

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant owes about \$12,916.39 in delinquent debt after being granted a Chapter 7 bankruptcy discharge in October 1998. Although an unexpected medical emergency and the loss of income were significant causes of the delinquency, financial considerations persist where Applicant has made little effort to resolve his debts. Applicant's failure to disclose his debts and bankruptcy on his March 2003 security clearance application does not raise security significant personal conduct concerns where he assumed the debts had been added to his bankruptcy, which he thought had been filed more than 7 years before. Due to the unmitigated financial considerations concerns, clearance is denied.

CASE NO: 03-26362.h1

DATE: 04/27/2006

DATE: April 27, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-26362

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Daniel J. Horgan, Esq.

SYNOPSIS

Applicant owes about \$12,916.39 in delinquent debt after being granted a Chapter 7 bankruptcy discharge in October 1998. Although an unexpected medical emergency and the loss of income were significant causes of the delinquency, financial considerations persist where Applicant has made little effort to resolve his debts. Applicant's failure to disclose his debts and bankruptcy on his March 2003 security clearance application does not raise security significant personal conduct concerns where he assumed the debts had been added to his bankruptcy, which he thought had been filed more than 7 years before. Due to the unmitigated financial considerations concerns, clearance is denied.

STATEMENT OF THE CASE

On February 3, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons under Guideline F, financial considerations, and Guideline E, personal conduct, why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant, [\(U\)](#) and recommended referral to an administrative judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

On March 3, 2005, Applicant, acting pro se, responded to the SOR and requested a hearing before a DOHA administrative judge. The case was assigned to me on August 1, 2005. On September 30, 2005, I scheduled a hearing for October 20, 2005. The notice was sent to Applicant's counsel of record based on verbal assurances of representation. At the hearing, eight government exhibits and two Applicant exhibits were admitted and testimony was taken from Applicant and his spouse, as reflected in a transcript received on November 4, 2005.

FINDINGS OF FACT

Applicant is alleged under Guideline F, financial considerations, to owe \$15,569.48 in delinquent debt following a Chapter 7 bankruptcy discharge in about October 1998 and to have monthly expenses in excess of his income as of October 2003. Under Guideline E, personal conduct, Applicant is alleged to have deliberately falsified his April 2003 security clearance application (SF 86) by responding "No" to questions 33 (any bankruptcy filing in the last 7 years), 37 (any unpaid judgments in the last 7 years), 38 (any delinquency over 180 days in the last 7 years) and 39 (any current delinquency over 90 days). In his answer, Applicant admitted the indebtedness, which he attributed to being diagnosed with cancer when he lacked medical coverage. While he entered "admit" to the guideline E allegations, he indicated he "answered the application for security clearance to the best of [his] knowledge and apparently made honest mistakes regarding debts and [his] personal debt." At the hearing, he denied the intentional falsification of his SF 86. His admissions to the bankruptcy filing, delinquent debt, and expenses exceeding his income are accepted and incorporated as findings of fact. After a thorough consideration of the evidence of record, I make the following additional findings:

Applicant is a 42-year-old maintenance mechanic who was employed most recently by a defense contractor (company A) from April 2003 until February 2005, when he was laid off due to a lack of clearance. He is subject to recall should he be granted a security clearance. Applicant worked for the company previously from 1982 to 1989 and held a security clearance without adverse incident.

In 1989, Applicant left company A for a better paying position with a local fence installer. About eighteen months later, he went to work for a manufacturer of hydraulic and mechanical components where he held a clearance. With years of experience working on race cars as a hobby, Applicant found a job as an automobile mechanic on being laid off by the hydraulics company in the mid-1990s.

In March 1998, he started his own business fabricating and installing fences and gates for residential and commercial customers. Self-employed, he had no health insurance and could count on business coming in only about nine months of the year. Applicant's spouse, who was employed part-time as a paralegal, took care of the contracts and computer work for the business.

In July 1998, Applicant and his spouse filed a joint petition for Chapter 7 bankruptcy to discharge a financial judgment of about \$50,000 awarded a prior landlord who prevailed in a damage claim against him. The debt was discharged in October 1998. [\(2\)](#)

Applicant was diagnosed with testicular cancer at age 35 in August 1999. After successful surgery, he underwent radiation for three weeks in October 1999. He incurred noncovered medical costs. He was also unable to walk for about six weeks and could not perform at the same level physically thereafter. Unable to pay the bills on her pay of \$10 plus per hour, his spouse contacted their creditors to set up some repayment arrangements but the creditors were not willing

to work with them. After September 11, 2001, his business experienced a significant decline to where he eventually closed it. (3) In February 2003, Applicant and his spouse were forced to leave their home when they could not secure a mortgage to buy the property from their landlord.

In late April 2003, needing a steady paying job, Applicant returned to work at company A, initially as an outside machinist. After a year, he transferred into his old department. In conjunction with his rehire by the defense contractor, Applicant executed a security clearance application (SF 86) on March 28, 2003. He responded "No" to questions 33 (any bankruptcy filing within the last 7 years), 37 (any judgments in the last 7 years that are unpaid), 38 (over 180 days delinquent on any debt in the last seven years), and 39 (currently over 90 days delinquent on any debts). He mistakenly thought the bankruptcy had been filed more than 7 years before and assumed any other debts had been added to the bankruptcy.

A check of Applicant's credit on September 11, 2003, revealed several outstanding delinquencies. A credit card account, opened in April 1999 and used to purchase materials for his fence business, was past due since December 2000 with a balance owed of \$661 (SOR ¶ 1.c.). (4) An account opened in January 2000 was charged off and placed for collection in January 2001 with \$2,738 owed. The balance was \$3,624 as of September 2003 (SOR ¶ 1.d.). (5) Applicant's revolving account with another lender, opened in November 1999, was cancelled by the creditor in July 2002 when it fell \$1,662 past due. The account had a reported balance owed of \$3,607 (SOR ¶ 1.f.). A revolving charge, reported opened in August 2001 and written off in July 2002, had a listed balance of \$3,735 (SOR ¶ 1.e.). Also reported on his credit record were a collection debt of \$330 owed the power company (SOR ¶ 1.j.), two outstanding default judgments of \$2,773 (SOR ¶ 1.g.) and \$331 (SOR 1.h.) from 2002, and his 1998 Chapter 7 bankruptcy discharge.

Sometime before October 20, 2003, Applicant's spouse contacted their bankruptcy attorney about possibly reopening their bankruptcy to add debts, and received assurances it could be done. Neither she nor Applicant followed through and just assumed it had been done, even though they filed no paperwork.

On October 20, 2003, Applicant was interviewed by a Defense Security Service (DSS) special agent about his unresolved indebtedness, his bankruptcy, and his failure to disclose this information on his SF 86. Applicant denied any knowledge of the outstanding indebtedness reported on his September 11, 2003 credit report. He indicated the debts might have been covered in his 1998 bankruptcy, as his bankruptcy attorney might have reopened his case to add them. Applicant denied falsifying his SF 86 by failing to list the bankruptcy or indebtedness, as he was under the impression that his filing was more than 7 years ago. Applicant provided the DSS agent with a personal financial statement reflecting a negative monthly cash flow of \$1,000 each month after payment of his monthly expenses, including \$1,300 in miscellaneous expenses. He averred that he would contact each of his creditors before 2004 and make repayment arrangements of the legitimate debts. Applicant expected an additional \$700 to \$800 in income from overtime each month.

During its investigation of Applicant's background, the DSS determined Applicant also owed \$384.61 for a civil judgment against him in June 1997 (SOR ¶ 1.b.). A check of Applicant's credit on January 7, 2005, showed no payments

of those debts that were listed on his September 2003 credit report, as well as a previously unreported debt of \$254 in collection (SOR ¶ 1.i.). Applicant's credit report of July 28, 2005, disclosed no progress toward resolving his debts.

Applicant's spouse, who had been making \$22.75 an hour, has been unemployed since January 2005 on the death of her employer, who had been an attorney in solo practice. Applicant, who had been making \$42,000 annually, was laid off from his defense contractor position in about February 2005. He collected unemployment at \$462 monthly for six months. Applicant had some odd jobs repairing cars and small fences. Their two sons, then 19 and 21, were residing at home. The elder was working for an auto parts retailer and paying rent to Applicant of \$20 per week. The younger, who worked for a grocery store for six or seven months after graduating from high school in 2004, was looking into colleges and babysitting part-time. Applicant and his spouse were living paycheck to paycheck as of October 2005. Neither Applicant nor his spouse was able to testify as to the extent of their indebtedness to Applicant's oncologist or his surgeon, although his spouse confirmed they owe money. Applicant and his spouse recently received a bill for an x-ray not covered by insurance.

Applicant drives a small race car in the summer on Saturdays. His winnings in 2005 covered his entry fees so the money did not come out of the household budget. Applicant was paying about \$20 weekly for his 19-year-old to go golfing. They stopped eating in restaurants after he lost his job. Their monthly miscellaneous expenses were nowhere near the \$1,300 Applicant estimated in October 2003, but neither Applicant nor his spouse was able to provide a reasonably accurate estimate at the hearing.

Applicant was an excellent worker with a positive attitude before he was laid off. His former foreman attests to his reliability and high quality of his work. Those who worked with him for many years consider him to be trustworthy and conscientious.

POLICIES

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

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

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

Financial Considerations. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts. (¶ E2.A6.1.1.)

Personal Conduct. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. (¶ E2.A5.1.1.)

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to Guidelines F and E:

Under Guideline F, financial considerations, the security eligibility of an applicant is placed into question when the applicant is shown to have a history of excessive indebtedness, recurring financial difficulties, or a history of not meeting his financial obligations. The government must consider whether individuals granted access to classified information are, because of financial irresponsibility, in a position where they may be more susceptible to mishandling or compromising classified information. Applicant credibly explained that the 1998 bankruptcy was pursued solely to discharge a judgment for disputed property damage to the house he rented and not consumer credit delinquencies. However, as reflected in the SOR, Applicant subsequently incurred consumer credit debts that have been delinquent since the 2000/02 time frame with an aggregate outstanding balance of at least \$8,535 (¶¶ 1.c. , 1.d., 1.f., 1.i., and 1.j.). He also has not repaid three financial judgments (¶¶ 1.a. owed since 1997, 1.g., and 1.h.). The creditor owed the debt in ¶ 1.g. reported an updated balance as of July 2005 of \$3,662, so his total unpaid debt is about \$12,916.39. The delinquent debt was incurred by him primarily but not solely for his fencing manufacture and installation business. Whatever dispute Applicant had with the veterinary service, he has an obligation to pay the judgment debt as he does

the \$330 to a light and power company for services at a prior residence. DC ¶ 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.

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)* applies to the extent that his unforeseen cancer surgery and radiation treatment left him unable to work for at least six weeks in 1999 and his business subsequently experienced a significant downturn after September 11, 2001. Yet, financial considerations persist because of his failure to make a good faith effort to address the debts after he returned to work for the defense contractor in April 2003. Applicant was on notice as of his DSS interview on October 20, 2003, if not before, ⁽⁶⁾ of the unpaid judgments, accounts in active collection, and charged off balances. He could no longer reasonably believe that his old debts had been added to his bankruptcy. Applicant indicated in October 2003 he would contact his creditors before 2004 and arrange for repayment. Neither he nor his spouse provided specific dates for any such contacts, although they both testified that she called their creditors who were unwilling to work with them. Assuming creditors were unwilling to accept less than lump sum repayment of the full amount owed, he made no attempt to go to the courthouse and pay the judgment debts.

Acknowledging the negative financial impact of his February 2005 layoff, Applicant had almost two years with \$42,000 in annual earnings before he was laid off in which to demonstrate the good faith effort required under ¶ E2.A6.1.3.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*. Even if his miscellaneous expenses were not \$1,300 per month, he and his spouse continued to go to restaurants, attend movies, pay golfing fees for their son, and pursue the family's racing hobby. Recent reductions in discretionary spending (no longer eating out) are not enough to show a favorable change in financial habits, especially where Applicant has shown little desire to resolve his legitimate indebtedness.

Moreover, the financial pressures that underlie Guideline F still exist. As of October 2005, Applicant and his spouse's financial situation was tenuous with both of them unemployed. She had been out of work since January 2005, having found no position outside of the legal field that would pay the wages she had enjoyed as a paralegal. Assuming Applicant is recalled to work by the defense contractor, there is little guarantee of a reasonably timely resolution of his debts, given his disregard and lack of financial good judgment. Applicant has exhibited little appreciation of his debt obligations. As reflected in the negative \$1,000 cash flow estimated in October 2003, he either estimated expenditures well in excess of reality or they were spending well above their means when they were both employed. While SOR ¶ 1.a. is resolved in his favor as the bankruptcy was to deal with a judgment debt of disputed validity, Applicant has failed to meet his burden of overcoming the financial considerations engendered by his unresolved delinquent debt and tenuous financial situation. SOR ¶¶ 1.b., 1.c., 1.d., 1.f., 1.g., 1.h., 1.i., 1.j, and 1.k. are resolved against him. SOR ¶ 1.e. is found for him as the government did not prove this is a separate debt from ¶ 1.c., and it does not appear on his 2005 credit reports.

Under Guideline E, personal conduct, the government alleges Applicant deliberately falsified his SF 86 by failing to disclose his unpaid financial judgments, delinquent debts, and the bankruptcy. An inference of intentional concealment may reasonably be drawn in this case based on the evidence. The credit check run in September 2003 listed the 1998 bankruptcy discharge, the unpaid civil judgments in ¶¶ 1.g. and 1.h., and other unpaid bad debts (¶¶ 1.c., 1.d., 1.f., 1.j.). Applicant has consistently denied any intentional concealment of his indebtedness, claiming that he recalled his

bankruptcy attorney "may have" added them to his bankruptcy, which he mistakenly thought had been filed more than 7 years before his SF 86.

Nothing in the language of questions 38 or 39 exempts from reporting delinquent debts included in a bankruptcy. Even so, a good faith belief that he did not have to report debts included on a bankruptcy would negate the knowing and willful intent required under 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.* The record is not clear as to when Applicant had this discussion with the bankruptcy attorney about reopening his case and adding the debt. When asked how he became aware of these unpaid delinquencies, Applicant responded:

I was called to the security office at [company A] and I was interviewed for the past debt which I forget the man's name, but he was involved in security. And once he brought this to my attention, we went and we called Attorney [X] and he said, don't worry about it, we'll add that on to the bankruptcy. (Tr. 60)

However, either Applicant or his spouse must have discussed the possible reopening of their Chapter 7 bankruptcy with their attorney sometime before Applicant's October 20, 2003, interview, where Applicant indicated that the debts might have been added to his bankruptcy. What is clear is that Applicant did not have, and still does not have, accurate knowledge of his financial situation. While this raises concerns for his financial judgment, it does not prove knowing and willful omission of delinquent debt, and I accept as credible that he was mistaken about the date of his bankruptcy. Accordingly, SOR ¶¶ 2.a., 2.b., 2.c., and 2.d. are found for him.

FORMAL FINDINGS

Formal findings as required by Section 3, Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: For 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

Paragraph 2. Guideline E: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: For the Applicant

Subparagraph 2.d.: 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. The bankruptcy records were not submitted. Applicant testified to no other debt being included in the bankruptcy ("There was no other debt at that time.") and the government presented no evidence to the contrary. (Tr. 51)

3. Applicant testified on direct examination that he closed the business sometime around September 2001. (Tr. 44) On his SF 86, Applicant indicated he owned and operated the fence company from March 1998 to February 2003 (Ex. 1), within a couple of months of his return to company A.
4. Applicant testified he had only one account with that lender. (Tr. 55) There are two separate entries on his September 2003 credit report under the same lender, a profit and loss debt of \$661 on an account opened in April 1999, and a \$3,735 debt on an account opened in August 2001 (SOR ¶ 1.e.). Only the former (SOR ¶ 1.c.) appears on his 2005 credit reports with a balance due of \$886. The debt balance in SOR ¶ 1.e. may well be due to accumulated interest, but it was not proven.
5. The debt in SOR ¶ 1.d. was listed twice, as a \$2,738 balance written off by the original creditor and as a \$3,624 collection debt.
6. Applicant testified he contacted the hospital owed the judgment in SOR ¶ 1.a. sometime after he started back to work with the defense contractor, and was told "they were just not going to deal with me. They were going to go through the court." (Tr. 46) Court records (Ex. 4) reflect a judgment date of June 1997, although it is noted that the judgment was on default and issued against Applicant under a previous address.