

KEYWORD: Financial; Personal Conduct; Criminal Conduct

DIGEST: Delinquent debt totaling about \$6,172 has been repaid. He has not paid a \$189 debt in collection since January 2003, which he submits should have been paid by a former girlfriend. The remaining debt of \$128 is for a collection account he has been unable to verify. Financial considerations are mitigated by his good faith efforts to address the debts. Personal conduct and criminal conduct concerns persist because he deliberately misrepresented his arrest record and financial delinquencies when he completed his security clearance application. Clearance is denied.

CASENO: 04-06991.h1

DATE: 04/17/2006

DATE: April 17, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06991

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Thomas Albin, Esq.

SYNOPSIS

Delinquent debt totaling about \$6,172 has been repaid. He has not paid a \$189 debt in collection since January 2003, which he submits should have been paid by a former girlfriend. The remaining debt of \$128 is for a collection account he has been unable to verify. Financial considerations are mitigated by his good faith efforts to address the debts. Personal conduct and criminal conduct concerns persist because he deliberately misrepresented his arrest record and financial delinquencies when he completed his security clearance application. Clearance is denied.

STATEMENT OF THE CASE

On June 14, 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, Guideline E, personal conduct, and Guideline J, criminal 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, ⁽¹⁾ 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 June 29, 2005, and requested a hearing. The case was assigned to me on November 7, 2005. On November 10, 2005, I scheduled a hearing for December 7, 2005. At the hearing, 10 government exhibits and 15 Applicant exhibits ⁽²⁾ were admitted and testimony was taken from Applicant and a captain in the shipyard's fire department where Applicant worked from October 2003 until he was laid off in late June 2005. A transcript of the proceedings was received by DOHA on December 16, 2005.

FINDINGS OF FACT

The government alleged Applicant owes delinquent debt totaling \$8,061 to nine creditors and his expenses exceed his income, and he falsified his September 2002 security clearance application (SF 86) by listing only a March 2000 harassment charge when he had also been arrested in February 1999 for stalking and obscene phone calls, and by claiming on his SF 86 that two delinquent debts had been satisfied. In his June 2005 Answer, Applicant admitted owing only a \$305 cable television debt for an unreturned cable box (SOR ¶ 1.c.). He asserted those debts in ¶¶ 1.a., 1.b., 1.d., 1.e., 1.i. (duplicate of the debt in ¶ 1.f.) had been paid, and that his income exceeded his expenses in 2004 as he earned \$72,000. Applicant denied any knowledge of the debts in ¶ 1.f. and 1.h., and indicated he would pay the debt in ¶ 1.g., even though it was his ex-girlfriend's debt. Applicant also denied any intentional falsification of his SF 86, averring the two arrests related to the same incident and he had listed the offense on his handwritten SF 86, and he had believed the two listed debts had been paid at the time he completed 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 married 37-year-old male with a young daughter. As of December 2005, he was collecting unemployment after having been laid off in June 2005 by a defense contractor (company A). Applicant seeks a secret clearance so that he can return to his duties in the company's fire department.

Applicant worked at company A as an outside machinist from January 1989 to 1994. Anticipating that he was going to be laid off from his defense contractor job, Applicant left for a position in maintenance with a doughnut company. After two years there, he went to work as a machinist/assembler for a local dowel manufacturer. Neither job required a security clearance. Around this time, Applicant began an off and on cohabitant relationship with a girlfriend that lasted until 2000. Despondent after breaking up with her in December 1998, Applicant wrote several letters and called her several times to where she complained of harassment to the police. In February 1999, he was arrested on a warrant and charged with stalking and making harassing/obscene phone calls (misdemeanors). At his arraignment, a no contact order was issued against him. Applicant pleaded nolo contendere to an amended charge of disorderly conduct in April 1999, and was ordered to pay \$93.50 court costs. The obscene phone call charge was dismissed at the request of the prosecution and the protective order terminated. Applicant and this girlfriend reconciled only to break up again in about March 2000. She complained again to the police of him making harassing phone calls, but the case against him was dismissed. [\(3\)](#)

Applicant's former girlfriend handled their finances when they were together. Unbeknownst to Applicant, she failed to make the payments on a \$148 debt (SOR ¶ 1.g.) he incurred for a clock she promised she would pay for, and the debt was subsequently placed for collection in about March 2000. In December 1998, Applicant took out a loan for an all terrain vehicle. He came home from work one day to find that the ATV had been repossessed as she had not made the payments. A charged off balance of \$2,847 (SOR ¶ 1.b.) was placed for collection in about August 1999.

In December 2001, Applicant married his spouse. They used a monetary gift from her parents to pay some bills. In or before January 2002, ⁽⁴⁾ Applicant returned to work for company A as an outside machinist because of the higher wages paid by the company. ⁽⁵⁾ Other of Applicant's debts were unpaid as of September 2002, largely because she stopped working on the birth of their daughter in April 2002. In addition to those debts in SOR ¶ 1.b. ⁽⁶⁾ and 1.g., Applicant owed a delinquent credit card balance of \$2,046 (SOR ¶ 1.d.), on an account charged off in the amount of \$1,779 back in July 2000. A \$305 balance owed for a cable television converter box since about December 2000 was in collection (SOR ¶ 1.c.). A \$331 debt for telephone services had been in collection since September 2001 (SOR ¶ 1.e.). He was 180 days past due in his payments on a balance of \$1,664 for a computer purchased for \$1,572 in March 2000 (SOR ¶ 1.f., ¶ 1.i.). ⁽⁷⁾

In about September 2002, Applicant completed a handwritten security clearance application which he turned in to company A security. A typed version of the SF 86 was prepared from the information he provided, with negative responses entered to several questions, including 35 (any repossessions in the past seven years), 39 (any debts currently over 90 days delinquent), and 26 (other offenses in the last 7 years). In response to question 38 concerning financial delinquencies over 180 days, two debts were listed but reported as satisfied in January 2001: a credit card delinquency (SOR ¶ .d.) in the amount of \$1,300 and the loan for the ATV (SOR ¶ 1.b.) of \$2,500. Satisfaction of those debts was reiterated in the general remarks section ("ALL DELINQUENT DEBTS ENTIONED IN 180 DAY DELINQUENCIES ARE PAID OFF."). Applicant signed the typed version of the SF 86 on September 23, 2002, adding in response to question 35 the name of the creditor and it had been paid off in full. Applicant did not change the negative answer to the police record inquiry but added "3/2000 Harassment Arrest Charges were Filed should be off my record was never charged with any crime." While he thought the charges were off his record, he realized while reviewing the form that he should just put it down to cover himself.

A check of Applicant's credit on September 27, 2002, revealed those debts in SOR ¶¶ 1.b., 1.c., 1.d., 1.e., 1.f., and 1.g. as outstanding delinquencies. A subsequent check on January 21, 2004 confirmed Applicant had made \$400 in payments on the ATV loan (¶ 1.b.) since October 2002, but the debt in ¶ 1.g. had risen to \$189 due to interest and the others remained unsatisfied.

On February 3, 2004, Applicant was interviewed by a Defense Security Service (DSS) special agent about his arrest record, his reported delinquencies, and his failure to accurately disclose his police and financial record on his SF 86. Applicant indicated he had been twice arrested by the police on harassment charges filed by his former girlfriend; that he pleaded nolo contendere to an amended charge of disorderly conduct in the first incident. Concerning his failure to report both offenses on his SF 86, Applicant averred he had told security about both of them, "wrote these arrests down on a typed copy of [his] EPSQ, and was told that corrections would be made." Applicant admitted he might owe the debts in ¶¶ 1.b. \$2,448, 1.c. \$305, 1.d.\$1,779, 1.f. (and 1.i.) \$1,700, 1.j. \$189, and 1.e. \$331, and indicated he had been paying \$50 monthly on the ATV loan (¶ 1.b.). He anticipated having the funds to satisfy his debts and his spouse's credit card debt on the sale of his condo in February 2004, which would leave him with an estimated negative cash flow of \$700 per month. Applicant denied intentionally omitted debt from his SF 86 ("I did not purposely omit my debt from the EPSQ, *i.e.*, I listed my 2 largest debts feeling that there was only room for 2 listings.").

On the sale of his condominium, Applicant settled his delinquent credit card debt (¶ 1.d.) with the collection agency in mid-March 2004, and he paid off the debt for his computer (¶¶ 1.f. and 1.i.) in mid-May 2004. Due to substantial

overtime at work, he earned gross income of \$72,525.74 on an hourly wage of \$18.32 in 2004, so he and his spouse were able to meet their monthly expenses without falling further behind.

In May 2005, Applicant satisfied in full his delinquent loan for the ATV (§ 1.b.) In mid-June 2005, he paid the telephone debt in collection (§ 1.e.). On receipt of the SOR, he learned there were two minor debts on his credit record of \$79 (§ 1.a.) and \$128 (§ 1.h.). Applicant paid the \$79 debt and has been unable to confirm the \$128 as a valid debt. In July 2005, Applicant paid \$130.33 on the cable television debt (§ 1.c.), which left him with a \$175 balance that was credited on his return of the cable converter box. In November 2005, Applicant made the latest of several inquiries to determine the status of the debt in (§ 1.g.).

In June 2005, Applicant was laid off from his position as a first class firefighter at company A at \$19 plus per hour due to lack of clearance. He elected to have no taxes withheld from his unemployment compensation, so his take-home benefit was \$477 weekly. His spouse went back to work in October 2005 in the accounting department of a local casino where she was being paid \$9.27 per hour. As of December 2005, finances were tight. They used accumulated savings to pay his spouse's credit card obligations and had reduced discretionary spending by no longer eating out. The mortgage on their home is in Applicant's spouse's name only. Their \$1,800 monthly payments were being paid out of his unemployment compensation. With his unemployment about to run out, Applicant anticipated a three-month extension of benefits would be granted as it was the first time he had ever collected.

Applicant has two active credit card accounts that he opened in June 2004 and June 2005, respectively, to reestablish credit. As of October 2005, the balances were \$698 on a credit limit of \$700 and \$232 on a credit limit of \$250, although both accounts were rated current. Applicant's October 2005 credit report indicates he was also paying on two vehicles. A \$19,598 truck loan taken out in May 2005 was being repaid timely at \$272 monthly. He and his spouse were paying \$292 monthly on an automobile loan of \$14,633, taken out in his name in October 2004. She has paid the bills since their marriage.

Applicant has been a volunteer firefighter in his town since 1991. Those who know Applicant as a second assistant in the town's fire department and from his work in company A's fire department attest to his dedication and personal integrity, as well as his skill as a firefighter.

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.)

Criminal Conduct. A history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. (¶ E2.A10.1.1.)

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, E, and J:

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 his September 2002 credit report confirms, several of Applicant's accounts were charged off and/or placed for collection between 1998 and 2001. Even though his former girlfriend handled their finances when they were together, it does not relieve him of his obligation to ensure that his debts were paid timely. Other accounts, such as the computer, were opened and became delinquent after this cohabitant relationship had ended. Disqualifying conditions (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.

While insufficient income may well have been a contributing factor in Applicant's delinquencies, Applicant did not prove his case falls squarely within 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)*. Absent evidence in the record of his income, living expenses, and debt obligations for the 1998/01 time frame, financial irresponsibility on his part cannot be ruled out. However, C ¶ E2.A6.1.3.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*, applies in his favor. Applicant commenced repayment efforts well before he received the SOR. He settled the credit card debt in March 2004 and satisfied the computer debt in May 2004. He began making payments of \$50 toward the ATV loan even earlier, although did not satisfy that debt in full until May 2005. He worked a significant amount of overtime at company A to make sure his family was provided for and to give him the funds to pay the past due accounts. As of the issuance of the SOR, he had resolved all but the debts in ¶¶ 1.g. and 1.h., because he has been unable to verify the indebtedness with the listed creditors.

A significant security concern may still exist where there is a risk of recurrence of financial instability, and Applicant admitted his financial situation has been tight since his layoff in June 2005. Nonetheless, his credit report reflects he has been making his automobile payments, and he arranged with his mortgagor to pay a portion of his mortgage each week when he receives his unemployment compensation. He has balances approaching the limits on his two active credit card accounts, but there is no evidence they have been past due. His documented repayments of his delinquent debts confirm a favorable change in financial habits. SOR subparagraphs ¶¶ 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.i., and 1.j. are found for him.

Under Guideline E, personal conduct, the government alleges Applicant deliberately falsified his SF 86 by misrepresenting that those debts in ¶¶ 1.b. and 1.d. had been satisfied in January 2001, and by his listing only a March 2000 arrest for harassment. An inference of intentional concealment may fairly be drawn in this case based on the evidence, which clearly establishes that the debts were unpaid as of late September 2002, and that Applicant had been arrested and charged with stalking and phone harassment in February 1999. It can also reasonably be argued that Applicant had no intent to conceal as he placed the government on notice of past financial difficulties and adverse legal involvement. Yet, partial disclosures can have a tendency to mislead, especially if they are inaccurate in any respect. Concerning his arrest record, Applicant indicated any harassment charges should not be on his record as he "was never charged with any crime." There is no record from the court confirming a formal charge against Applicant in March 2000, but court records submitted by the government (Exs. 3, 4) confirm formal stalking charges filed in February 1999 and his nolo plea to disorderly conduct that April. When confronted with that charge at the hearing, Applicant

responded, "I had wrote the wrong date on the paperwork." When asked to explain his plea of nolo contendere to disorderly conduct, Applicant answered, "In all honesty, I thought that those were dropped from my record." (Tr. 107) The inconsistency in his explanations belies his claim of unintentional omission.

Similarly with respect to his financial situation, in the general remarks section of his SF 86, Applicant made a very affirmative statement that the two delinquent debts, which he listed by creditor name in question 38, had been paid off. At his hearing, he testified to a belief that they had been paid off ("Because of the bills that I had had. You see, at that point, I had never gotten a credit report. So just the stuff that I had had in my possession as bills were paid off, and I thought that they were paid off." Tr. 109) Applicant's testimony would be believable given his spouse paid the bills and they used a monetary wedding gift from her parents to pay debts off but for the fact that he indicated on his SF 86 that the ATV loan had been satisfied in January 2001, well before his marriage in December 2001, and his testimony as to his efforts to repay the ATV loan debt ("So what ended up happening is they repossessed it, sold it, and then I had a leftover balance of whatever it was, and I had made-I had gotten with [the lender] and I had made payments with them for a few years, \$50 a month, to make an attempt to pay it back. Then once me and my wife had sold the condo and made some money, we paid-just paid the rest of it off." Tr. 88) The evidence reflects Applicant made \$400 in payments between the time he executed the SF 86 in September 2002 and January 2004. Assuming he initiated the repayment as he claims, he would have to have known the debt had not been paid. The more likely scenario is that Applicant listed the debts as satisfied on his SF 86 in anticipation of his plan to pay them off with the funds from the sale of his condominium. When asked on direct examination whether he had any outstanding delinquency as of his rehire by the defense contractor, Applicant responded, "[The ATV loan] I had been paying on, the \$50 a month." Apart from the issue of when he began making those payments, it shows he had knowledge of the status of that debt. 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 accurately disclose his arrest record and financial delinquencies.

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 twice charged by the police in the 1998/2000 time frame for stalking/harassment on complaint of his former girlfriend; that he had pleaded nolo contendere to disorderly conduct in the first incident. He also did not deny that he "may owe about \$7,000 in delinquent debt," including the credit card and ATV loan debts that he previously indicated had been paid in full. He reported he was making payments of \$50 on the ATV loan and computer. 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. With respect to his failure to accurately report his delinquent debt on his SF 86, Applicant responded, "I listed my 2 largest debts feeling that there was only room for 2 listings." (Ex. 8) Nowhere in his sworn statement did he indicate that he thought his debts had been satisfied as of his SF 86.

His knowing and willful misrepresentations on his SF 86 constitute a violation of 18 U.S.C. § 1001.⁽⁸⁾

Under Guideline J, DC E2.A10.1.2.1. *Allegations or admission of criminal conduct, regardless of whether the person was formally charged*, and DC E2.A10.1.2.2. *A single serious crime or multiple lesser offenses*, apply. Doubts persist as to whether his representations can be relied on, given his inconsistent explanations for the inaccuracies on his SF 86. His reputation for personal integrity held by those who know him as a fellow firefighter and friend is not enough to overcome the security concerns in this regard. Accordingly, ¶¶ 2.a., 2.b., and 3.a. 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: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: For the Applicant

Subparagraph 1.i.: For the Applicant

Subparagraph 1.j.: For the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Paragraph 3. Guideline J: AGAINST THE APPLICANT

Subparagraph 3.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. Applicant also relied in his case on his security clearance application (government exhibit 1).
3. The only police record in evidence (Ex. 5) is not from the originating agency, and does not substantiate filing of any formal charges against Applicant in 2000, although it confirms complaints to the police of harassment. (*See Ex. 5*) Applicant admitted to a Defense Security Service (DSS) agent in February 2004 that he had been charged twice in the 1998 to 2000 time frame for "stalking + obscene phone calls and/or harassment" his former girlfriend. He admitted pleading nolo contendere in the first case to a reduced charge of disorderly conduct. In the second case, he averred he received a court letter that he was again stalking, went to court, and the charge was dismissed. (*See Ex. 8*)
4. Applicant testified initially that he returned to company A in January 2000 as an outside machinist and after about a year and a half, he transferred to the fire department. (Tr. 42) He later corrected it to January 2001 (Tr.44). Yet, references indicate he joined the fire department in October 2003 (Exs. A, B). His SF 86 (Ex. 1) is not helpful in resolving the discrepancy, as it suggests he was still working for his previous employer as of September 2002.
5. Applicant testified that he returned to work for the defense contractor because he would make "a lot more money." (Tr. 89) The specifics of the increase in income are not of record.
6. Applicant testified that he had been repaying the debt at \$50 per month as of his return to work at company A in January 2001. (Tr. 88-89) His January 2004 credit report (Ex. 7) indicates a \$2847 balance was charged off and subsequently placed for collection in about October 2002 in the amount of \$2,848. As of January 2004, the balance

owed was \$2,448, so payments of about \$400 were made apparently not until October 2002 at the earliest, which was after he completed his SF 86.

7. Applicant submits he purchased only one computer (Tr. 74), and there is insufficient evidence to the contrary. Applicant's September 2002 credit report lists only one computer debt in the amount of \$1,572 rated 180 days delinquent. (Ex. 6) While his January 2004 credit report contains two listings concerning the financing of a computer, the \$1,664 may well be an updated collection balance. (Ex. 7)

8. 18 U.S.C. § 1001 provides in part:

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully: (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both.