

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant, a test operator for a defense contractor since August 1974, has a history of financial problems, including unpaid federal tax debt due to insufficient tax withholdings. His ability to repay his debt had been impacted by the loss of income of his spouse, who is collecting social security disability, and ongoing medical expenses not covered by insurance. Financial considerations concerns are mitigated where he is receiving financial counseling through his church and has retained the services of a debt resolution firm that is negotiating with his creditors on his behalf. While he did not report a 2001 judgment for rent and possession on his security clearance application, he did not knowingly and willfully conceal that information from the government. Clearance is granted.

CASENO: 03-17302.h1

DATE: 11/30/2005

DATE: November 30, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-17302

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a test operator for a defense contractor since August 1974, has a history of financial problems, including unpaid federal tax debt due to insufficient tax withholdings. His ability to repay his debt had been impacted by the loss of income of his spouse, who is collecting social security disability, and ongoing medical expenses not covered by insurance. Financial considerations concerns are mitigated where he is receiving financial counseling through his church and has retained the services of a debt resolution firm that is negotiating with his creditors on his behalf. While he did not report a 2001 judgment for rent and possession on his security clearance application, he did not knowingly and willfully conceal that information from the government. Clearance is granted.

STATEMENT OF THE CASE

On August 19, 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. [\(1\)](#)

On August 31, 2004, Applicant answered the SOR and requested a hearing before a DOHA administrative judge. The case was assigned to me on March 31, 2005. Pursuant to formal notice of May 9, 2005, I convened a hearing on May 27, 2005. At the hearing, 16 government exhibits and three Applicant exhibits were admitted. Applicant, his spouse, his brother, and a deacon at his church testified, as reflected in a transcript received on June 8, 2005. The record was held open initially until June 17, 2005, for Applicant to submit financial records.

Granted an extension to June 24, 2005, Applicant submitted by facsimile between June 21-24, 2005, 48 additional

exhibits, which were marked for identification as Exs. D through YY. On June 28, 2005, the parties were given a deadline of July 11, 2005, Department Counsel to file any objection to the proposed exhibits, Applicant to submit a legible copy of proposed exhibit HH. On July 5, 2005, Applicant forwarded proposed exhibits GG (second copy), HH (legible copy), ZZ, AAA, and BBB. Department Counsel having filed no objections by July 11, 2005, the post-hearing exhibits D through BBB were entered accordingly.

On July 8, 2005, the deadline for further submissions by Applicant was extended to July 14, 2005. On July 20, 2005, Applicant asked for an opportunity to tender documents concerning the terms of repayment of his 1996 federal income tax debt alleged in SOR ¶ 1.a. Department Counsel having no objection, the record was reopened. Applicant exhibit CCC, an installment agreement with the IRS, was admitted on July 25, 2005, Department Counsel having filed no objection by the due date.

FINDINGS OF FACT

DOHA alleged as raising financial considerations concerns that Applicant owed a delinquent federal tax debt of \$6,334.32 for tax year 1996 (SOR ¶ 1.a.), a arch 2001 judgment of about \$1,100 (¶ 1.d.), and four other bad debts (¶¶ 1.b., 1.c., 1.e., 1.f.) totaling \$7,801, and that his wages had been garnisheed three times from 1995 to 2001. Personal conduct concerns were also alleged because Applicant had not listed the unpaid financial judgment on his October 2002 security clearance application. In his Answer, Applicant indicated that notices of levy had been filed against his wages by the IRS for 1996, but they were being held responsible for only \$2,950.32 due to extreme hardship. He indicated he and his spouse have high medical expenses and there was some identity theft, but that he was willing to pay the small debts as soon as possible and was working with the deacons in his church to establish a budget to enable him to repay the debt. In response to the Guideline E concern, Applicant indicated the judgment was an isolated incident due to his checking account being overdrawn. He did not specifically address the issue of intentional falsification, and at his hearing denied any intent to misrepresent. His admissions to the delinquent debts are incorporated as findings of fact. After a thorough review of the evidence of record, I make the following additional findings:

Applicant is a 56-year-old married male who has worked as a test operator on an assembly line for the same defense contractor since August 1974. He seeks to retain the confidential security clearance that he has held since he started his employ.

Applicant, who has cerebral palsy and asthma, has a history of financial difficulties from about 1986, in part because of underpayment of federal taxes for several years. In 1991, the IRS began assessing penalties and interest for failure to file returns for tax years 1985 and 1986. Applicant and his spouse filed joint returns for subsequent years, but owed for several years due to insufficient withholdings. In 1992, the IRS began attaching Applicant's wages to collect back taxes owed for 1985. In August 1995, the IRS issued a new levy on Applicant's salary to collect \$1,214.12 for tax year 1986 and \$843.51 for tax year 1990. The levy was released later that month, but in February 1996, the IRS filed against Applicant's wages to collect \$697.99 for 1986, \$882.77 for 1990, \$578.56 for 1993, and \$459.47 for 1994. Applicant's

taxes for 1986 and 1990 were satisfied by April 1996 through garnishment and IRS intercepts of overpayment of taxes for other years. Starting in September 1996, Applicant's wages were garnished in excess of \$260 per week to collect remaining back taxes, which now included \$609.87 for tax year 1995.

Applicant executed a National Agency Questionnaire (DD 398-2) on December 29, 1995. In response to inquiries into his credit history, Applicant responded affirmatively to garnishments, unpaid judgments, and significant debt delinquency. He listed wage garnishments by the IRS in 1992 and 1995, and delinquencies of \$3,000 in back taxes, \$10,000 on a credit card, \$500 to a telephone company, and \$10,050 to another creditor. A check of Applicant's credit on January 24, 1996, revealed additional past due balances of \$185 (in collection) and \$8,877 in loan debt for a timeshare purchased in April 1993. The telephone debt was reported as reduced to judgment in the amount of \$398, but the \$10,000 credit card debt was listed as having a zero balance.

On July 10, 1996, Applicant was interviewed by a special agent of the Defense Security Service (DSS) about his financial problems, including tax debt that he attributed to failure to report earned income of his spouse. He explained that due to his cerebral palsy, his spouse handles the family's finances, and she began in 1986 to give money to others that should have been used to pay their own debts. An effort by him to straighten out their finances through opening his own checking account failed when she began to write checks on that account. Although they had sufficient income to pay their living expenses, they did not have the income to pay their overdue debts. Applicant estimated a monthly net remainder of \$678 after payment of expenses, including \$560 in rent and \$100 to the IRS (based on his spouse's report of payments since April 1996).

Applicant was reinterviewed on September 18, 1996, about his back taxes, which were being collected through garnishment as his spouse had apparently not kept up with the \$100 monthly payments. Applicant also acknowledged an outstanding chiropractor bill of \$185. As for the unpaid telephone company judgment, Applicant indicated his spouse had begun repayment in August at \$25 or \$50 per month. On April 14, 1997, a default judgment was issued against Applicant in favor of his dentist in the amount of \$462.93. That judgment remained unpaid as of November 2002.

Applicant's spouse, who has a long history of mental health problems, including psychiatric hospitalizations for a delusional disorder, underwent cardiac catheterization for ischemic cardiomyopathy in June 2000. While it has been treated successfully by medication, she had to stop working. Without her income (she had been working as many as 60 to 70 hours per week as a waitress), Applicant and his spouse fell behind on their rent. In March 2001, their landlord filed for summary eviction. Later that month, a judgment was issued in favor of the landlord for possession and rent in the amount of \$1,100.

Following their eviction, Applicant and his spouse moved in with his brother for a few months. On April 29, 2002, the IRS issued a tax levy to collect unpaid federal income taxes of \$6,334.32 (\$4,537.06 in unpaid assessment) for tax year 1996 (SOR ¶ 1.a.). In August 2002, the IRS issued a partial release of all wages in excess of \$50 biweekly.

On October 24, 2002, Applicant signed a security clearance application (SF 86) that was initially completed by his spouse and then corrected before it was electronically uploaded. Applicant disclosed his wages had been ordered garnisheed four times between August 1995 and June 2002 to collect delinquent federal tax debt totaling \$12,063.63. Both Applicant and his spouse were uncertain whether the judgment that resulted in their eviction was considered a financial judgment or rather an eviction. After discussing it between themselves, Applicant's spouse indicated "No" to question 37 concerning unpaid judgments when she filled out the form. Applicant signed the document after having read it over once and he made no effort to correct that answer before the document was uploaded electronically, although the address from which he had been evicted was added in response to inquiry into where he had lived (question 4).

A check of Applicant's credit on November 27, 2002, revealed the two judgment debts (\$1,100 for rent and possession and \$462 for dental services) had not been satisfied. Four other bad debts were listed: a \$68 anesthesiology debt in collection since April 2000 (¶ 1.c.); a \$3,325 debt (¶ 1.e.) in collection; a \$70 debt for a financial publication on a debt repayment plan that Applicant elected to not pursue (¶ 1.f.); and a charged off credit card balance of \$4,311 (¶ 1.b.), run up in part because of cash advances to pay the IRS. On July 7, 2003, Applicant admitted to a DSS interviewer that those debts in ¶¶ 1.c. and 1.d. had not been satisfied, and added that the original debt could have been as high as \$3,352 (¶ 1.e.).⁽²⁾ Living paycheck to paycheck with his spouse still unemployed, Applicant expressed his intent to continue to work so that he can eventually pay off his creditors.

In March 2004, Applicant's spouse began repaying the IRS about \$200 per month for back taxes owed for 2002. She subsequently missed a payment and had to make double payments for a couple of months until it was straightened out.

In about January 2005, Applicant and his spouse moved into a motel to reduce their monthly rent expense from about \$1,200 to \$1,160.32. In April 2005, Applicant's spouse was hospitalized for pneumonia.⁽³⁾ With noncovered medical expenses of about \$140 monthly and their substantial rental obligation causing a strain on their finances, Applicant and his spouse began working with church members--one of whom is a financial vice president for a computer technology company- in April 2005 to establish a budget they could follow, and to submit an offer in compromise with the IRS through consumer debt resolution firm. In mid-May 2005, Applicant decreased from two to one the number of exemptions claimed for federal tax withholding in the hope of avoiding a large tax bill at filing time. Applicant and his spouse estimated a net monthly remainder of \$69 after payment of monthly expenses and \$450 to the debt resolution firm working on consolidating their consumer debt, including \$2,855 in medical costs.

As of mid-June 2005, the debt resolution firm had negotiated on Applicant's behalf with the dentist (claimed to be now owed only \$86) and with the agency collecting the \$1,100 judgment for back rent (¶ 1.d.) and the \$3,352 debt (¶ 1.e.). The creditors agreed to repayment terms of \$25 and \$50 per month, respectively, beginning on July 15, 2005, until paid in full. In late June 2005, the debt resolution company negotiated with the IRS for Applicant and his spouse to repay what they owe for tax years 2002 (about \$2,551), 2003 (about \$303) and 2004 (\$335.22). After a first payment of \$193 (inclusive of a \$43 service charge) due August 5, 2005, Applicant and his spouse are scheduled to pay \$150 monthly. In mid-July 2005, the debt resolution company had arranged for repayment of the 1996 tax debt (¶ 1.a.) at \$262 monthly after an initial payment of \$305 (inclusive of a \$43 service charge). Applicant estimates the outstanding tax debt for 1996 to be about \$1,000 exclusive of any interest and penalties.

Applicant and his spouse's gross income (his wages and her taxable social security disability) was \$53,173.51 in 2004, up from \$43,622.48 in 2003. Applicant has taken loans from his 401K plan at work, including most recently a \$2,000 loan. He has been repaying his two outstanding loans at \$68.38 monthly and they are scheduled to be paid off in a few months. He withdrew about \$747.39 from his savings plan at work in May 2005. (4)

Since destroying their credit cards in August 2004, Applicant and his spouse have paid most of their obligations in cash, including their prescription copays and ongoing medical care. Applicant's spouse takes a cab to the bank to obtain the funds to pay their bills. They have one car, a 1994 model year economy car that is paid for. They have direct deposit of his pay and her disability payments. As of mid-June 2005, they had \$11.78 on deposit in their savings account, \$11.24 in their checking account, and \$40.08 cash on hand. They continue to work with church deacons to resolve their financial situation and have been compliant with requests for financial documentation. Applicant's spouse's mental health condition is stable clinically, and she plans to obtain part-time work as soon as she is medically cleared. With the help of church members, their priority is subsidized housing so that they can lower their living costs.

Applicant's supervisor at work, who has known him for 20 years, has found Applicant to be a dedicated employee. Applicant takes personal pride in getting critical product tested, and he has had no problems with attendance. Continuation of Applicant's clearance is also advocated by a church member who has helped Applicant develop a budget. Aware of the potential vulnerabilities associated with financial indebtedness through his 17 years of prior service as a DSS industrial security special agent and his present employment as a security manager at a military installation, he attests to Applicant's desire to rectify his financial situation.

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 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 government established its case with respect to Guideline F, as follows:

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 had a history of financial problems since the 1980s, initially due to his spouse's well-intentioned but misguided attempts to help others in difficulty at substantial cost to their own financial solvency. Applicant, who had his spouse handle their finances because of his cerebral palsy, failed to ensure that their tax returns were filed for tax years 1985 and 1986. This led to substitute returns being filed, and eventual garnishments of his wages for back taxes. Insufficient tax withholdings led to federal income taxes due for 1990, 1993, 1994, 1995, 1996, 2002, 2003, and 2004, and while Applicant's wages were garnished to repay some of this tax debt, Applicant's spouse ran up the balance of at least one credit card (SOR ¶ 1.b.) taking cash advances to repay the IRS. In March 2001, their landlord obtained a judgment against them for unpaid rent. Applicant and his spouse were eventually evicted from their home. As of June 2005, Applicant still owes the delinquent debt alleged in the SOR. Under Guideline F, 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.

Indebtedness can be mitigated where it was incurred largely beyond a person's control (¶ E2.A6.1.3.3.). As recently noted by the DOHA Appeal Board (ISCR Case No. 03-17479, App. Bd. Nov. 3, 2005), this financial considerations mitigating condition can apply where the evidence shows events beyond an applicant's control resulted in, or significantly contributed to debts becoming delinquent, to an inability to address debts that had previously become delinquent, or to incurring new debt that aggravates or exacerbates an applicant's financial difficulties. Applicant's spouse admits to past financial irresponsibility, although her diagnosed delusional disorder may well have contributed to her behavior. However, the 2001 judgment for back rent and possession is largely attributed to the loss of her income, when she had to quit her waitress jobs in June 2000 because of an unrelated medical condition. Repeated garnishments of Applicant's wages to recover back taxes and ongoing out-of-pocket costs for prescriptions, chiropractic care, mental health sessions, and high rental costs following their eviction, have burdened them financially to where they have been unable to repay their tax and other debts.

While ¶ E2.A6.1.3.3. applies, the government must be assured that those individuals granted access are not likely to succumb to financial pressure because of debt. Applicant and his spouse estimate their outstanding debt at about \$12,188, excluding tax liabilities that could amount to about \$10,000 if no penalties or accrued interest are excused for tax year 1996, although Applicant indicates that because of hardship the tax debt had been reduced to \$2,950.32. They have very little to draw on in the case of an emergency, with less than \$25 on deposit in the bank and only about \$40 cash on hand as of May 2005. Yet, in their favor, they have been attempting to resolve their tax debts for several years, and been taking active steps since April 2005 to address their other delinquencies. With the help of church members, including a deacon who is a financial officer for a software company, Applicant and his spouse have established a budget and secured the services of a debt resolution firm that has made repayment arrangements for those debts in ¶¶ 1.a., 1.d., and 1.e. as well as for the unpaid dental judgment. Applicant recently changed his tax withholding to avoid future tax indebtedness, and they cut up their credit cards in August 2004. Mitigating conditions ¶ 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*, and ¶ E2.A6.1.3.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*, apply.

Unsophisticated in the handling of financial matters, Applicant and his spouse have the support in place to resolve their debts in time, provided a stable household income. After considering all the facts and circumstances in this case, including the respective medical disabilities that have had a negative financial impact, Applicant's long record of dedicated service to his employer, and the efforts they have made of late to address their delinquencies, I find for Applicant with respect to the financial considerations concerns in ¶¶ 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., and 1.g.

The government's case under Guideline E, personal conduct, is based solely on Applicant's negative response to question 37 on his October 24, 2002, SF 86 concerning any unpaid financial judgments in the last seven years. The evidence establishes that a former landlord was granted a default judgment in March 2001 for rent and possession, execution stayed to April 2001. 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 unpaid judgment was intentional.

Applicant's spouse testified that she completed the SF 86 for Applicant, and "checked off no." She hesitated because she really did not know how to answer it (Tr. 47), and discussed it with Applicant who was also uncertain as to whether an eviction was a judgment. (Tr. 93) In his direct testimony, Applicant reiterated that he was confused at the time and did not know whether the judgment should have been reported. (Tr. 120) When interviewed by a DSS agent in July 2003, Applicant remembered that the \$1,100 was for a judgment in favor of his former landlord. Given that the result of this judgment was their eviction, Applicant's explanation that he was confused is accepted. It is noted that before the document was uploaded, Applicant reported the address from which he had been evicted in response to question 4 inquiring into where he had lived. Absent persuasive evidence that Applicant deliberately falsified his security clearance application, I conclude SOR ¶ 2.a. in his 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: 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

Paragraph 2. Guideline E: FOR THE APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Elizabeth M. Matchinski

Administrative Judge

1.

2. ²The \$1,100 judgment debt (¶ 1.d.) and the \$3,325 debt (¶ 1.e.) are owed the same collection agency, but the evidence does not support the \$3,325 as being the original amount owed. The judgment of about \$1,100 was awarded in 2001, and the \$3,325 is a collection account opened in February 2002. Assuming they are not two separate debts, it is more likely that the \$3,325 is an updated collection balance of the earlier unsatisfied judgment since Applicant and his spouse have made no payments on the \$1,100 judgment debt.

3. ³Applicant's spouse was hospitalized for psychiatric care sometime in 2004. Their estimated budget, submitted after the hearing, includes a \$1,465 hospital debt. It is not clear whether this was incurred as a result of her psychiatric hospitalization or her recent medical admission for pneumonia.

4. ⁴It is not clear whether these funds went to payment of living expenses, to the IRS, or to other debts, such as medical costs.