

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant owes more than \$35,000 in delinquent consumer credit debt incurred during a previous marriage, much of it owed since the late 1990s. While he deserves credit for paying his child support for two children, and his financial situation has been negatively affected by having to pay alimony to his ex-wife, financial considerations persist. Yet, personal conduct concerns related to deliberate omission of this debt from his security clearance application are not proven where he mistakenly believed the debt had been discharged in his former spouse's bankruptcy. Clearance is denied.

CASENO: 04-02211.h1

DATE: 04/13/2006

DATE: April 13, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-02211

**DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

**APPEARANCES**

**FOR GOVERNMENT**

Eric H. Borgstrom, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant owes more than \$35,000 in delinquent consumer credit debt incurred during a previous marriage, much of it owed since the late 1990s. While he deserves credit for paying his child support for two children, and his financial situation has been negatively affected by having to pay alimony to his ex-wife, financial considerations persist. Yet, personal conduct concerns related to deliberate omission of this debt from his security clearance application are not proven where he mistakenly believed the debt had been discharged in his former spouse's bankruptcy. Clearance is denied.

**STATEMENT OF THE CASE**

On April 15, 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 May 10, 2005, Applicant submitted an initial response in which he admitted SOR ¶ 1.i., but indicated the remaining allegations would be answered at a hearing. Applicant subsequently filed a responsive answer, notarized on June 1, 2005, and the case was assigned to me on December 20, 2005. On January 6, 2006, I scheduled a hearing for February 7, 2006. At the hearing, 12 government exhibits were admitted (exhibits 6, 7, 8, 9, 12 over Applicant's objections). Applicant's case consisted of his testimony and eight exhibits. A transcript of the hearing was received on February 17, 2006.

## FINDINGS OF FACT

Under Guideline F, financial considerations, Applicant is alleged to owe \$37,976.55 in unpaid delinquent consumer credit debt, \$7,305 in child support arrearage, and \$156.12 in unpaid state taxes for 2001. Under Guideline E, personal conduct, Applicant is alleged to have deliberately falsified his February 2003 security clearance application (SF 86) by responding "No" to questions 38 (any delinquency over 180 days in the last 7 years) and 39 (any current delinquency over 90 days). In his June 2005 answer, Applicant disputed the validity of the child support arrearage (SOR ¶ 1.i.), on which he was paying \$25 monthly, and the delinquent consumer debt, with the exception of ¶¶ 1.e., 1.g., and 1.h. He denied owing back taxes as well as deliberately falsifying his SF 86. Applicant's admissions to having delinquent debt 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 45-year-old male who has been employed as an armed first class security officer in plant protection for a defense contractor employer since mid-February 2003. <sup>(2)</sup> He holds a confidential security clearance for his duties.

Applicant served on active duty in the U.S. Marine Corps from about June 1978 to June 1998, when he was honorably discharged into the USMC Reserve at the rank of E-6, staff sergeant. He was awarded several decorations for his active duty service, including a Good Conduct Medal with four stars, an Armed Forces Expeditionary Medal, Marine Corps Expeditionary Medal with star, Humanitarian Service Medal with two stars, Combat Action Ribbon with 2 stars, Southwest Asia Service Medal with three stars. He held clearances up to the top secret level without adverse incident.

One year into his military career, Applicant was married in July 1979. He and his first wife have a son, who was born in May 1988. In August 1992, Applicant had a daughter by another woman. Applicant was stationed overseas when his daughter was born but set up an allotment from his military pay of \$150 monthly for his daughter's support. In or before April 1997, the state notified Applicant that he owed about \$7,371 in back child support for his daughter, as his prior payments directly to the girl's mother were considered gifts. Applicant retained an attorney to challenge the assessment, but did not actively pursue the issue after he separated from active duty and moved to his present locale. In February 1998, the state garnisheed his military pay in the amount of \$389 for child support.

During his marriage to his first wife, he handled the family's finances when he was home. His military duties led to several overseas postings, and she handled the finances in his absence. Aware that finances were tight, Applicant gave his spouse the money to make minimum payments of \$10 to \$25 on their credit card accounts. Yet, several consumer credit card accounts opened in Applicant's name were rated as bad debts, charged off and/or placed for collection due to nonpayment, including some accounts when he was still on active duty (¶¶ 1.a., 1.b., 1.c., 1.f.). Their financial situation did not improve on Applicant's separation from active duty, partly because he was unemployed from July 1998 to

January 1999. He worked for a temporary agency for about six months before getting a job as a warehouseman at a shopping mall.

In 2000, Applicant and his first wife separated, and she filed for personal bankruptcy. Although he was not on the bankruptcy, Applicant assumed all their debts had been taken care of. In November 2001, they divorced. Applicant, working as a laborer for a local contractor at the time,

was ordered in the divorce decree to pay child support for his son at \$106 per week, and 35% of his military retirement pay to his ex-wife in alimony.

In February 2003, Applicant commenced employment with the defense contractor. Included in the hiring package was a security clearance application (SF 86) that he executed on February 10, 2003. In response to financial record inquiries, Applicant disclosed one wage garnishment of \$525 in September 1999 for a credit card debt of his first wife. Aware that he was considered in arrears about \$7,000 in his child support for his daughter, Applicant did not disclose it as a delinquent debt as he was paying his child support and disputed the arrearage. He assumed that delinquent accounts had been cleared up in his first wife's bankruptcy, so responded "No" to questions 38 (any financial delinquent over 180 days in the last seven years) and 39 (currently over 90 days delinquent on any debts).

A check of Applicant's credit on February 24, 2003, revealed several delinquent debts (SOR ¶ 1.a. \$3,954 charged off balance, 1.b. \$1,746 bad debt, ¶ 1.c. \$1,011 charged off installment loan, ¶ 1.e. \$9,271 charged off balance, ¶ 1.f. \$4,977 bad debt, ¶ 1.g. \$418 charged off balance, making payments, ¶ 1.h. \$8,743 charged off, ¶ 1.i. \$1,406 balance 60 days past due<sup>(3)</sup>). Also listed was a \$361 unpaid collection account (¶ 1.k.) that was eventually taken off his record. In May 2003, Applicant financed the purchase of a 2002 model year vehicle, taking out a \$22,487 loan to be repaid at \$530 monthly for 47 months. He was having problems with a car he had bought in September 2000, which he voluntarily had repossessed in about July 2003.

On November 5, 2003, the state assessed an unpaid income tax obligation for tax year 2001 of \$1,982.15, based on a substitute return. A credit check of December 10, 2003, revealed Applicant had not satisfied his delinquent debts. On December 16, 2003, Applicant was interviewed by a Defense Security Service special agent, in part about his indebtedness. After being shown his credit report, Applicant expressed no knowledge about those debts in SOR ¶¶ 1.a., 1.b., 1.c., 1.e., and 1.h., which he assumed had been discharged in his ex-spouse's bankruptcy. He averred his former spouse was paying \$69 monthly on the debt in ¶ 1.g., he had contacted the creditor owed the debt in ¶ 1.i. and on December 14, 2003, had sent them the first of \$75 monthly payments he promised to make until the \$1,174 balance was satisfied. Applicant attributed his financial problems to periods of unemployment and high child support payments, including \$378 monthly for his daughter. He indicated he was contesting an assessed arrearage as well as a state assessment of \$1,982.15 for unpaid taxes for tax year 2001. Applicant indicated he failed to list any delinquent debts on his SF 86 "because [he] either did not know about them or thought they had been taken care of." Applicant furnished a personal financial statement in which he estimated a monthly net remainder of \$147, after payments on his delinquent debt of only \$75 to the debt in SOR ¶ 1.i.

In January 2004, the division of child support enforcement issued an order assessing Applicant's support obligation at \$364 monthly for his daughter and \$25 toward arrearage. On July 20, 2004, Applicant was reinterviewed about the child support arrearage for his daughter. Applicant indicated he was still contesting any arrearage as he had paid the girl's mother \$150 per month by allotment which the state had not credited, but he was paying the \$25 per month toward the arrearage.

In January 2005, Applicant married a woman with a 12-year-old son. She is paid child support of \$300 plus per month for his care by the child's father. She stopped working in summer 2005 for medical reasons. Around that same time, Applicant took in his older brother, who is an unemployed alcoholic, to take the burden off their elderly mother.

A credit check by the DSS of December 15, 2005, revealed listed outstanding past due obligations totaling \$24,793 (SOR ¶¶ 1.c., 1.e., 1.h., 1.i.). The financial history and repayment efforts of those debts alleged in the SOR follows:

Debt	Delinquency history	Repayment status
¶ 1.a. MasterCard debt \$3,954	Opened Nov 88, high credit \$2,985; \$3,954 charged off Nov 96	Contacted creditor in Fall 05 to set up repayment plan, potential settlement by paying \$1,500 in debt consolidation
¶ 1.b. Credit card debt \$1,746	\$1,746 past due as of Feb 03 with no activity since Feb 97	No payments, been trying to contact creditor since late summer 05
¶ 1.c. Personal loan \$1,011	Unsecured installment loan \$7,152 taken out Oct 95; \$1,011 charged off Jun 98, past due Nov 05	Settlement offer of \$500 (two \$250 payments), due in Feb 06 and Mar 06
¶ 1.d. Personal loan \$1,011	Same debt as ¶ 1.c.	
¶ 1.e. Credit card debt \$9,271	Opened Dec 95, charged off Mar 99 \$5,585 past due; \$9,271 balance as of Dec 05 with no activity since Mar 99	No payments, creditor agreed in Jan 06 to settle for \$4,357 through debt consolidation
¶ 1.f. Retail revolving charge \$6,559.55	Opened Apr 82, \$4,460 high credit; sold collection Jul 98, debt balance \$4,977 as of Jun 99	Late Jan 06/early Feb 06 creditor agreed to settle for \$4,200, cannot afford to make payments
¶ 1.g. Retail revolving charge \$418	Opened June 90, high credit \$788; \$418 charge off Dec 99; Rated as bad debt Dec 03, balance \$478 sold for collection	Denies debt
¶ 1.h. VISA debt in collection \$12,012	Opened Jul 87, \$8,743 charged off Mar 00; Reported as paid by original lender but balance \$11,016 by collection agency as of May 04; \$12,753 past due as of Dec 05	Creditor willing to settle for \$6,269.11, no payments; did not incur it but ex-spouse would neither confirm nor deny if she incurred it.
¶ 1.i. Child support arrearage	Assessed as of May 97, balance \$7,138 as of Dec 05	Paying as agreed

\$7,305		
¶ 1.j. State taxes \$156.12	Assessed \$1,982.15 Nov 03, adjusted to \$156.12 Jun 04	No outstanding liability as of May 05
¶ 1.k. Telephone services in collection \$361	\$361 for collection Apr 02; reported unpaid as of ay 04 but Applicant claimed in Dec 03 it was paid	Account deleted from credit report in Jan 06
¶ 1.l. Credit card \$1,633	Balance \$1,406 with \$195 60 days past due as of Feb 03; \$1,469 balance charged off as of Dec 03, \$1,539 balance as of May 04; \$1,758 charged off balance as of Dec 05	Promised to make \$75 monthly payments in Dec 03, one payment in Dec 03 with no further contact until Jan 06

In January 2006, Applicant inquired into repayment of delinquent debt totaling \$36,331.12 through debt consolidation. With some of his creditors agreeing to accept less than the full amount owed in settlement, he was offered a debt consolidation plan under which he would make three payments of \$653.96 in down payment plus 33 regular payments of \$535.06 for 36 months. As of February 2006, Applicant had not signed any debt consolidation agreement as he was still looking into other ways to pay off his debt.

As of February 2006, Applicant's net pay after taxes from his work with the defense contractor varied from \$4,000 to \$6,000 monthly depending on available overtime. Out of that income, he was paying \$760 in child support for his daughter, \$365.38 in alimony to his ex-wife, and expenses (rent \$625, car payment \$551, utilities \$400, cell phones for self and children \$80, groceries, car insurance at \$725 every 6 months, 12 % of pay to 401K). Child support of \$428 monthly for his son was being taken out of his military retirement pay. Applicant's spouse has a checking account. He pays all his bills by money order. As of February 2006, Applicant had \$145 in savings. Applicant has at least one active credit card account. As of November 2005, the account had a \$961 balance and a \$1,000 credit limit.

Applicant enjoys his job and would like to continue to work for the defense contractor. He has exhibited the utmost professionalism, courtesy, and good judgment on the job. He requires little supervision and is frequently tasked with training new hires. The company's security director considers Applicant a model for other plant protection officers. He gives Applicant the "highest recommendation" without hesitation. Those who supervise his work commend his reliability and stellar job performance and demeanor. Applicant's landlord considers him the "ideal tenant."

## 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 the Applicant, 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. As reflected in the SOR, Applicant has several unpaid financial accounts that have been delinquent since the late 1990s (¶¶ 1.a., 1.b., 1.c., 1.e., 1.f., 1.h.). Assuming the debt in ¶ 1.g. was never his, he still owes more than \$35,000 in old debt for which he is legally responsible. 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.

It is not clear in the record to what extent his former spouse's financial habits contributed to their debt. While Applicant gave her the funds to make the minimum payments on their obligations when he was away serving his country, he handled the family's finances when he was home and must have had some knowledge of their expenditures. 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)* has limited applicability in that Applicant has had to pay child support and alimony to his ex-wife on their divorce. Certainly, his financial situation has been negatively impacted by the child support for a daughter born outside of the marriage, but it is a consequence of his own actions that he should have budgeted for well before the late 1990s.

MC ¶ E2.A6.1.3.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*, applies in his favor with respect to his payment of his child support obligation (SOR ¶ 1.i.). Although the state assessed a support arrearage for his daughter of about \$7,305 in May 1997, Applicant presented evidence showing he had made \$150 payments by allotment to the girl's mother that were not credited by the state. He has been paying \$25 toward the arrearage per court order, even though he disputes its validity, and makes his regular child support payments for his son and daughter. With respect to the state tax assessment (SOR ¶ 1.j.) based on a substitute return, it was adjusted down to \$156.12 and the state reported no balance owed as of November 2005. The telephone services debt of \$361 (SOR ¶ 1.k.), listed on his credit record as an outstanding collection debt, was recently deleted by the credit bureau. He reported it had been paid in or before December 2003. Applicant's denial of the \$418 revolving charge delinquency that appears on his credit record (SOR ¶ 1.g.) is accepted even in the absence of corroboration, given his admissions to several more significant delinquencies. Favorable findings are returned as to ¶¶ 1.g., 1.i., 1.j., and 1.k. accordingly.

The Directive does not require that an applicant be free of debt before he or she can be granted access. Under the "whole person" concept to be applied in security adjudications, a person is to be viewed by the totality of their acts and omissions. Applicant's failure to make progress toward resolving those debts in SOR ¶¶ 1.a., 1.b., 1.c. (and 1.d., same debt), 1.e., 1.h., and 1.l. precludes me from finding that it is clearly consistent with the national interest to grant him a clearance at this time. Although it is not of record when Applicant learned of the debt in ¶ 1.l., he promised the creditor in or before December 2003 that he would make \$75 monthly payments, but did not follow through. Even though he believed his former spouse had taken care of all their marital debt in her bankruptcy (*see* personal conduct, below), he was made aware during his DSS interview in December 2003 of the other delinquencies. There is no evidence that he made any effort to contact his creditors until summer 2005, which would have been after the SOR was issued. He had not taken advantage of settlement offers extended to him and was still pursuing alternatives to a debt consolidation as of January 2006. While there is no evidence of recent credit mismanagement, his failure to take a more proactive approach in the face of the government's concerns raises doubts for his financial judgment. SOR ¶¶ 1.a., 1.b., 1.c., 1.d., 1.e., 1.h., and 1.l. are resolved against him.



Under Guideline E, personal conduct, the government alleges Applicant deliberately falsified his SF 86 by failing to disclose his delinquent debt. Applicant has credibly maintained that he thought the debts incurred during his first marriage were discharged in his ex-spouse's bankruptcy. He failed to recognize that debts incurred on his individual accounts cannot be discharged in a bankruptcy to which he is not a party. While this financial naivete bears negative implications for his knowledge and handling of his financial matters, it does not prove knowing and willful omission. Applicant learned of the debt in ¶ 1.1. before his DSS interview, but the credit reports are not consistent as to whether it was more than 90 days behind as of his SF 86. In contrast and undisputed, Applicant knew as of his February 2003 SF 86 that the state considered him some \$7,000 in arrears in his child support for his daughter. In light of his legal contest to the order, and payments to the girl's mother, he believed in good faith (albeit mistakenly) that the debt need not be reported. Since his omissions were not knowingly false, I find for him with respect to SOR ¶¶ 2.a. and 2.b.

### 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.: For the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: For the Applicant

Subparagraph 1.j.: For the Applicant

Subparagraph 1.k.: For the Applicant

Subparagraph 1.l.: Against the Applicant

Paragraph 2. Guideline E: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

**Elizabeth M. Matchinski**

**Administrative Judge**

- 1.
2. Applicant testified that he started working for his present employer on February 18, 2002. However, he also indicated it had been three years, which would make his start date in February 2003. His SF 86 was completed in February 2003 (*see* Exs. 1, 2).
3. *See* Ex. 8. A subsequent credit report of December 10, 2003, revealed that account as charged off with a balance of \$1,469 and no activity since May 2002. (Ex. 7)