or satisfaction in the foreseeable future. Financial considerations concerns persist, but personal conduct concerns are resolved in her favor where she did not knowingly falsify her security clearance application. Clearance is denied.

CASENO: 03-21032.h1

DATE: 05/05/2005

DATE: May 5, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-21032

**DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant began having financial problems in 1996/97 due to a divorce. While she has a record of timely repayment of her current monthly expenses, two delinquent accounts totaling more than \$12,000 are unresolved with little prospect of settlement or satisfaction in the foreseeable future. Financial considerations concerns persist, but personal conduct concerns are resolved in her favor where she did not knowingly falsify her security clearance application. Clearance is denied.

**STATEMENT OF THE CASE**

On August 3, 2004, 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. [\(U\)](#)

On August 23, 2004, Applicant answered the SOR and requested a hearing before a DOHA administrative judge. On receipt of the case on November 8, 2004, I issued a notice of hearing scheduling a hearing for December 1, 2004. At the hearing, six government exhibits and nine Applicant exhibits were admitted. Applicant and three coworkers (federal civilians) testified on her behalf, as reflected in a transcript received on December 10, 2004.

## FINDINGS OF FACT

The SOR alleges three delinquent debts with an aggregate outstanding balance of \$12,842, and deliberate falsification by Applicant of an October 2002 SF 86 (knowingly false denial of any financial delinquencies over 180 days in the last seven years). In her Answer, Applicant admitted she had not satisfied the debts in ¶ 1.a. and ¶ 1.c. with balances of \$4,213 and \$7,367. Applicant had made a payment on August 18, 2004, to satisfy the bank debt alleged in ¶ 1.b. She acknowledged the debts in ¶ 1.a. and ¶ 1.c. had not been disclosed on her SF 86, but denied any willful concealment. Applicant's admissions are accepted and incorporated as findings of fact. After a complete and thorough review of the evidence, I make the following additional findings:

Applicant is 40 years old, and employed as a contractor employee at a naval installation. She prepares documentation, allocates funds, and monitors financial contracts in support of the financial manager, who is a government employee. Applicant had previously worked as a contractor in the same department from January 1995 to January 1999, and held a secret clearance for her duties. She seeks a security clearance for her present duties.

Married to a police officer, Applicant worked full-time (since January 1995 as a contractor employee at the naval installation) while taking classes from January 1994 to January 1997 towards a nursing career. With her spouse also in school, they did not spend money frivolously. They split household expenses fifty-fifty, including their mortgage, even though he earned more than she did. <sup>(2)</sup> Their marriage deteriorated and Applicant's spouse eventually moved out of the marital home in early 1997. Left to pay the \$1,200 monthly mortgage and utilities on her own for four or five months, Applicant relied on consumer credit to pay the mortgage. She opened an individual revolving charge card account with a bank in October 1996 that quickly reached its credit limit (SOR ¶ 1.c.). Lacking the means to make the house payments, the mortgage fell in arrears and the house was lost to foreclosure in about April 1997. Before Applicant could move, she had to pay the utilities on the marital home. With payment of the first and last months rent on her new residence, she was left with no financial reserves to pay on her credit cards. On her divorce in August 1997, Applicant assumed responsibility for repayment of a joint credit card debt incurred during the marriage, bringing her total credit card debt to about \$8,000.

In January 1999, Applicant left her job with the defense contractor for a more lucrative legal secretary's position in a neighboring state. With an increase in her annual salary from \$34,000 or \$35,000 to \$50,000 (as much as \$55,000 with substantial overtime), she was able to pay down a good percentage of her debts, but she had no friends in the area. In November 2001, she returned to her present locale, which meant a long commute to work. <sup>(3)</sup>

Needing a reliable vehicle for commuting during the winter months, Applicant financed the purchase of a 2000 Ford Explorer in January 2002, taking out an installment loan of \$20,196 to be repaid at \$365 monthly for six years (SOR ¶ 1.b.). After a few months of a very stressful commute, Applicant elected to take a significant cut in pay to return to work for the defense contractor in March 2002. Her income was barely enough to cover her expenses, and she stopped paying

on the debt alleged in SOR ¶ 1.c.

In late summer 2002, Applicant's boyfriend was killed in an automobile accident. She coped by devoting all her energies to her job. In October 2002, Applicant was required to complete a security clearance application (SF 86 EPSQ Version 2.2) for her duties as a contractor at the naval installation. Applicant had trouble entering the information onto the form she had downloaded from a disk provided to her by her defense contractor employer, and she had to electronically submit the information to her security officer more than once. Aware she had made no payments on the debt in SOR ¶ 1.c. for several months, Applicant failed to accurately review the questions on the form and entered "NO" responses to questions 38, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" and 39 "Are you currently over 90 days delinquent on any debt(s)?".

In October 2002, Applicant moved from her apartment to her present residence, the top floor of an old farmhouse, reducing her rental obligation from \$900 to \$800 per month. <sup>(4)</sup> She had to come up with the first month's rent as well as a security deposit.

A check of Applicant's credit on November 1, 2002, revealed Applicant was 60 days past due on a credit card account opened in October 2001 that had an outstanding balance of \$3,506 (SOR ¶ 1.a.). Applicant's Discover card account, opened in July 1996, was reported to be 30 days past due in the amount of \$10 on a balance owed of \$403 (not alleged). With no payments on the debt in ¶ 1.c. since that February, that creditor charged off a balance of \$7,367. Her remaining financial accounts, including her car loan (¶ 1.b.) were current or satisfied according to terms.

In response by a request from Applicant to close her account, the creditor of her Gold MasterCard account notified her in February 2003 that with over limit fees, she owed \$3,724.94 (¶ 1.a.) and had to continue to make payments before the account would be closed. A subsequent check of Applicant's credit by the Defense Security Service (DSS) on July 10, 2003, revealed the Gold MasterCard debt had been charged off as a bad debt with a balance of \$3,746, and also that no payments had been made on debt ¶ 1.c., although she was current on her car loan (¶ 1.b.) and had paid off the \$411.52 balance of her Discover card in March 2003 with her income tax refund.

On July 17, 2003, Applicant was interviewed by a Defense Security Service (DSS) special agent about her delinquent debts. Applicant did not deny she was in arrears on the two accounts, and provided updated balances of \$3,724.94 (¶ 1.a.) and \$8,388.29 (¶ 1.c.). She attributed the delinquencies to her divorce and inadequate income since resuming her job with the defense contractor. She expressed her intent to pursue part-time employment to obtain the funds to repay the debts. Asked about her failure to list her delinquencies on her SF 86, <sup>(5)</sup> Applicant indicated she failed to review the questions before submitting the form and denied any willful concealment. Applicant provided a financial statement reporting assets of only \$100 (bank savings) and a net monthly remainder of \$274 after payment of expenses and one debt--her car loan.

On July 24, 2003, a collection agency attempted to collect a \$8,464.73 balance owed on the account alleged in SOR ¶ 1.c. Applicant twice tried before February 2004 to negotiate a payment plan with the collection agency without success. In November 2003 and January 2004, Applicant fell 30 days past due on her auto loan (¶ 1.b.), primarily due to unexpected automobile repair expenses of \$102.24 in September 2004 and \$79.53 in January 2004. In February 2004, she incurred additional vehicle repair costs of \$267.29.

In response to financial interrogatories from DOHA, Applicant acknowledged in February 2004 she had not made any payments on her two delinquent credit card accounts. Attempts to work out repayment terms with both creditors had been unsuccessful. As reflected in her latest statement of earnings, Applicant's take home pay from her job with the defense contractor was \$738.97 per week. To supplement her income, she had taken on part-time work with an accounting firm (10-15 hours per week during tax time) and with a local brewing company. Wage and tax statements for 2003 reflect earnings of \$44,186.32 with the defense contractor, \$1,565 with the accounting firm, and \$966.30 with the brewing company.

In July 2004, Applicant again fell 30 days delinquent in her automobile loan on which she owed \$14,110. She brought the account current in August 2004. In September 2004, Applicant paid \$481.18 for repairs to her vehicle. In about October 2004, one of her creditors offered to settle its debt for a lump sum payment of \$2,000 but she did not have the funds.

Sometime prior to November 2004, Applicant's employer was acquired by another defense contractor. Applicant stayed on the job at the naval installation for her new employer. As of November 5, 2004, her take home pay was \$1,224.68 every two weeks. She was current in her automobile loan, which had been reduced through payments to \$12,765.19. Applicant estimated a \$281.17 net monthly remainder (exclusive of any payment on her two delinquent credit cards) as of late November 2004, but she was essentially living paycheck to paycheck, even with her \$1,500 in gross part-time earnings from her part-time work at the tax firm. She has not made any payments on either of her two delinquent credit card accounts in more than a year. Recently certified by the Red Cross as a first aide and CPR instructor, Applicant hopes to earn income from local companies who need instruction for their employees. In an effort to obtain a higher position and commensurate increase in salary within the company, Applicant intends to pursue her associate's degree. She has submitted documentation to her employer who has a tuition reimbursement plan. Applicant recently downgraded her cellular telephone costs to between \$25 and \$30 and her cable television services to \$20 per month to reduce her expenses. She has thought about moving to a less expensive residence to reduce her rent from its present \$800 per month, but with two pets her options are limited. Applicant anticipates a tax refund for tax year 2004 that she will devote first to any current expenses and then to her delinquent credit card debts.

Applicant's supervisors at the Navy installation, both federal civilians, consider her their most trusted and loyal contract employee. If they had to terminate the services of all of the contractors but one, Applicant is the person they would retain. One of the hardest workers in their group, Applicant supports small business research contracts. In the course of her duties, Applicant prepares funding documentation for her immediate supervisor's signature, sets up the job orders, tracks spending on a weekly basis, and ensures everything is within budget.

## 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 her 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. After she and her ex-spouse separated and he moved out of the marital home, she began to use credit cards to pay the \$1,200 mortgage and her accounts (including the account in SOR ¶ 1.c.) reached their limits. In an effort to pay off approximately \$8,000 in credit card debt, Applicant took a job as a legal secretary in 1999. With an increase of between \$15,000 and \$20,000 in annual salary from her previous job, Applicant managed to pay off a good percentage of her debts, and to finance the purchase of a used vehicle needed for her long-distance commute. However, in March 2002, she returned to her old job. With her income barely sufficient to cover her expenses, she stopped paying on an account owed since her marriage (SOR ¶ 1.c.). By November 2002, she was late in her payments on a Gold MasterCard account opened the year before (SOR 1.a.). She paid nothing on it after April 2003. As of November 2004, she had delinquent debt in excess of \$12,000. 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.

Financial problems may be mitigated where they were caused by circumstances beyond a person's control (*see* MC 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)*). The larger of her two credit card delinquencies (¶ 1.c.) is due to her having to shoulder alone the burden of the mortgage on the marital home pending her divorce. While divorce is an unforeseen factor which explains the incurring of that debt, her Gold MasterCard (¶ 1.a.) was not opened until October 2001 when her annual salary was at least \$50,000. Moreover, MC E2.A6.1.3.3. does not apply to her failure to make payments on the debt in ¶ 1.a. since April 2003 or on the debt in ¶ 1.c. since February 2002. While Applicant experienced a significant decrease in her annual income when she returned to her old job in arch 2002, it was her choice and not an unforeseen circumstance that left her without the financial means to repay all her debts.

In her favor, Applicant, who had been twice 30 days late in her Discover card payment, paid off the debt with her income tax refund in March 2003. She has no record of late rent payments, nor is there evidence of new credit card delinquencies. Yet, she fell thirty days late on her automobile loan in November 2003, January 2004, and July 2004. While a favorable finding is nonetheless warranted as to ¶ 1.b. as she has brought her automobile loan current, MC E2.A6.1.3.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*, cannot be applied to the debts in ¶ ¶ 1.a. and 1.c. Even with income from her part-time employment, Applicant was unable to take advantage of a recent settlement offer from one of the creditors as she could not afford the approximately \$2,000 lump sum demanded, and she has had no success in negotiating affordable repayment terms with the collection agencies.

Although Applicant is sincere in her intent to resolve her two delinquent debts, there is little prospect she will be able to do so in the foreseeable future. While she estimated a net remainder of \$281.17 each month as of November 2004, she also testified she is left with close to nothing at the end of the month when she has emergency or unexpected expenses.

She has only \$100 in assets (bank savings). Applicant has two active credit cards she uses for clothing purchases (Tr. 102) that are current, but which have balances of \$653 and \$195, respectively. Although she moved in about October 2002 to lower her rent by \$100 per month, other steps to reduce her expenditures, such as the elimination of extended basic cable television service and reduction in cellular phone service, have been taken only very recently. Something has always come up, such as unexpected automobile repair expenses, that have prevented her from making any payments on her delinquencies. While she plans to devote a portion of her federal income tax refund for tax year 2004 to her old debt, she intends first to pay whatever she owes in current debt ("whatever I'm owing on my current will obviously be paid to make myself comfortable" Tr. 100). Although the Directive does not require that one be debt free, her failure to make progress towards resolving those debts in SOR ¶ 1.a. and ¶ 1.c. precludes me from finding that it is clearly consistent with the national interest to grant her a security clearance at this time.

Having made no payment on the debt alleged in ¶ 1.c. since February 2002, Applicant knew the debt was seriously delinquent as of the time she executed her SF 86 in October 2002.<sup>(6)</sup> Yet, her SF 86 contains negative responses to question 38 concerning delinquencies more than 180 days in the past seven years and to question 39 concerning any current delinquency over 90 days. Under the personal conduct guideline DC 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*, is potentially security disqualifying, but only if the omission of the delinquent debt was intentional.

Applicant has consistently denied any intentional falsification of her responses to the relevant financial inquiries. She told a DSS agent in July 2003 (Ex. 4) and reiterated in her Answer to the SOR that she "just failed to review the questions before [she] responded." At her hearing, Applicant responded she had been through the security process before so knew that anyone reviewing her application would be able to obtain her credit report, so it would not have made sense to cover up her financial problems. She indicated it was "just an error, [she] didn't intend to check no." (Tr. 104) Applicant subsequently testified:

I think that may have been what the problem was, that I did not review the document prior to, I'd been through the document probably three times, electronically, and then twice I believe I saw it physically, the last time having signed it, and I did not review my answers accurately, I just didn't review them for accuracy. I think at that time I was also moving, not that that [sic]--just one more added thing. (Tr. 105-06)

Applicant has been described as meticulous in the way she prepares funding documentation for her immediate supervisor's signature, sets up the job orders, tracks spending on a weekly basis, and ensures everything is within budget. It would be reasonable to expect her to have closely reviewed her security clearance application for accuracy. There is also no evidence someone other than Applicant entered the negative responses to questions 38 and 39; responses that required one to type in the word "NO" rather than simply check a block. Applicant expressed her belief the security officer could not enter information onto her file (Tr. 108). Yet, it is uncontroverted that due to problems in the software, Applicant had trouble entering information and had to submit the form electronically to her employer more than once. Applicant has not been reluctant to discuss her debts with the government. Absent persuasive evidence that Applicant deliberately falsified her security clearance application, I conclude SOR ¶ 2.a. in her favor.

## **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: For the Applicant

Subparagraph 1.c: Against 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. Clearance is denied.

**Elizabeth M. Matchinski**

## Administrative Judge

1.

2. Applicant testified on cross-examination that a year and a half or so into their marriage, she and her ex-spouse purchased their home. (Tr. 76) The only mortgage of record is a \$119,981 installment loan taken out in July 1992 to be repaid at \$360 monthly that has been satisfied (Exs. 2, 3, 5), and her SF 86 reflects September 1992 as the date of marriage. Applicant and her spouse apparently moved in about 1994 to a new home that was eventually lost in foreclosure (Tr. 71, 77). Applicant testified the financial debt from the foreclosure was reported as her spouse's debt (Tr. 77, 81).

3. From the addresses she provided for her work and residence, it appears she commuted about 64 miles one-way to work at the law firm.

4. Applicant's SF 86 executed October 28, 2002, does not reflect her current address. (Ex. 1) Her credit report of July 2003 indicates she has lived at her current address since October 2002. Either she provided the address information in one of her early iterations of the SF 86 and failed to annotate the change before she signed the form, or she moved at the end of October 2002.

5. The evidence reflects she was not delinquent over 90 days on that debt in ¶ 1.a. at the time she executed her SF 86, so she would not have been required to list that debt.

6. Since Applicant was 60 days past due on her Gold MasterCard account (¶ 1.a.) when she executed her SF 86, she was not required to report it as a delinquent debt on her SF 86.