

KEYWORD: Financial; Criminal Conduct; Personal Conduct

DIGEST: After her divorce in February 2001, Applicant was held responsible for sizeable debt she incurred during her marriage. Under financial pressure, she stole about \$600 in charitable donations and a credit card she had been entrusted with as school secretary. In October 2002, she was charged with seven counts of larceny and three counts of credit card theft, and sentenced to an accelerated rehabilitation program which she completed successfully. Financial considerations concerns are not mitigated despite a discharge of the debts in bankruptcy given the recency and extent of her financial irresponsibility. She shows genuine remorse for her criminal conduct, but more is required to mitigate such a serious breach of fiduciary responsibility. Her failure to candidly disclose her indebtedness on her security clearance application casts doubt as to personal conduct. Clearance is denied.

CASENO: 03-24795.h1

DATE: 01/24/2006

DATE: January 24, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-24795

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Denise Bevza, Esq.

SYNOPSIS

After her divorce in February 2001, Applicant was held responsible for sizeable debt she incurred during her marriage. Under financial pressure, she stole about \$600 in charitable donations and a credit card she had been entrusted with as school secretary. In October 2002, she was charged with seven counts of larceny and three counts of credit card theft, and sentenced to an accelerated rehabilitation program which she completed successfully. Financial considerations concerns are not mitigated despite a discharge of the debts in bankruptcy given the recency and extent of her financial irresponsibility. She shows genuine remorse for her criminal conduct, but more is required to mitigate such a serious breach of fiduciary responsibility. Her failure to candidly disclose her indebtedness on her security clearance application casts doubt as to personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On December 30, 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, Guideline J, criminal conduct, 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.⁽¹⁾

On February 17, 2005, Applicant answered the SOR and requested a hearing before a DOHA administrative judge.⁽²⁾ The case was assigned to me on July 18, 2005. Pursuant to formal notice of July 19, 2005, I scheduled a hearing for August 5, 2005. Counsel for Applicant formally entered her appearance on August 2, 2005. At the hearing, nine government exhibits and eight Applicant exhibits were admitted, and Applicant testified, as reflected in a transcript received on August 22, 2005.

FINDINGS OF FACT

DOHA alleged Applicant owed 12 delinquent consumer credit debts with an aggregate outstanding balance of \$53,473.16 as of November 2004; had been arrested in October 2002 for five counts of larceny 6th degree, two counts of larceny 5th degree, and three counts of credit card theft, for which she was placed on accelerated rehabilitation with 18 months probation and restitution; and she deliberately falsified her April 2003 security clearance application (SF 86) by reporting only one \$500 debt as delinquent.

In her Answer, Applicant admitted the indebtedness alleged, but asserted she had executed and planned to file a Chapter 7 bankruptcy petition. She also acknowledged she had made "a terrible mistake and lapse of judgment" with regard to the larceny, submitting in mitigation that she had turned herself in to the police, entered a guilty plea, and successfully completed her accelerated rehabilitation program. She expressed regret over the inaccuracies in her SF 86, yet denied any intentional falsification, and explained that she had been attempting to consolidate her debts through a debt management company that she subsequently learned was neither licensed nor bonded. Applicant's admissions are incorporated as findings of fact. After a complete and thorough review of the evidence, I make the following additional findings:

Applicant is a 39-year-old administrative assistant who has been employed by a defense contractor since May 2003. She seeks a security clearance for her duties.

In May 1986, Applicant married a young sailor, who was also nineteen years old. Marital problems led to a divorce and a brief separation of about six months. They remarried in November 1991, and subsequently had two children, a daughter born in 1994 and a son born in 1997. Applicant's spouse handled the family's finances except during his deployments, when Applicant assumed responsibility for paying their obligations. At times, she felt he did not give her enough money to manage their finances, so she relied on credit. They continued to have marital difficulties and were separated in January 2000, and divorced in February 2001. Applicant was given physical custody of the children, and she became solely responsible for repaying the debt she incurred during the marriage. Working as a receptionist for a law firm at a take-home pay of \$284 weekly, she became overwhelmed by the expenses of raising two children and maintaining the household. Already about \$25,000 in debt to various creditors, Applicant took on new credit card debt in her own name in an effort to pay credit card debt ("I had to, as you would say, rob Peter to pay Paul for my credit cards." Tr. 42).

Several financial accounts became delinquent and were charged off as bad debts over the 2001-2003 time frame:

- A credit card account opened in January 2000 was charged off with \$4,503.91 owed (\$2,366 past due) in May 2001. (SOR ¶ 1.a.)
- A department store credit card account opened in April 2001 was charged off in October 2001 with \$254.45 owed. (¶ 1.b.)
- A credit card account opened in January 2001 was charged off in August 2002 with \$2,676 past due. As of March 2003, the balance was \$3,159. It remained unpaid and was \$4,200 as of October 2004. (¶ 1.c.)
- A credit card account opened in December 1999 was charged off in September 2002 with \$776 past due. As of March 2003, the balance was \$4,722. (¶ 1.d.)
- A credit card account opened in June 1998 was charged off in September 2002 with \$1,967 past due on a balance of \$15,767. (¶ 1.h.) In April 2003, a new account was opened with the same lender. A \$12,981 balance was charged off in June 2003 and placed for collection. (¶ 1.e.)
- A credit card account opened in June 2000 was written off in September 2002 with a balance of \$2,828. It was referred for collection in the approximate amount of \$3,375 in November 2003. (¶ 1.f.)
- A department store revolving charge opened in March 1999 was charged off in the amount of \$875 in about August 2002. (¶ 1.g.) A credit card account opened in December 2000 was charged off in September 2002 with \$818 past due. The debt was subsequently placed for collection in the amount of \$801. (¶ 1.i.)
- A \$411 delinquent balance on a department store revolving charge opened in November 1995 was sold in July 2002. As of September 2003, Applicant owed a collection agency \$411.16. (¶ 1.j.)
- A revolving charge incurred in about May 2002 was placed for collection in about November 2003. As of January 2005, Applicant reported owing \$1,600. (¶ 1.k.)
- A credit card account opened in November 2001 was charged off in February 2002 in the amount of \$708. In June 2004, the creditor obtained a judgment against Applicant of \$743. (¶ 1.l.)

In June 2001, Applicant commenced employment as a secretary for a private school, earning between \$325 and \$350 weekly. Applicant was entrusted with handling donations from the school community that would be distributed to local foster children in the form of gift certificates to the local mall. During the holiday season in late 2001, Applicant stole approximately six gift certificates and also a credit card because she felt she needed to provide for her children. The thefts were subsequently discovered by the school, and Applicant was interviewed along with other school personnel.

While she initially denied any knowledge of the crime, she subsequently turned herself in to the police and quit her position at the school. (3) In about October 2002, she was charged with larceny, 6th degree (five counts), larceny, 5th degree (two counts), and credit card theft (three counts). She was placed on accelerated probation with conditions, to include 18 months probation and restitution. (4) Applicant feels remorse about her criminal theft.

After working a couple of months as a waitress, Applicant began working for a temporary services agency in October 2002. Her receptionist/secretarial services were contracted out to her present employer's human resources department. In or before April 2003, she was put in for a permanent position with the defense contractor. Needing a security clearance, she completed a Questionnaire for National Security Positions on April 21, 2003. Applicant was not fully candid about the circumstances that led her to leave her secretarial job at the school, indicating that she had left the position in August 2002 because she "got stressed out over job." She listed her arrest and probation for theft in answer to police record inquiries, but did not reveal any of the details to her employer. She responded "Yes" to financial delinquencies, listing one debt, a \$500 credit card debt incurred in October 2002. There was a reference to "see attached" entered on the security questionnaire, but it is not in her handwriting. Applicant testified on direct examination that she gave her employer "a piece of paper with other listings of [her] cards but [she does] not know what was on the listing." (Tr. 39) Later on cross examination, she testified she provided "several pages of employers at that time and [she] gave them to them along with other things." She was unable to recall specifically whether it included debt information. (Tr. 67) Applicant turned the QNSP in for typing to her employer. On April 23, 2003, she signed the typed version of her security clearance application (SF 86). The \$500 credit card debt was the only delinquency listed and there was no reference thereon to any attachment.

A check of Applicant's credit on May 1, 2003, revealed delinquent outstanding balances totaling about \$35,000. By letter of June 16, 2003, Applicant notified her creditors that she was attempting to make arrangements to pay on the debts. On July 21, 2003, she asked her creditors to drop the late fees and interest applied to her accounts during the periods of no action. She expressed a willingness to work with her creditors and/or assignees to set up a repayment plan for each debt. In or before August 2003, Applicant began working with a debt consolidation firm to repay her debts. Applicant apprised her creditors and/or assignees by letter dated August 25, 2003, that she was working with a debt consolidation company. As of September 15, 2003, the debt consolidation company forwarded a repayment schedule to Applicant. In return for monthly payments of \$825, the company would make payments to nine creditors owed a total of \$42,280.70, including those debts alleged in ¶¶ 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.i., 1.j., and 1.k.

On September 17, 2003, Applicant was interviewed by a Defense Security Service special agent about her delinquent accounts, which she did not dispute with the possible exception of that debt alleged in SOR ¶ 1.b. She indicated she would be paying a debt consolidation firm \$825 monthly to resolve her indebtedness. With child support from her ex-husband of \$1,500 and her salary, she estimated a financial cushion of \$700 monthly after the \$825 payment. Asked about her larceny conviction, Applicant admitted she took about six gift certificates to the local mall because of a need for her family. She related the defense contractor was aware of her arrest and had no problem with it.

Applicant made payments for about eight months to the debt consolidation company starting in October 2003. She stopped making payments when she found she could no longer make her car payment and put food on the table for her children. In May 2004, she contacted an attorney with regard to filing Chapter 7 bankruptcy, but could not afford his legal fee. Applicant retained the services of another bankruptcy attorney. On his advice, she made minimum payments on her credit card debt, which due to interest and charges had increased to about \$53,473 by October 2004. Eventually able to save up his \$690 fee and \$209 filing costs, she petitioned for Chapter 7 bankruptcy in early February 2005, listing \$65,344.90 in unsecured nonpriority debt, including those debts alleged in the SOR as well as \$4,101.01 in new

credit card debt incurred on one account opened in January 2005. Her debts were discharged in bankruptcy in early May 2005. Applicant reaffirmed her car, a 2000 model year sedan, on which she owed about \$4,831. She has been current in her car loan payments of \$336 monthly.

In order to reestablish credit, Applicant opened a credit card with a \$250 limit in late June 2005. With program, set-up and annual fees, she had an initial balance of \$178 on the account. As of August 2005, she had about \$130 in discretionary funds each week and was managing to live within her means. She had not completed any financial counseling, but had received some guidance from her bankruptcy attorney, who as of August 2005 was still preparing a program in budgeting.

Applicant's work performance for the defense contractor has been rated as "exceeds job requirements" since she started. She has consistently earned the highest rating for quantity of work output. For the March 2004 to March 2005 ratings period, she also earned that rating for teamwork. Applicant enjoys her job as an administrative assistant.

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.)

Criminal Conduct. A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. (¶ E2.A10.1.1.)

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 the Applicant, I conclude the following with respect to Guidelines F, J, and E:

Under Guideline F, financial considerations, the security eligibility of an applicant is placed in 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. Applicant, who was unsophisticated in financial matters, relied on credit to manage the financial obligations of the household when her spouse was deployed. After her marital separation and divorce, she incurred new credit debt to pay old credit debt. By April 2003, she owed about \$42,000 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.

Financial pressures led her to commit larceny and theft by credit card in about December 2001, in breach of the

fiduciary relationship she had with the school where she was employed. Under the Directive, such conduct could raise financial considerations concerns (see ¶ E2.A6.1.2.2. *Deceptive or illegal financial practices such as embezzlement, employee theft . . .*). Since her larceny was alleged only under Guideline J, criminal conduct, it is not considered to raise separate disqualifying concerns under Guideline F.

Financial problems may be mitigated where they were caused by circumstances beyond a person's control (see ¶ 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)*). ¶ E2.A6.1.3.3. applies to the extent that Applicant had to shoulder alone the burden of the credit card debt incurred during her marriage, which amounted to about \$25,000. However, Applicant exhibited financial irresponsibility in borrowing from some credit cards to pay others and in failing to take proactive steps to manage her debt in the 2001/02 time frame when she was working for the school. Instead, she compounded the concerns for her security worthiness (see Guideline J, below) by committing larceny. To her credit, she made some effort to resolve her debts after she began working for the defense contractor, arranging for debt consolidation in September 2003. However, she only made eight months of payments under the plan, undermining the mitigation available to her under ¶ E2.A6.1.3.6. *The individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts*. Despite an annual salary of about \$32,500 (Tr. 75) and consistent child support from her ex-spouse of \$1,500 monthly, she testified to being unable to maintain her car payments, put food on the table for her children, and pay the \$825. Intending to file for bankruptcy, she made minimum payments, if any, on her delinquent debt between May 2004 and January 2005, and it still took her months to save the \$690 attorney fee to file.

With the Chapter 7 discharge in bankruptcy of some \$65,344.90 in unsecured nonpriority debt in May 2005, all the debts listed in the SOR have been liquidated. While Applicant has a legal right to the fresh start afforded in bankruptcy, and the financial pressures presented by more than \$50,000 in delinquent debt have been eliminated, bankruptcy is not a substitute for a demonstrated track record of repaying debt. Although she had no outstanding delinquencies as of August 2005, Applicant apparently opened a credit card account in January 2005, just before the filing of her bankruptcy petition, on which she incurred an additional \$4,101.01 in debt that was discharged. In the absence of evidence that the charges were necessary and due to unexpected circumstance, her incurring of this sizable debt in such a short time when she planned to file for bankruptcy raises serious concerns about her financial judgment that are not overcome by a few months of financial stability. Although she testified to having received some guidance from her bankruptcy attorney, he was still working on a plan to help her budget her funds. It is not clear that she has received financial counseling of the type contemplated in ¶ E2.A6.1.3.4. *The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*. Her history of delinquency warrants adverse findings as to ¶¶ 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.i., 1.j., 1.k., and 1.l., even though she is no longer legally liable for the debts.

The government's case under Guideline J, criminal conduct, is established by her theft by credit card and larceny of about six gift certificates intended for foster children while she was employed as a school secretary. Disqualifying conditions ¶ E2.A10.1.2.1. *Allegations or admission of criminal conduct*, and ¶ E2.A10.1.2.2. *A single serious crime or multiple lesser offenses*, are clearly pertinent to an evaluation of Applicant's security worthiness. She committed an egregious breach of fiduciary duty. Assuming the thefts occurred during the December 2001 holiday season, her misconduct was apparently not discovered for some time, since she remained in her job until August 2002 and was not formally charged until October 2002.

In her favor, Applicant turned herself in, albeit a week after the investigators conducted interviews at the school. She paid restitution and completed the accelerated rehabilitation program without incident. She exhibited genuine remorse about her misconduct when asked about it at her security clearance hearing. Even though her probation ended within a year of her hearing, the thefts took place in about December 2001. Since the criminal behavior is no longer recent, ¶ E2.A10.1.3.1. applies. However, there is insufficient information in the record about the thefts to conclude that her criminal conduct was isolated. It is unclear whether she took the gift certificates on one or multiple occasions and she offered no explanation of the theft by credit card. Doubts persist for her rehabilitation where she was not candid on her SF 86 about the circumstances that led to her leaving her employment at the school. She indicated she left a job by mutual agreement following allegations of unsatisfactory performance related to stress over the job when her misconduct led her to leave her job.

Discrepant accounts about when she confessed to the police about the thefts also do not aid her case in reform. In September 2003, she told the DSS agent that she confessed to taking the gift certificates when the police conducted their investigative interviews at the school. (Ex. 7) She testified at her security clearance hearing that she turned herself in about one week after the police came to the school:

At that time when they found out that the gift certificates were missing, the police was [sic] called in to my employment and they took a statement and all that. They took a statement from everybody. And then after that about a week later I felt guilty and had remorse and I went to the police station and turned myself in. (Tr. 48)

Although I do not doubt that Applicant regrets her criminal behavior, her evidence in reform falls short of meeting her heavy burden of overcoming the trust concerns created by her very serious breach of a fiduciary relationship. SOR ¶ 2.a. is resolved against her.

Related to the issue of her trustworthiness, which is at the heart of the security clearance decision, the government has alleged Applicant deliberately falsified her SF 86 by reporting only one \$500 debt when her delinquent debt totaled about \$42,000. Under the personal conduct guideline, ¶ 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 her debts was intentional.*

Applicant admits her SF 86 was inaccurate, but denies any deliberate falsification. In her Answer to the SOR, Applicant claimed she thought she was current on her bills as she was attempting to consolidate her debts and pay them off through the debt management. This is not credible where she had not entered into any formal repayment arrangement with the debt consolidation company as of her SF 86.

At her hearing, Applicant claimed for the first time that she had provided additional information by way of several attachments which were inexplicably absent from her typed clearance application that the government claims she falsified. In response to the financial record inquiries on the initial QNSP, the words "see attached" were added, by apparently someone other than Applicant. However, neither that form (Ex. A) or the typewritten version (Ex. 1) bears an attached listing of financial delinquencies, and the typed version does not even refer to any attachment. Had Applicant provided her employer with a separate listing of most, if not all of her delinquent debt, it would negate the inference of intentional concealment that may fairly be drawn in this case based on the substantial indebtedness and the limited disclosure of delinquent debt. Unable to produce the attachments, Applicant could not even recall whether the attachments contained financial record information. She failed to prove she had made a reasonable effort to inform the government of her debt. Accordingly, ¶¶ 3.a. and 3.b. are resolved against Applicant as well.

Applicant's contributions to her employer are viewed favorably, and she deserves credit for the efforts she has made to turn her life around. However, I am unable to conclude it is clearly consistent with the national interest to grant her a security clearance at this time.

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

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: Against the Applicant

Subparagraph 1.k.: Against the Applicant

Subparagraph 1.l.: Against the Applicant

Paragraph 2. Guideline J: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Paragraph 3. Guideline E: AGAINST THE APPLICANT

Subparagraph 3.a.: Against the Applicant

Subparagraph 3.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

2. While the Answer bears a typewritten date of January 19, 2005, it is not considered complete until its notarization, which was on February 17, 2005.

3. Applicant testified that the school officials were willing to work with her, but she elected to leave the job because she would have felt guilty if she stayed. (Tr. 87)

4. Applicant testified she took six gift certificates valued at about \$25 apiece. (Tr. 79-81) When asked on direct examination about total dollar amount she had taken, Applicant responded, "They said it was almost \$600." (Tr. 48)