

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant fell behind in paying his financial obligations, and his home was foreclosed on in 2002. While factors beyond his control contributed to his financial problems, Applicant also made questionable financial decisions. Despite some efforts to resolve past due accounts, he still owes about \$35,000 in delinquent debt and lacks the financial means to satisfy it in the near future. Financial considerations persist but personal conduct concerns are not proven where Applicant failed to disclose debts due to a good faith misunderstanding as to what was required. Clearance is denied.

CASE NO: 04-04636.h1

DATE: 05/26/2006

DATE: May 26, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-04636

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esq., Department Counsel

FOR APPLICANT

Thomas Albin, Esq.

SYNOPSIS

Applicant fell behind in paying his financial obligations, and his home was foreclosed on in 2002. While factors beyond his control contributed to his financial problems, Applicant also made questionable financial decisions. Despite some efforts to resolve past due accounts, he still owes about \$35,000 in delinquent debt and lacks the financial means to satisfy it in the near future. Financial considerations persist but personal conduct concerns are not proven where Applicant failed to disclose debts due to a good faith misunderstanding as to what was required. Clearance is denied.

STATEMENT OF THE CASE

On May 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.

Applicant responded to the SOR on May 19, 2005, and requested a hearing. The case was assigned to me on September 6, 2005. On September 19, 2005, I scheduled a hearing for October 27, 2005. At the hearing, six government exhibits and two Applicant exhibits were admitted, and testimony was taken from Applicant, his spouse, and his supervisor, as reflected in a transcript received on November 11, 2005.

FINDINGS OF FACT

The government alleged Applicant owes delinquent debt totaling \$99,022.87 to 10 creditors and he falsified his October 2002 security clearance application (SF 86) by listing as debts more than 180 days delinquent in the last seven years only \$500 owed to the creditor in ¶ 1.f. and \$650 to the creditor in ¶ 1.h., and denying that he was then over 90 days delinquent on any debts. Applicant denied any debt remaining on his first mortgage after foreclosure of his residence, but otherwise admitted owing at one time the outstanding balances alleged (those debts in ¶¶ 1.a. and 1.j. provisionally pending research into their validity). He averred some of the debts had been paid (¶ 1.d. and 1.i.), and he was making monthly payments on ¶ 1.h. Applicant denied any intentional falsification of his SF 86. Applicant's admissions 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 39-year-old pipefitter apprentice who entered a defense contractor's four-year apprenticeship program in October 2002. He previously served on active duty in the United States Army Reserve from March 1984 to March 1990, where he held a secret-level security clearance granted to him in January 1986. Applicant has a company-granted confidential clearance and seeks a secret clearance for his present duties.

From May 1989 to August 2002, Applicant was employed as an assistant produce manager for a supermarket in the Midwest. In about September 1996, with \$2,500 from his then girlfriend, Applicant bought a house. He secured a mortgage of \$65,184 (SOR ¶ 1.g.) in his name, and he and his girlfriend lived together in the home and shared expenses, including the mortgage. After their relationship ended and she moved out in December 1999, Applicant struggled to make the mortgage payment on his income of \$11.05 per hour. As of May 2001, he began to fall behind in paying his \$615 monthly mortgage and some credit card accounts. In July 2001, Applicant married his spouse, a pharmacy technician. Applicant took out an installment loan in excess of \$14,000 (¶ 1.b.) with his home as collateral. He added the balance of another account with the same lender to the loan, making the balance \$16,172. He gave \$3,000 of the loan to his former girlfriend to buy out the interest she had in his home. He also satisfied an outstanding balance on ¶ 1.h. to keep the account open, only to run up a balance of \$3,838 that was eventually charged off. His mortgage lender started foreclosure proceedings in 2002. Applicant listed his home for sale in an unsuccessful effort to avoid the foreclosure.

With his debts mounting and foreclosure looming, Applicant applied to work for his present employer in about August 2002. Applicant completed a handwritten Questionnaire for National Security Positions (QNSP) on August 18, 2002. In response to question 28 concerning any financial delinquencies over 180 days in the past seven years and currently over 90 days delinquent on any debts, Applicant indicated his credit card accounts in ¶¶ 1.f. and 1.h. were delinquent \$500 and \$650, respectively. He assumed the questions referred to the amount he was behind rather than the total balances owed on the accounts. In a continuation space, he added with respect to question 28, "I will catch up my delinquencies in my finances. I am selling my house to help my situation. I am also contacting a debt consolidation company for some help. Thank you." Applicant listed the two debts that he thought were the "most important" and no others because there was space for only the two under question 28. Applicant omitted his mortgage and installment loan accounts as he was uncertain whether they should have been listed, given his home was in foreclosure, and owned by the mortgagor, and he was uncertain how much money he would owe on the installment loan after the foreclosure.

In September 2002, Applicant and his spouse moved to their present locale. He started working for the defense contractor at \$10.87 per hour in October 2002, and his spouse she continued to work for her same employer. As of the move, Applicant had the following delinquent debts:

Debt as alleged in SOR	Delinquency history	Payment status
¶ 1.a. \$450 in collection	\$461 collection balance of debt in ¶ 1.c. due to accrued interest	On 24 Oct 05 arranged to pay \$50 per month for 3 months and then the balance; paid \$50 on 26 Oct 05
¶ 1.b. \$20,125 in collection (installment loan)	Personal loan \$16,172 opened Aug 01; \$1,192 past due 120 days as of Oct 02; \$20,125 balance as of Sep 03, \$2,981 past due	In 2003, creditor offered to accept \$149 monthly; no payments made as of Mar 05; in mid-Oct 05, arranged to pay \$149 monthly; one payment made by automatic deduction in late Oct 05
¶ 1.c. \$326 in collection (telephone services)	\$326 debt placed for collection Aug 01, last activity ar 00; balance unpaid as of Jan 05	Unpaid balance \$411 after \$50 payment (see ¶ 1.a.)
¶ 1.d. \$506 retail store revolving charge	Account opened Dec 93; \$491 balance as of Jun 02 past due 90 days; \$506 balance as of Sep 03, \$185 past due.	Paid \$304 in Jul 04 in settlement
¶ 1.e. \$301.87 home improvement store revolving charge	Account opened Jan 97, \$617 bad debt balance as of Sep 01 still owed as of 03	Paid 2/3 of the balance in 2003, intends to satisfy \$301.87 balance before Dec 05
¶ 1.f. \$11,271 MasterCard account	Account opened Oct 95, \$11,271 charged off with \$1,378 past due as of Mar 02	In Jun 05, creditor offered to accept \$35 weekly, did not make payments as spouse not working; paid \$595 in Oct 05, intends to pay \$140 monthly until satisfied
¶ 1.g. \$61,971 mortgage loan	Sep 96 loan for \$65,184, \$61,971 balance with \$4,325 past due as of Mar 02; foreclosure	zero balance owed after foreclosure
¶ 1.h. \$3,872 MasterCard account	Revolving charge opened Sep 94, \$3,300 credit limit; \$3,838 balance in collection May 02, \$293 past due; \$4,709 balance as of Sep 03; \$5,098.60 balance as of Jun 04	Paid \$100 monthly Jun 04 to Jun 05, \$120 monthly since
¶ 1.i. \$119 in collection (satellite television service)	\$119 placed for collection Nov 02; unpaid as of Jul 03	Paid in or after Aug 04
¶ 1.j. \$81 in collection (utility services)	\$81 placed for collection Mar 03	No payments, no success in contacting collection agency
(Not alleged) DISCOVER card	Account opened Feb 98, high credit \$5,700; \$3,395 balance 60 days past due as of May 00; \$4,520 charged off Dec 02	Settled \$4,520.96 balance in late Jul 04 on payment of \$1,810

On October 9, 2002, in Applicant's presence, an employee in the defense contractor's security department entered the information from Applicant's QNSP onto a SF 86 form to be submitted to the government. The two debts Applicant had disclosed on his QNSP (¶¶ 1.f. and 1.h.) were listed in response to question 38 (any delinquency over 180 days in the last seven years). The security department employee entered a negative response to question 39 concerning any debts over 90 days delinquent. When presented the typewritten SF 86 for his signature, Applicant informed the security official of her error in answering "No" to question 39. She refused his request to start over, but added in response to question 43, "90 DAY DELINQUENT DEBTS ARE EXACTLY THE SAME AS 180 DAYS DELINQUENT DEBTS, THAT QUESTION SHOULD HAVE A YES ANSWER." Applicant then signed the form.

A check of Applicant's credit by the Defense Security Service (DSS) on October 16, 2002, revealed the debt in ¶ 1.h. had a \$3,838 balance and was in collection, and the debt in ¶ 1.f. had been charged off in the amount of \$11,271. Also listed were the debts in ¶¶ 1.b. (\$1,192 120 days past due), 1.c., 1.d. (\$87 past due 90 days), 1.e. as zero balance but as charged off account, and 1.g. as \$4,325 past due with a balance of \$61,971 with foreclosure started. Other accounts that had been in collection were reported as paid.

In about April 2003, Applicant started the apprenticeship program with the defense contractor and his pay increased to \$13.05 hourly. In August 2003, the lender owed the debt in ¶ 1.f. agreed to settle for \$5,600. Applicant did not accept the offer as he was paying on other obligations. A subsequent check of his credit on September 11, 2003, revealed ¶ 1.f. was still owed, the balance of ¶ 1.h. had risen to \$4,709, his DISCOVER card account had been charged off with \$4,520 owed, the loan in ¶ 1.b. had been placed for collection and had a balance of \$20,125, ¶ 1.d. had been charged off with \$501 owed, and \$119 (¶ 1.i.) in unpaid satellite television services had been placed for collection. He was reported to owe nothing on his mortgage (¶ 1.g.) after foreclosure.

On October 28, 2003, Applicant was interviewed by a special agent of the DSS. He disclosed his debts, confirming the balances owed on his recent credit report, but could neither admit nor deny a balance remaining on his mortgage after the foreclosure. He admitted he had not made any payments on the accounts except for ¶ 1.i., which he indicated he satisfied in September 2003. Applicant expressed his intent to fully satisfy his remaining indebtedness once he was financially able to do so, and he provided a personal financial statement listing an estimated monthly net remainder of \$709 not including any payments on his past due accounts. Applicant explained that he listed "the most important delinquent debts" on his SF 86 because there was "not enough room" on the form.

In about April 2004, Applicant was promoted to second class mechanic with a consequent increase in his hourly wage to \$15.60. Applicant made some effort to satisfy his indebtedness in 2004, settling the debt in ¶ 1.d. and his DISCOVER card for less than the full balance. He also arranged to repay the debt in ¶ 1.h.

On August 5, 2004, in response to DOHA interrogatories, Applicant again denied any intentional falsification of his SF

86:

There were 2 blanks on the form. I put the debts I was furthest behind in the spaces provided. This form 86 was filled out and signed 8-18-2002 at that time those credit cards were way behind on payments. Should I have used other paper to list everything I could? I thought I filled it out properly.

Applicant provided documentation of his efforts to resolve his debts. He admitted he still owed the debts in ¶¶ 1.a., 1.b., 1.e. (which he hoped to satisfy by September 2004), 1.f., and 1.j. He expressed his intent to repay his debts.

At least one credit bureau reported that as of March 15, 2005, Applicant had not paid those debts in ¶¶ 1.a., 1.b., 1.h., 1.i. (as of July 2003), and 1.j. Applicant was reported to have a zero balance owed on his mortgage (¶ 1.g.) after foreclosure. The debt in ¶ 1.f. was not listed.

In about April 2005, Applicant was promoted to first class mechanic at \$19.62 per hour. He took advantage of overtime opportunities, requesting to work extra hours weekly. Applicant's spouse worked as a pharmacy technician until July 2005. Her take home pay was about \$350 weekly, exclusive of overtime earnings, and she usually worked between 45 and 60 hours a week. She had to stop working due to a physical disability, which negatively affected their financial situation. They fell behind in their rent, and borrowed \$500 from her parents. In mid-October 2005, she began to receive disability benefits totaling \$302.09 weekly, retroactive to July 2005. With the retroactive disability payment of \$2,790, they caught up in their living expenses, including monthly satellite television costs of \$119⁽²⁾ and Internet service costs of \$39. They also paid back her parents, and Applicant made payments on ¶¶ 1.a., 1.b., and 1.f. Her condition continues to deteriorate so she is not likely to return to work. Most of her medical expenses are covered by insurance but they have prescription and co-pay costs. She plans to start injections for pain management that cost \$300 each. She does not know whether they are covered by insurance.

Applicant and his spouse together handled payment of their financial obligations until she stopped working. Since July 2005, she has paid the bills. When his debts became an issue for his clearance, Applicant and his spouse agreed to pay off the smaller debts first and then tackle the larger of his debts, increasing the amounts paid "later down the road." Applicant and his spouse do not have a savings account but their joint checking account had a balance of about \$2,000 as of October 2005. Applicant was paying \$25 weekly for a van to drive him to work since his license had been suspended for five years until January 2006 for speeding, habitual offender. His speeding tickets cost him about \$300 each. He and his spouse travel home for Christmas every year at a cost to them of about \$600.

Applicant has been a very good worker for his employer. His supervisor is aware of his indebtedness as alleged in the SOR but he has seen no negative affect on Applicant's job performance. Applicant intends to satisfy his debt, but he estimates it will take him 15 years to do so.

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 got into financial trouble after he and his former girlfriend terminated their relationship and he had to pay all of his living expenses, including his \$615 monthly mortgage, on an hourly wage of \$11.05. His financial situation did not improve significantly after his marriage in July 2001 even though his spouse was employed. While the Directive provides for mitigation where debts are incurred because of unforeseen circumstances (see E2.A6.1.3.3. *The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation)*), Applicant exercised poor financial judgment. He took out a sizeable (about \$14,000) installment loan (¶ 1.b.) well in excess of the \$2,500 or \$3,000 that he owed his former girlfriend. Then, after satisfying with the loan monies a debt balance owed to the creditor in ¶ 1.h., he subsequently ran up \$3,838 in unpaid charges on that same account by May 2002. By the time he relocated in September 2002 to work for his present employer, his home was in foreclosure, he was past due \$1,192 on his installment loan, and several consumer credit accounts had been charged off and/or placed for collection. 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.

Applicant had not satisfied any of his past due accounts as of his DSS interview in October 2003. Yet he deserves credit for taking advantage of overtime, and making payments toward some of his delinquencies in 2004. He paid \$100 monthly on ¶ 1.h., settled his DISCOVER card debt on payment of \$1,810, and paid ¶ 1.d. in full. He paid his satellite television debt (¶ 1.i.) sometime after August 2004. These efforts to resolve his debts, all taken before the SOR was issued, fall within mitigating condition E2.A6.1.3.6. *The individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts*, and warrant favorable findings as to those debts.

Applicant still owes about \$411 on ¶ 1.a. (same debt as ¶ 1.c.), \$20,000 on ¶ 1.b., \$301.87 on ¶ 1.e., \$10,656 on ¶ 1.f., about \$3,000 on ¶ 1.h., and \$81 on ¶ 1.j. Apart from continuing his payments on ¶ 1.h., he made little headway toward resolving his delinquencies during the first half of 2005 when he and his spouse were both working. Just before his hearing, he paid \$50 on ¶ 1.a., \$149 on ¶ 1.b., and \$595 on ¶ 1.f. on receipt of her disability benefit. While his failure to make any payments between July 2005 and October 2005 is excused because his spouse had to stop working due to her medical condition (see E2.A6.1.3.3.), his outstanding delinquent debt is sizeable in relation to his income. Nothing in the Directive requires that an applicant be debt free before he can be granted access, but there must be sufficient objective indicators that financial problems are being resolved and not likely to recur. There is no evidence of recent over extension on consumer credit. The television football package and travel over the Christmas holidays are the only extravagances of record. Their financial situation is improved now that his spouse is receiving her disability payments, and they are not currently behind in their living expenses. However, Applicant does not have the funds available to resolve his indebtedness in the near future. He and his spouse have little set aside for emergency expenses, as reflected in the need to borrow from her parents to pay their mortgage when she had to quit working. Applicant estimates it will take about 15 years to resolve his outstanding obligations, and additional medical costs are likely given his spouse's

condition. It is simply too soon to conclude that his financial problems are safely behind him, notwithstanding the good faith he has recently exhibited in attempting to resolve his debts. SOR ¶¶ 1.a., 1.b., 1.e., 1.f., and 1.j. are resolved against him. SOR ¶ 1.g. is found for Applicant as the government did not prove that Applicant is being held responsible for the remaining balance on the mortgage following the foreclosure (*see* Ex. 6).

Under Guideline E, personal conduct, the government alleges Applicant deliberately falsified his SF 86 by listing only two of his debts. Applicant disclosed in response to question 38 that the debts in ¶ 1.f. and 1.h. were \$500 and \$650 delinquent, respectively. Applicant credibly explained that he reported the past due amounts rather than the total balances owed. Even though his credit report of October 2002 indicates the debt in ¶ 1.f. was past due in the amount of \$1,378 rather than the \$500 he reported, he clearly placed the government on notice of these two debts, and I find no deliberate misrepresentation as to these two debts. As for his failure to report the sizeable installment loan debt in ¶ 1.b. and the mortgage loan in ¶ 1.g., I accept his explanation that since foreclosure proceedings had commenced on his home, he was not certain whether he still owed on those two accounts. Inattention to financial matters, in this case a failure to understand the financial ramifications of the foreclosure, raises financial judgment rather than falsification concerns. Applicant had other minor debts which he did not list because there were only two spaces available on the QNSP that he completed for his employer (Ex. A). The QNSP, from which the information was taken for the SF 86 eventually submitted, has only two spaces designated specifically for indebtedness, although there is also a continuation space "to continue answers to all other items⁽³⁾ and any information [the applicant] would like to add." Applicant did not list any other debts on the QNSP, but indicated he intended to "catch up his delinquencies in his finances." His failure to list other debts on review of the SF 86 prepared for his signature was due to a good faith misunderstanding as to what was required.

Concerning the alleged falsification of question 39 (currently over 90 days delinquent) on the SF 86, the application submitted to the government bears a negative response to that inquiry. On the original, handwritten QNSP that he provided to his employer, Applicant had checked off the yes box in response to any delinquency currently over 90 days. When asked to review his SF 86 typed by his employer, Applicant noted the error with regard to question 39, and he asked that his form be retyped. While the security employee refused to do so, she entered in the additional remarks section, "90 DAY DELINQUENT DEBTS ARE EXACTLY THE SAME AS 180 DAYS DELINQUENT DEBTS, THAT QUESTION SHOULD HAVE A YES ANSWER." SOR ¶¶ 2.a. and 2.b. are resolved in his favor, as the government did not prove a knowing and willful falsification of his SF 86.

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.: For the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: For the Applicant

Subparagraph 1.i.: For the Applicant

Subparagraph 1.j.: 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. As of October 2005, Applicant was paying for basic satellite television service plus a football package that cost an extra \$50 month for the season.

3. The space is to be used to provide additional information for all items other than 9, 10, and 11. (*See Ex. A*)