

DATE: March 26, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-06913

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owes about \$50,000 in delinquent debt. While he has brought his student loan accounts current and has paid other minor debts, there are no clear indications that his financial problems are behind him. In July 2001, he was apprehended by military police for larceny of non-appropriated funds from the post exchange after he attempted to purchase a compact disk player for less than its full value by placing it in a box intended for a compact disk player of lesser value. He did not disclose this incident or his financial delinquencies on his February 2004 security clearance application. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on January 9, 2006, detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct) of the adjudicative guidelines. Applicant answered the SOR on February 22, 2006, and elected to have a determination on the written record without a hearing. On November 24, 2006, the government submitted a File of Relevant Material (FORM) consisting of eight exhibits (Items 1-8). On December 7, 2006, DOHA forwarded a copy of the FORM to Applicant and instructed him to respond within 30 days of receipt. Applicant filed his rebuttal on February 5, 2007, after the January 19, 2007 due date. The case was assigned to me on February 22, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Applicant's belated response to the FORM is accepted for consideration as the government did not object to its admissibility.

FINDINGS OF FACT

DOHA alleged under Guideline F that Applicant owed delinquent debt totaling \$62,416 that had not been paid by September 21, 2005. Applicant was alleged under Guideline J to have been administratively discharged from the Air

National Guard in October 2002 following charges of larceny of non-appropriated funds, and under Guideline E to have falsified his February 2004 security clearance application (SF 86) by failing to disclose the offense, an other than honorable discharge from the Air National Guard, and financial delinquencies over 180 days in the last seven years or currently over 90 days.

In his Answer, Applicant admitted the debts alleged in SOR ¶¶ 1.a, 1.b, 1.c, 1.d, 1.f, 1.g, and 1.i, but provided evidence of his satisfaction of those in ¶¶ 1.b, 1.c, and 1.f with the assistance of a consumer credit counseling agency. Applicant explained that his debt with the federal government (SOR ¶ 1.g, \$41,503) was due to "a delayed reaction with [his] scheduled allotment payments" after he was discharged from the military. He admitted owing student loans that are in good standing, although to a creditor other than alleged in SOR ¶ 1.j. Applicant denied those debts alleged in SOR ¶¶ 1.e, 1.h, and 1.k. In dispute of the Guideline J allegation and related failure to report a larceny charge on his SF 86, Applicant denied he had ever been charged criminally and he submitted the certificate of his honorable discharge from the Air National Guard. Applicant admitted the alleged failure to disclose any financial delinquencies on his SF 86, which he attributed to a failed marriage and loss of employment. Applicant's admissions are incorporated as findings of fact. After a thorough review of the government's FORM and Applicant's rebuttal, I make the following additional findings:

Applicant is a 34-year-old defense contractor employee who has been in the Middle East since May 2004 screening local and third company nationals to determine their suitability to support U.S. operations in Iraq. Considered to be "a top notch team builder," Applicant has displayed a high degree of professionalism, excellent customer support, a mission-oriented attitude, and flexibility. Applicant's performance in theater was recognized in April 2006 by letters of appreciation from the program manager in Iraq and from the president/chief executive officer of Applicant's employer.

Applicant entered the United States military in late August 1992 and was granted a secret-level security clearance in November 1992. In June 1994, he began serving as a security craftsman in the U.S. Air Force National Guard. During the latter half of the 1990s, Applicant did not manage his financial accounts responsibly. A check of Applicant's credit on April 30, 2004, showed several accounts opened in the mid to late 1990s placed for collection: a personal loan taken out in December 1997 with a past due balance of \$397 as of November 2003, a credit card account placed in July 1997 in the amount of \$1,264 although with a zero balance as of April 2004, a credit card opened in September 1996 past due \$1,778, a credit card account with \$5,135 past due as of January 1998, a \$748 department store revolving charge balance as of April 1999. [\(1\)](#)

In May 2000, Applicant got married and he and his spouse had a son born in November 2001. His financial problems continued. Applicant's credit report of April 2004 reported among the past due accounts two credit card accounts on which he was an authorized user delinquent in the amounts of \$5,380 and \$3,744. Concerning accounts in Applicant's name, among those reportedly placed for collection were a \$910 past due debt to a music center in October 2000; \$4,619 on a joint account in June 2000 (not alleged); \$89 in November 2000 (¶ 1.b).

On July 17, 2001, Applicant was charged by military police with larceny of non-appropriated funds from the post exchange. Post exchange security observed Applicant placing a compact disk player valued at \$325 into the box of a compact disk player valued at \$129. When he went to place the box on layaway, he was detained and the transaction was voided. Applicant was then apprehended and transported to the military police station where he was processed before being released to his unit. His command took action to discharge him administratively under honorable conditions (general discharge). Effective October 17, 2001, he was released from active duty, character of service honorable, and transferred into the state's Air National Guard. On November 25, 2002, he was awarded an honorable discharge from the state's Air National Guard at the rank of technical sergeant (E-6). He subsequently joined the United States Army Reserve, and was granted an honorable discharge in October 2005.

Until about September 28, 2003, Applicant was employed in the civilian sector as a correctional officer in the state prison system. He failed to make timely payments and several more accounts were reported as placed for collection: \$730 in unpaid cellular phone services in December 2002 (not alleged); \$240 and \$93 in medical emergency costs in April 2003 (¶ 1.a); radiology costs of \$64 incurred in March 2003 (not alleged); hospital costs of \$86 (¶ 1.a) and \$524 (not alleged) in Fall 2002 and \$1,241 in June 2003 (¶ 1.a); apartment rental fees of \$887 in October 2002 (not alleged); electric utility costs of \$27 in March 2003 (not alleged); medical costs of \$50 in June 2003 (not alleged).

From October 2003 to late February 2004, Applicant worked as a force protection specialist for a federal contractor. Telephone costs of \$584 (¶ 1.d) went unpaid, although Applicant satisfied his delinquent cable television debt with a payment of \$103.63 (¶ 1.c). In February 2004, Applicant took a job as a security investigator/analyst with a defense contractor. Needing a security clearance for his duties, Applicant executed a security clearance application (SF 86) on February 17, 2004. He responded "No" to whether he had ever received other than an honorable discharge from the military (question 17), to whether he had been arrested, charged, or convicted of any offense not otherwise listed in the last seven years (question 26), to whether he had been over 180 days delinquent on any debt in the last seven years (question 38), and to whether he was currently over 90 days delinquent on any debt(s) (question 39).

Applicant's credit report of April 30, 2004, listed past due debt balances totaling \$15,557 and 14 accounts in the collection section. Two student loans of \$875 opened in May 1993 and September 1995 were listed as sold in 2001 (not alleged). In about May 2004, Applicant's duty station was transferred to Iraq. He and his spouse separated at that time.

Applicant's credit was checked again on September 21, 2005. Nine debts were listed as in collection, including debts of \$2,041 placed in June 2005 (¶ 1.e) and \$177 (originally \$131) placed in January 2005 (¶ 1.f). The \$103 cable television debt (¶ 1.c) was reported as in dispute. Included in the trades' section was a \$41,503 past due balance in collection due the federal government (¶ 1.g), a charge off balance of \$293 owed a jeweler that he now disputes (¶ 1.k), and a charged off automobile loan with \$4,523 past due since July 2004 (¶ 1.i). Another automobile loan, taken out in March 2005 for \$18,275, was reported as current with a \$17,874 balance. Student loan debts of \$2,625 and \$1,750 (¶ 1.j) incurred in September 1995 and May 1993, respectively, were reported as past due as of August 2005 with balances of \$1,749 and \$1,279. He was also reported to owe another student loan lender \$4,632 and \$191 on loans refinanced in June 2005. Three student loan accounts had been opened with the lender in 2002 on which he originally owed a total of \$7,851, and they had been 120 days past due as of June and July 2004. When he answered the SOR, Applicant indicated that the loans in ¶ 1.j had been sold to this lender, although it is not clear from the documentation of record. As of December 2005, Applicant was 60 days delinquent on his two outstanding student loan accounts.

On January 10, 2006, Applicant began working with a debt counseling firm to resolve his delinquencies, and to remove some disputed debts from his credit report. His counseling has been largely through correspondence given his overseas location. Through the assistance of this credit counselor, Applicant satisfied in January 2006 the \$27 electric services debt that had been in collection since March 2003 (not alleged), a telephone debt in collection since January 2005 (¶ 1.f), and the \$89 collection debt overdue since 2000 (¶ 1.b). Between March 26, 2006 and December 22, 2006, he paid \$470 on his refinanced student loans. By January 2007, he had satisfied the smaller of the two loans and had brought the other loan with a balance of about \$4,000 current. In June 2006, Applicant began paying \$200 per month toward his student loan debt that had been sold in 2001 (not alleged). As of December 2006, those student loans were in collection status. After payments totaling \$1,600 after default, he had brought the outstanding balance to \$2,562.18. With a payment of \$250, Applicant settled his outstanding emergency services debts of \$240 and \$93 (¶ 1.a) in mid-January 2007.

In September 2006, the U.S. government issued an administrative wage garnishment order in an effort to collect the \$41,503 overpayment (¶ 1.g), which he asserts resulted from the government continuing allotment payments for child support and a car note on his behalf after he was discharged from the U.S. military ("a delayed reaction with [his] scheduled allotment payments."). Applicant disputed the amount of the assessed overpayment, and in December 2006, the wage garnishment order was suspended pending investigation.

A credit report of January 11, 2007, reported unpaid balances of \$220 for telephone services placed for collection in November 2006 (not alleged) and \$4,001 for his car loan placed for collection in May 2006 (¶ 1.i). He was reported to have made no progress in resolving the \$41,503 debt in collection that he reportedly owed the federal government due to earlier overpayment (¶ 1.g), the \$584 telephone services debt in collection since January 2004 (¶ 1.d), or the apartment rental debt of \$887 charged off in October 2002 and in collection status (not alleged).

In July 2006, Applicant prepared the paperwork to divorce his spouse, including a separation agreement in which he proposed to pay child support of \$953 per month. It is not clear whether he had filed for dissolution with the court. As of December 2006, Applicant was still overseas.

In rebuttal to the government's FORM, Applicant expressed his plan to have his credit completely cleared by the end of 2007 through the assistance of the consumer credit counselor. Concerning his failure to disclose the larceny offense, Applicant continued to deny any intent to conceal while at the same time admits that it was concealed:

It was never my intention to conceal any information. My goal was to be brief to prevent any confusion or misinterpretation of the truth. I was aware of the incident, but it did not prevent me from receiving my honorable discharge. I regret that the situation ever took place and that it was concealed from you. This was an isolated incident and I did not believe that it was documented. After this situation, I enlisted in the US Army and no record of this was mentioned. I was never charged with a crime, nor have I ever received a police record as stated in the question.

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 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). 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 (App. Bd. Dec. 19, 2002).

The adjudicative guidelines set forth potentially 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline F--Financial Considerations

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. ¶ E2.A6.1.1 Applicant's April 2004 credit report listed 14 debts in the collection section and several other accounts rated as bad debts in the trades' section. Applicant has a serious history of not meeting financial obligations (¶ E2.A6.1.2.1.) and of an inability or unwillingness to satisfy debts (DC ¶ E2.A6.1.2.3) even if some debts had been listed in error as he claims. Then, in February 2005, the federal government placed an unpaid balance of \$41,263 for collection, which has been explained as allotment payments for child support and a car note after he was discharged from the military. Assuming the child support allotment was \$953 monthly as he proposed in settlement of his marital assets and liabilities, and the car note was \$413 monthly (¶ 1.i), the debt balance exceeds two years of payments. Even if his spouse did not inform him of her receipt of the child support, he knew or should have known whether or not his car note was being paid, and that the allotment should have been stopped once he was out of the military. Following his inquiry into the balance, a wage garnishment action was suspended. The balance may well be adjusted in his favor, but he has not denied that monies were paid in his benefit after his discharge. The extent of the overpayment suggests that he knew for at least some time that funds he was not entitled to were paid on his behalf.

Applicant submits his financial problems were due to his failed marriage, and that he has worked diligently to recover. A marital separation is an extenuating circumstance contemplated within mitigating condition (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)*, but the impact of the marital separation cannot be determined without evidence of income and expenditures. If Applicant's explanation as to the government debt is accepted, some of the child support payments made to his spouse after their separation did not come out of his pocket. Applicant's efforts to resolve his debts through the assistance of the credit counselor warrant consideration of MC ¶ E2.A6.1.3.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.* With respect to the debts alleged, he settled or satisfied two of the medical debts (¶ 1.a), as well as those debts in ¶¶ 1.b,

1.c, and 1.f. Of those debts disputed by him (¶¶ 1.e, 1.h, 1.j, 1.k), his student loan debt is being repaid. Applicant asserts that he has been successful in having the debt in ¶ 1.k removed from his credit report. In August 2005, Equifax reported the \$2,041 debt (¶ 1.e) was placed for collection in June 2005, he owed a past due balance of \$8,428 on the debt in ¶ 1.h, and \$270 on the debt in ¶ 1.k. None of these debts appear on his January 2007 credit report, although that alone does not negate their validity. Significantly, Trans Union had not received an update for the creditor in ¶ 1.h since 1999.

Whether or not Applicant owes those debts in ¶¶ 1.e, 1.h, and 1.k, there is the unresolved matter of the \$41,503 federal debt (¶ 1.g). He has not yet made any payments on the \$584 telephone debt (¶ 1.d) in collection with the current assignee since January 2004, or on the \$4,001 car loan balance placed for collection in May 2005 (¶ 1.i). Applicant also owes collection debts (not alleged) of \$887 to an apartment rental firm and \$220 for telephone services. The recent referral of the telephone debt in November 2006 undermines the credit counselor's assessment as of early 2006 that Applicant is not likely to experience additional debt problems.

Guideline J--Criminal Conduct

A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. ¶ E2.A10.1.1 Applicant was apprehended by military police in July 2001 on a charge of larceny of non-appropriated funds after he had attempted to purchase a compact disk player for less than its full value by placing it in the box intended for a less expensive model and then putting the box on layaway at the military exchange. While the charge was never prosecuted by military authorities, it remains relevant for consideration. Under Guideline J, DC ¶ E2.A10.1.2.1. *Allegations or admission of criminal conduct, regardless of whether the person was formally charged, applies.*

Department Counsel argues persuasively that larceny is a serious crime reflecting lack of personal integrity and good judgment. Despite the isolated nature of the attempted theft (¶ E2.A10.1.3.2. *The crime was an isolated incident*)⁽²⁾ and the passage of time since the offense (¶ E2.A10.1.3.1. *The criminal behavior was not recent*), Applicant has not shown sufficient reform, which requires meaningful acceptance of responsibility for one's misconduct as well as a demonstrated track record of compliance with the law for a sufficient period of time to guarantee against recurrence. When he answered the SOR, he denied "any of these charges" and cited his honorable discharge. In his recent response to the FORM, he expressed regret that the situation ever took place, which is not the same as expressing remorse for one's behavior. Moreover, his failure to candidly disclose the charge on his SF 86 (*see* Guideline E, *supra*) raises considerable doubt as to whether he is clearly rehabilitated within the meaning of ¶ E2.A10.1.3.6. *There is clear evidence of successful rehabilitation.*

Guideline E--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 The government contends Applicant falsified his SF 86 when he responded negatively to question 17 on the SF 86 ("Have you ever received other than an honorable discharge from the military?"). While the commander's report of disciplinary or administrative action (Item 5) indicates that Applicant was given an administrative discharge (general discharge under honorable conditions) effective October 7, 2002, from the state's National Guard, Applicant's DD 214 shows he was released from active duty into the state's Air National Guard on October 17, 2001. This was considered a transfer and not a discharge. He was given an honorable discharge on November 25, 2002. Under the circumstances, Applicant's negative response to question 17 was not false.

However, Applicant is found to have knowingly falsified his SF 86 by not disclosing the larceny charge or any financial delinquencies. The military police report indicates Applicant was apprehended and transported to the MP station where he was advised of his legal rights, processed, and then released to his unit. The actions taken by military police were the equivalent of a civilian arrest. The fact that he was not prosecuted either under the UCMJ or by civilian authorities does not negate the initial arrest or apprehension, which should have been reported in response to question 27. While a good faith mistake as to whether the military's actions constituted an arrest or charge would negate the willful intent required for deliberate falsification, Applicant admitted in his rebuttal to the FORM that he not only was aware of the incident, but that it was concealed.

As for his failure to list any delinquent debts, Applicant's April 2004 credit check showed the debt in ¶ 1.h as charged off since July 2000, the \$887 apartment rental debt as in collection since October 2002, a music center debt of \$910 in collection since October 2000, the \$27 charged off electric services debt owed since August 2003, and several other debts in collection, including the medical debts alleged in SOR ¶ 1.a, the \$89 debt in ¶ 1.b, and the \$584 debt in ¶ 1.d. He has not denied the intentional omission of delinquent debts. 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 implicated. Absent evidence that the omitted arrest and debt information was volunteered by Applicant before confrontation, I am unable to conclude that MC ¶ E2.A5.1.3.3. *The individual made prompt, good faith efforts to correct the falsification before being confronted with the facts* applies in his favor. None of the other mitigating conditions are pertinent.

Whole Person Analysis

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." ¶ E2.2.1. As of January 2007, Applicant owed more than \$50,000 in debt. Of that debt, only the student loans had been brought current (*see* ¶ E2.2.1.1. *The nature, extent, and seriousness of the conduct*; ¶ E2.2.1.3. *The frequency and recency of the conduct*). The referral of a telephone debt for collection in late 2006 raises issues of recent financial mismanagement. His efforts to resolve his indebtedness starting in early 2006 and his unquestioned dedication to his work in the Middle East are viewed favorably, but they are not enough to overcome the security concerns. His 2001 attempted larceny and his knowing false statements on his February 2004 SF 86 cast considerable doubts for his personal judgment and trustworthiness. Furthermore, the size of the federal overpayment raises questions of knowing acceptance of benefits he was not entitled to. Based on the information of record, I am unable to conclude that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant⁽³⁾

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: For Applicant

Subparagraph 1.k: Against Applicant

Paragraph 2. Guideline J: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a: For Applicant

Subparagraph 3.b: Against Applicant

Subparagraph 3.c: Against Applicant

Subparagraph 3.d: Against Applicant

DECISION

In light of all of the circumstances 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. These collection accounts were not listed in the SOR but they appear on his credit report dated April 30, 2004. Other debts were listed as well that Applicant disputes, such as a \$1,001 balance reportedly owed on a credit card, a \$4,667 installment loan debt as a cosigner reportedly collection since July 2000 (¶ 1.h), and a \$270 past due balance reportedly owed a jeweler since October 1999 (¶ 1.k).
2. A knowing and willful false statement to the federal government concerning a material matter is punishable as a felony under Title 18, Section 1001 of the United States Code. While Applicant is found to have intentionally concealed the charge from the government (see Guideline E), the government did not allege that Applicant committed criminal conduct by doing so.
3. While Applicant has settled two of the medical debts in collection, others remain unresolved.