

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has a history of late payment of his financial obligations, due in part to financial mismanagement. Several tax liens were filed against his property for failure to pay his real estate taxes on time between April 1997 and May 2003, although the liens were released after he satisfied the taxes. As a result of being laid off from his job with a defense contractor in February 2005, Applicant was behind about \$3,000 to \$4,000 in paying his utility costs and property taxes as of August 2005. Despite recent efforts to reduce unnecessary expenses, financial considerations concerns persist. Personal conduct remains of concern as well because he did not disclose his delinquent debts or his tax liens on his security clearance application. Clearance is denied.

CASENO: 04-05196.h1

DATE: 01/30/2006

DATE: January 30, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-05196

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of late payment of his financial obligations, due in part to financial mismanagement. Several tax liens were filed against his property for failure to pay his real estate taxes on time between April 1997 and May 2003, although the liens were released after he satisfied the taxes. As a result of being laid off from his job with a defense contractor in February 2005, Applicant was behind about \$3,000 to \$4,000 in paying his utility costs and property taxes as of August 2005. Despite recent efforts to reduce unnecessary expenses, financial considerations concerns persist. Personal conduct remains of concern as well because he did not disclose his delinquent debts or his tax liens on his security clearance application. Clearance is denied.

STATEMENT OF THE CASE

On January 13, 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. [\(U\)](#) Specifically, the government alleged Applicant owes delinquent debt totaling \$7,944 to seven creditors and his expenses exceed his income, and he falsified his April 2003 security clearance application (SF 86) by denying any liens had been filed against his property and that he had debt more than 180 days delinquent in the last seven years.

On February 8, 2005, Applicant answered the SOR, and requested a hearing. The case was assigned to me on July 8, 2005. On July 20, 2005, I scheduled a hearing for August 10, 2005. At the hearing, an initial question was raised as to DOHA's jurisdiction, as Applicant had been terminated from his employment with the defense contractor on February 18, 2005, for lack of work in his area that did not require a clearance. Jurisdiction was accepted based on assurances that Applicant is subject to recall to his job by the defense contractor if his clearance issue is adjudicated favorably and the hearing proceeded to its conclusion. The government entered seven exhibits and Applicant one exhibit. Applicant

testified as reflected in a transcript received on August 26, 2005.

FINDINGS OF FACT

In his Answer, the Applicant admitted owing only two of the alleged debts (SOR ¶¶ 1.c. and 1.d.), and that his expenses exceed his income. Applicant denied the remaining debts as well as any deliberate falsification of his April 2003 security clearance application. 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 41-year-old married father of two children (daughters born in 1987 and 1990) who was employed by a defense contractor (company X) from April 2003 to February 2005 when his interim secret-level clearance was withdrawn and he was laid off due to lack of a clearance. He is subject to recall by company X should his clearance be adjudicated favorably.

Applicant worked for company X previously from 1982 to May 1988 at an hourly rate that eventually rose to \$12.02. He held a confidential security clearance, which was granted to him in June 1982. From 1988 to about 1991, he was employed as a machinist for another company at \$11.50 an hour. After the business went bankrupt, Applicant was out of work for five months until he was hired on in May 1991 at a new company started by the owners of the bankrupt business. He was paid about \$14.20 an hour as a machinist. From about 1988 to 1998, Applicant's spouse owned and operated a small restaurant with her mother that was open only for lunch. They did not realize any significant income from the business although it paid for itself.

Neither Applicant nor his spouse was good at budgeting their expenses or paying bills and at times they spent money foolishly. They began to fall behind in paying their mortgage, property taxes, and medical bills, starting in the mid-1990s. Current in their mortgage loan of \$73,677 taken out in November 1992, Applicant and his spouse refinanced with the same lender in February 1994, taking out a new 15-year loan of \$86,919. In March 1995, they took out a second mortgage (SOR ¶ 1.b.). Even though Applicant had started working as a computer-aided design draftsman at \$16.28 per hour in February 1997, an increase over what he had been earning, they were late in paying their second mortgage as well as their property taxes. Tax liens were filed against Applicant in the amounts of \$702 in April 1996, \$743 in April 1997, and \$875 in April 1998.

In 1998, Applicant's spouse went to work as a cook for the local school system. In September 1998, Applicant and his spouse refinanced their mortgage with a loan of \$96,000 held by a new lender. In lieu of defaulting on their second mortgage, on which was owed about \$10,000, the creditor agreed to take a lesser amount in a payoff. The \$6,078 balance of the loan was listed as a charge off for accounting purposes. Applicant denies owing the debt and collection is

not being pursued by the creditor. The delinquent real estate taxes on his home were satisfied in the refinancing, and the liens were released in October 1998.

In February 1999, a local hospital obtained a judgment against Applicant in the amount of \$292. In April 1999, the town filed another lien, this time in the amount of \$452, for failure to pay real estate taxes. In September 1999, a credit card debt delinquency was settled for less than the full balance. Applicant and his spouse were also thirty days late several times on their \$890 monthly mortgage payment. In November 1999, Applicant took out a second mortgage of \$11,797, to be repaid at \$159 per month. He fell behind as many as 120 days on the loan. In May 2000, a tax lien of \$919 was filed against Applicant because of past due real estate taxes on his home. The April 1999 and May 2000 tax liens were released on payment in August 2000. From September 2000 to February 2001, Applicant worked part-time for a hardware retailer to make extra money to pay household expenses, including the second mortgage.

Applicant was also unable to pay the balance of his gas bill, and it reached a high of \$4,082. He paid whatever he could afford, usually between \$125 and \$150 monthly toward the balance, which was acceptable to the utility service provider, and had reduced the balance to \$1,003 as of January 2003 (SOR ¶ 1.g.). Applicant again failed to pay his real estate taxes on time, and in May 2002 a tax lien was filed against him in the amount of \$1,023.

In July 2002, Applicant and his spouse refinanced their mortgage with their current mortgagor, taking out a new loan of \$121,000, to be repaid at \$1,156 monthly. The outstanding real estate taxes were paid in or before December 2002, and the lien was released. In August 2002, Applicant satisfied the \$292 hospital judgment, but another medical provider placed a \$337 delinquent debt for collection in October 2002 (SOR ¶ 1.d.). In February 2003, the hospital obtained a second judgment against Applicant, this one for \$257, that he paid in June 2003.

Applicant returned to work for company X as a first class machinist in about March 2003.⁽²⁾ Needing a security clearance for his duties, Applicant executed a security clearance application (SF 86) on March 27, 2003. He responded negatively to whether in the last seven years he had any financial judgments filed against him that had not been paid (not alleged), any liens placed against his property for failing to pay taxes or other debts (SOR ¶ 2.a.), or any debts delinquent more than 180 days (SOR ¶ 2.b.). An electronic version of the form was subsequently prepared and submitted on April 1, 2003. Applicant did not change his responses to the financial inquiries before the form was submitted to the government.⁽³⁾ A check of Applicant's credit on April 2, 2003, revealed the settled second mortgage (¶ 1.b.) as a charged off balance of \$6,078, the \$337 medical bill in collection (¶ 1.d.), and the tax liens released with the exception of the May 2002 lien of \$1,023. No outstanding credit card delinquencies were reported by the credit bureaus.

In December 2002, the \$1,023 tax lien against his property was released. Sometime in April 2003, an outstanding dental debt of \$763, on which there had been no activity since August 2002, was placed for collection (¶ 1.c.). Applicant again failed to pay his real estate taxes on time and in May 2003, a \$558 lien was filed by the town against his property. In June 2003, Applicant satisfied the \$257 hospital judgment. In September 2003, Applicant and his spouse financed a vehicle for her, taking out a loan of \$16,087 to be repaid at \$382 monthly while the medical debts in ¶¶ 1.c. and 1.d. went unpaid. That same month, Applicant's former employer obtained a \$686 judgment against Applicant in a dispute

with him over payment for vacation time. A check of Applicant's credit on February 2, 2004, revealed the medical debts (¶¶ 1.c. and 1.d.) as still outstanding, but Applicant had through payments reduced the balance of his utility services debt (¶ 1.g.) to \$138.

A Defense Security Service (DSS) special agent interviewed Applicant on February 5, 2004, about his delinquent property taxes and the unpaid financial judgment and medical bills. Applicant explained his former employer had obtained the judgment in a dispute over his vacation pay, which he was repaying at \$140 per month. He denied owing the \$6,078 mortgage debt, but acknowledged the medical debt delinquencies and that he had been late at times in paying his property taxes, explaining that "neither [he] nor [his] wife are [sic] good at budgeting or paying bills." Applicant estimated miscellaneous monthly expenses of \$640, leaving him with a monthly negative cash flow of \$795. He admitted spending "near to \$3,000.00 per year on golf, bowling and racing," but averred he would attempt to cut back on those expenses. He attributed his omission of the judgments and tax liens from his SF 86 to an oversight on his part. (Ex. 4) In June 2004, Applicant satisfied the judgment owed his former employer with a final payment of \$162.50.

As of December 2004, Applicant owed \$413 (\$270 past due) to his utility provider (¶ 1.g.). He was current on his car loan payments (balance \$13,366) and mortgage, and had no outstanding credit card debt, but had not paid the medical bills in collection. In February 2005, Applicant was laid off from his job at company X since there was no work for him without a clearance. For the next five months, he collected unemployment compensation of about \$415 weekly. His spouse was employed as a cook at a local elementary school 20 hours weekly at an hourly wage of \$13. They fell behind in their bills about \$200 to \$300 every month during his layoff

Applicant, who had already stopped his participation in a golf league, terminated his long distance telephone service sometime in Spring 2005 as his daughter had been incurring monthly charges of about \$150. On her graduation from high school in June, she moved out of the house. As of June 2005, Applicant owed \$746 to his natural gas provider but his account was not rated as past due. The medical and dental debts went unsatisfied. In July 2005, Applicant started working in machine assembly for a new employer at \$17 an hour, \$3.00 less per hour than he had earned at company X with no overtime and at some distance from his residence. His spouse worked for about a month as a cook to bring in extra income and they reduced their monthly miscellaneous expenses to \$200, but with his additional transportation costs to get to work, they fell behind in their gas and telephone payments and did not pay their property taxes due in July 2005. ⁽⁴⁾ As of August 2005, Applicant owed about \$3,000 to \$4,000 for utility services (\$150 for his telephone and \$795 for natural gas) and property taxes in addition to those debts in ¶¶ 1.c. and 1.d. Applicant anticipated that once his spouse returned to her school job in September 2005, they would be able to catch up financially.

Applicant just learned that his older daughter is pregnant. Although she lives with her boyfriend, Applicant expects he will have to provide some financial support for her.

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. While the government alleged Applicant had delinquent debt of \$7,944, it was not clearly established that Applicant owed the \$70 debt in ¶ 1.a.,⁽⁵⁾ or that his account with the creditor in ¶ 1.f. had ever been delinquent. Applicant is not being held responsible for the \$6,078 (¶ 1.b.) listed as a charge off balance following the refinancing of his home in 1998. The judgment awarded his former employer (¶ 1.e.) was satisfied in June 2004, before the issuance of the SOR, and it arose because of a dispute over vacation pay. Favorable findings are returned as to ¶¶ 1.a., 1.b., 1.e., and 1.f. of the SOR.

Financial considerations concerns are raised by those debts alleged in ¶¶ 1.c., 1.d., and 1.g. The \$763 dental debt and \$337 medical debt have been in collection status since April 2003 and October 2002, respectively, and remain unpaid. Applicant has a history of falling behind in paying for his natural gas, and his account was \$270 past due as of December 2004. While the creditor did not report a past due balance as of July 2005, Applicant owes about \$795 for gas services. Yet, the primary concern in this case is not so much the amount of delinquent debt, given its relatively minor amount, but rather Applicant's history of financial mismanagement. As of February 2004, Applicant reported a net monthly negative cashflow of \$795 (¶ 1.h.), due in significant part to miscellaneous expenses totaling about \$640, including for golfing, bowling, car racing. 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.

Applicant has exhibited some effort to repay his creditors (*see* MC ¶ E2.A6.1.3.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). He paid his delinquent property tax debts in 1998 and 2002 by refinancing his mortgage. For several years, he has made payments, albeit late on occasion, to his natural gas provider. While they have not been enough to get caught up, the gas company has accepted his partial payments and not turned over any past due balances for collection.

As of August 2005, Applicant was again behind in meeting his monthly expenses and obligations. Since he was laid off from his job with company X in February 2005, he has fallen short of meeting his expenses by \$200 to \$300 monthly and did not pay his property taxes by the July 2005 due date. He estimates he is behind about \$3,000 to \$4,000, if the taxes are taken into account, although he has managed to remain current in his mortgage and car loans as he has in the past. While 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 because of the unforeseen job layoff, his present situation is not an aberration.

To his credit, Applicant has taken steps to reduce his expenses by canceling his long distance telephone service, and he no longer golfs. Yet, it is too soon to conclude that his financial problems are behind him. He has made no effort to repay the medical and dental debts in collection, his expenses continue to exceed his income, and there is no evidence that he has received financial counseling. SOR ¶¶ 1.c., 1.d. and 1.h. are resolved against him, but his payments to the gas company warrant a favorable finding as to ¶ 1.g.

Under Guideline E, personal conduct, the government alleges Applicant deliberately falsified his SF 86 by failing to disclose his tax liens, the \$6,078 written off by the holder of his second mortgage in September 1998, or the \$337 medical bill in collection. During his DSS interview in February 2004, Applicant attributed his negative response to the tax lien question to "oversight" on his part. At his hearing, Applicant explained that since the tax liens had been paid off, he "did not consider that [he] still had them." After he noted that an affirmative response was required even if the tax liens had been paid, Applicant testified, "I wasn't sure--I misread that, I believe." (Tr. 68-69) An inference of intentional concealment may fairly be drawn in this case based on the number (six) tax liens filed against him between April 1999 and May 2002 and the unambiguous inquiry ("In the last 7 years, have you had a lien placed against your property for failing to pay taxes or other debts?"). His explanations do not persuade me otherwise.

As for the omission of the two debts, Applicant testified that the second mortgage had been paid off, and that while he knew he was behind, he did not know how many days. While Applicant explained that the creditor took a lesser amount in a payoff to avoid him defaulting, there is no evidence that it was more than 180 days delinquent as of the mortgage refinancing in September 1998. However, it stretches credulity for Applicant to claim that he did not believe the medical debt in collection since October 2002 or the dental debt of \$763 (¶ 1.c., not alleged under ¶2.b.) were over 180 or 90 days delinquent as of his SF 86. His credit report of July 6, 2005 (Ex. 7) indicates there had been no activity on the medical debt since January 2002 or on the dental debt since August 2002. While Applicant admits he has poor financial management skills ("I'm not good at financial things, stuff." Tr. 71), he has not claimed he was unaware of his outstanding medical and dental debts. Even assuming he did not realize that medical debt (SOR ¶ 1.d.) was delinquent more than 180 days, he knew it had been placed for collection in October 2002. While the government did not allege that Applicant falsified his response to question 39 on the SF 86 (any delinquencies over 90 days), his negative answer to question 39 casts considerable doubts on his claim of good faith mistake. His knowingly false answers to financial record inquiries on his SF 86 fall within 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.*) Applicant has a heavy burden of overcoming the negative inferences for his judgment, reliability, and trustworthiness raised by his failure to disclose his tax liens and delinquent debt to the government.

The government must be assured that those granted access can be counted on to fulfill their obligations of full candor. When interviewed by the DSS agent in February 2004, Applicant admitted he had been delinquent at times in paying his personal property taxes and medical bills. MC ¶ E2.A5.1.3.3. *The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts,* is inapplicable where the correction was not reasonably prompt. His failure to provide a consistent, credible explanation for the omission of relevant financial record information from his SF 86 engenders doubt as to whether his representations can be relied on. SOR ¶¶ 2.a. and 2.b. are resolved against 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.: For the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against 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 he returned to company X in February 2003 (Tr. 79), but his SF 86 signed on March 27, 2003, indicates he was still working at his previous employer (Ex.1).

3. The government alleged in the SOR that Applicant falsified an April 1, 2003 SF 86, which is the electronic version of the SF 86 (Ex. 2) rather than the form that bears his actual signature and a date of March 27, 2003 (Ex. 1). The circumstances under which the April 1 version was prepared are not of record. Both forms contain negative responses to questions 36 (tax liens), 37 (unpaid judgments), and 38 (financial delinquencies over 180 days).

4. There is no evidence the town had placed a lien against Applicant's real estate for the unpaid taxes due July 2005.

5. Although there is a record of delinquent payment of his local real estate taxes, it is not clear what this alleged debt pertained to and it is disputed by the Applicant.