

KEYWORD: Financial; Personal Conduct

DIGEST: As of October 2004, Applicant owed \$24,735 in student loan debt in collection and about \$2,900 in delinquent consumer credit and utility services debt. Applicant has resolved some of his past due debts, he is making payments on his student loan debt as a precondition of acceptance into a student loan rehabilitation program, and he and his spouse no longer have a negative monthly balance after payment of expenses. Yet, financial considerations concerns persist where other delinquencies are unpaid, he has not notified these creditors of his current address, and the terms of repayment of his student loan debt are yet to be determined. Personal conduct remains of concern as well because he did not disclose his delinquent debts on his security clearance application. Clearance is denied.

CASENO: 04-05268.h1

DATE: 01/30/2006

DATE: January 30, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-05268

**DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

**APPEARANCES**

## **FOR GOVERNMENT**

Daniel F. Crowley, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

As of October 2004, Applicant owed \$24,735 in student loan debt in collection and about \$2,900 in delinquent consumer credit and utility services debt. Applicant has resolved some of his past due debts, he is making payments on his student loan debt as a precondition of acceptance into a student loan rehabilitation program, and he and his spouse no longer have a negative monthly balance after payment of expenses. Yet, financial considerations concerns persist where other delinquencies are unpaid, he has not notified these creditors of his current address, and the terms of repayment of his student loan debt are yet to be determined. Personal conduct remains of concern as well because he did not disclose his delinquent debts on his security clearance application. Clearance is denied.

### **STATEMENT OF THE CASE**

On October 19, 2004, 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 \$26,373 to five creditors and his expenses exceed his income, and he falsified his September 2003 security clearance application (SF 86) by denying any debts delinquent more than 180 days in the previous seven years and any debts that were then delinquent more than 90 days.

Applicant filed an initial response to the SOR dated December 3, 2004, which was not considered complete because he did not admit or deny each allegation or have it notarized. On January 25, 2005, Applicant submitted a responsive answer, and requested a hearing. The case was assigned to me on July 7, 2005. The hearing, originally scheduled for August 8, 2005, was held on August 10, 2005, pursuant to an amended notice issued July 26, 2005. Four government exhibits and four Applicant exhibits were admitted and testimony was taken from the Applicant, as reflected in a transcript received on August 26, 2005. At the government's request, the SOR was amended to reflect September 19,

2003, as the date Applicant signed the security clearance application he is alleged to have falsified. The record was held open at Applicant's request until August 26, 2005, for him to submit documentation post hearing. Applicant timely submitted four documents, which were marked and admitted as Exhibits E, F, G, and H, Department Counsel having filed no objections by the September 8, 2005, due date.

## FINDINGS OF FACT

In his January 2005 Answer, Applicant admitted the indebtedness alleged as well as having a monthly negative cash flow (expenses exceeding income) of \$749 as of February 2004. He denied the deliberate falsification of his September 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 28-year-old senior draftsman employed by a defense contractor since September 2003. He seeks a security clearance for his duties.

In June 1999, Applicant graduated from college with a degree in physical education. He took on government-sponsored student loans to pay for his education in the amounts of \$2,625 in January 1996, \$3,500 in November 1996, \$5,500 in June 1998, and \$5,500 in February 1999. He worked as a substitute teacher at \$15 an hour from September 1999 to July 2000. Applicant then took a position as a technical author for a lithography company where he earned about \$40,000 annually for the next three years.

Due to financially irresponsible decisions, Applicant allowed several accounts to become delinquent. A credit union obtained a \$520 judgment against him in arch 1999, which he paid in about December 1999, but his account was cancelled by the credit grantor. He did not make his student loan payments, and in late 2000, his student loans with a total balance of \$20,000 were sold. In about December 2001, the loans were placed for collection in the aggregate amount of \$24,735 (SOR ¶ 1.a.). He also failed to make timely payments on some of his credit card accounts. A \$1,577 balance on a revolving charge opened in February 1998 was subsequently twice transferred, and in August 2002, the creditor assignee obtained a judgment against Applicant in the amount of \$1,630.22 (not alleged in SOR).<sup>(2)</sup> In January 2001, another credit card lender placed for collection a \$540 past due balance (SOR ¶ 1.d.). A \$447 delinquent revolving charge debt (SOR ¶ 1.b.) was written off by another lender in February 2001. In December 2001, the provider of his cable services at the time placed a \$243 debt for collection (SOR ¶ 1.e). Unpaid telephone service charges of \$408 (SOR ¶ 1.c.) were charged off by the utility company in about October 2001.

In July 2003, Applicant took out an automobile loan of \$22,740, to be repaid at \$379 per month. In September 2003, Applicant commenced employment with the defense contractor as a senior draftsman (piping designer) at an hourly

wage of \$15.50. A conscientious employee and excellent performer, he subsequently earned four raises.

Needing a security clearance for his duties, Applicant executed a security clearance application (SF 86) on September 19, 2003. He responded negatively to the financial record inquiries, including whether he had any financial judgments against him in the last seven years that had not been paid (question 37), any delinquent debts over 180 days in the last seven years (question 38), and any delinquent debts currently over 90 days (question 39). A check of Applicant's credit on September 23, 2003, revealed outstanding collection balances totaling \$25,518 (\$24,735 in defaulted student loan debt), and another \$855 in debt written off to profit and loss.

After a payment of \$360.10, the balance of the August 2002 judgment was \$1,270.12 as of December 2003. On February 4, 2004, Applicant was interviewed by a Defense Security Service special agent about his delinquent debt and its omission from his SF 86. Applicant admitted that he and his fiancée (now spouse) had \$64,000 in debt, with about \$25,000 of it his student loans. He averred he would contact his creditors directly or through a debt consolidation company and arrange for repayment of his delinquent obligations. As for the omission of his debt from his SF 86, Applicant stated:

I do not know why I failed to disclose this debt on my security questionnaire. I don't believe that I was purposely attempting to avoid this disclosure. I don't know what I was thinking about. I have no excuse for failing to disclose the aforementioned information. (Ex. 3)

At the request of the DSS agent, Applicant estimated he had a negative monthly cash flow, with his expenses and debt payments (excluding any payments on his delinquent debts) exceeding his income by \$749. On his personal financial statement Applicant added, "To pay back my debts, I realize that I will have to curtail my miscellaneous expenses," which he estimated at \$1,300 per month. Included in this figure was the cost of gas for Applicant's commute to work, which was then 160 miles round-trip daily, as well as the expense of "weekends out."

In October 2004, Applicant and his fiancée married. Applicant's spouse is a teacher, whose contract with the school system is renewed annually. She has received annual salary increases of between five and 7 percent.

On October 19, 2004, DOHA issued an SOR to Applicant alleging the delinquent student loan, consumer credit card, telephone and cable television services debts, and deliberate falsification of his September 2003 SF 86 for failing to list those debts. Applicant submitted a response dated December 3, 2004, that was not notarized in which he indicated he was assessing the debt problems but refuted the falsification allegations. In a notarized answer dated January 25, 2005, Applicant admitted the alleged debts but denied the deliberate falsification of his SF 86.

On December 20, 2004, Applicant obtained a copy of his credit report, which reflected three judgments against him, including a small claims judgment of \$375 in December 2000. The status of that judgment is not of record. His credit report confirmed Applicant has been current in his car loan opened in September 2003.

In December 2004, Applicant satisfied his delinquent cable television debt (¶ 1.e.). He made two payments of \$163.20 in December 2004/January 2005, less than the full amount owed, to settle his delinquent telephone services debt (¶ 1.c.). On or before February 23, 2005, Applicant inquired into a federal student loan rehabilitation program. His participation was contingent on making 12 payments of \$270 due by the 15<sup>th</sup> of each month. After the 12 payments had been applied to his account, his loans would be considered successfully rehabilitated and his account considered for purchase by an eligible lender. Collection costs of 18% would be added to the outstanding principal balance due on his loans upon rehabilitation. Applicant agreed on March 9, 2005, to be bound by these conditions. He elected to accelerate his participation in the program by paying \$275 per month for nine months. From March 1, 2005 to at least May 25, 2005, \$275 per month was automatically deducted from his joint checking account. In April 2005, his income tax refund of \$433.33 was intercepted by the IRS and applied to his student loan debt. Of his outstanding credit card delinquencies, Applicant concentrated on the outstanding judgment, which had a balance of \$1,270.12 as of December 2003. In March 2005, \$926.66 was debited from Applicant's bank account in repayment of the judgment debt pursuant to a court order. On or before July 18, 2005, the judgment and costs were satisfied in full.

In early March 2005, Applicant and his spouse moved into the new home they bought for \$270,000. They have a five-year adjustable rate mortgage, with their monthly mortgage payment varying between \$1,300 and \$1,600. Since their move, Applicant's long distance commute is 130 miles a day. In about May 2005, Applicant's spouse bought a new hutch for their home on credit.

As of August 2005, Applicant had made no payments on the debts in ¶1.b. (\$583 balance as of May 2005) or ¶ 1.d. He has not notified these creditors of his new address. Applicant estimated he and his spouse had about \$1,160 in discretionary funds available to them monthly, although he budgeted only \$150 for groceries. Expecting their first child, Applicant and his spouse were saving \$300 each month for the baby, although their total savings amounted to less than \$1,000. He anticipated the \$325 payment he was making for his and his spouse's student loans would decrease in December 2005.

Applicant has been an ethical, productive employee for the defense contractor. He is well regarded by supervisory personnel, who have found he can be relied on to get products out on time and under budget.

## **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. Applicant defaulted on his federal student loans, which were placed for collection with an aggregate balance of \$24,735. He allowed about \$2,500 in credit card balances to become seriously delinquent. Another \$651 in cable and telephone services went unpaid as he spent beyond his means. As of February 2004, he had made no effort to repay these debts and his expenses exceeded his income by an estimated \$749 per month. 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's disregard of his federal student loan debt has negative implications for his willingness to abide by the government's rules and regulations in addition to the concerns raised by being financially overextended.

In his favor, Applicant has exhibited some effort to repay his creditors. The \$1,630.22 judgment and the cable television debt (¶ 1.e.) have been paid off and the telephone debt (¶ 1.c.) was settled for less than the full balance owed. Due largely to an increase in their incomes and a reduction by more than half in their monthly miscellaneous expenses, Applicant and his spouse are no longer operating at a monthly deficit as of August 2005. He has started repaying his delinquent student loans, although the outstanding balance with the interest to be added on should he be accepted into the loan rehabilitation program exceeds \$25,000. MC ¶ E2.A6.1.3.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* applies, but these efforts in mitigation are undermined by his unexplained delay in resolving his debts. When he was interviewed in February 2004, Applicant indicated he would obtain a credit report within three months and contact his creditors. There is no evidence that he procured his credit report before December 20, 2004, and the payments on his debts commenced around that time. He has made no payments on the debts in ¶¶ 1.b. and 1.d., despite a monthly net remainder in excess of \$1,000 after expense and debt payments as of August 2005. Nor has he informed these creditors of his new address. Three months before the hearing, Applicant and his spouse purchased (albeit on her credit card) a hutch for their home, raising questions about their financial priorities. Applicant's anticipated reduction in his and his spouse's monthly student loan payment is speculative on his part. Assuming he continued to make his \$275 payments and was accepted into the loan rehabilitation program, his student loan account was to be sold on rehabilitation with the new lender negotiating terms of repayment. The four payments of record on his student loan are not enough to overcome the years of deliberate disregard of his federal student loan obligations. Favorable findings are returned as to ¶¶ 1.c., 1.e., and 1.f., because of the resolution of those debts and improvement in his personal financial situation, but he has not done enough to address the financial considerations concerns raised by the delinquencies in ¶¶ 1.a., 1.b., and 1.d.

Under Guideline E, personal conduct, the government alleges Applicant deliberately falsified his SF 86 by failing to disclose his delinquent debt. An inference of intentional concealment may fairly be drawn in this case based on the evidence, which clearly establishes that Applicant's student loans were in default, and the debts in ¶¶ 1.b., 1.c., 1.d., and 1.e. were more than 180 days delinquent as of September 2003. Applicant's consistent denials of intentional concealment do not persuade me otherwise. During his DSS interview, he claimed to not know why he failed to disclose his debts on his SF 86. (Ex. 3) In December 2004, he filed an incomplete response to the SOR in which he denied the allegations of deliberate falsification stating, "I was not aware of the extent of these financial delinquencies at the time of questioning." In his January 25, 2005, answer, he denied the alleged falsifications without explanation. When asked at his hearing whether or not he knew his student loans were in default as of the time he completed his SF 86, Applicant testified, "I don't know. I didn't intentionally not pay them. I don't know why they didn't get paid." (Tr. 52) Yet, Applicant had admitted to the DSS agent in February 2004 that he "decided to forego paying against [his] Government student loans because he felt it was more important to apply [his] money against other expenses." (Ex. 3) Even assuming he did not know the extent of his delinquent debt before he obtained his credit report, he knew he was not paying on some accounts. 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 applies. Applicant has a heavy burden of overcoming the negative inferences for his judgment, reliability, and trustworthiness raised by his failure to disclose his 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 owed about \$25,000 in delinquent debt. 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.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

### Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a.: 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. It is not clear why this judgment debt was not alleged in the SOR. The evidence establishes it was not satisfied until after the SOR was issued.