

DATE: July 18, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 04-07378

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Thomas Albin, Esq.

SYNOPSIS

Applicant fell behind in several financial obligations as she struggled to support herself and her two children whose fathers are delinquent in their child support. She is currently living within her means and plans to resolve the delinquent debt still outstanding. The lack of child support income and her satisfaction of several debts mitigate the financial considerations concerns. Personal conduct concerns related to the deliberate omission of delinquent debt from her security clearance application are not established where she alerted the government of her financial problems by disclosing a car repossession. Clearance is granted.

STATEMENT OF THE CASE

On May 18, 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. [\(1\)](#)

On June 17, 2005, Applicant answered the SOR and requested a hearing before a DOHA administrative judge. The case was assigned to me on January 3, 2006, and I convened a hearing on February 10, 2006. Six government exhibits and ten Applicant exhibits were admitted, and testimony was taken from Applicant and her immediate supervisor, as reflected in a transcript received February 27, 2006.

I held the record open for one month for Applicant to submit additional financial records. No additional documents were submitted.

FINDINGS OF FACT

DOHA alleged under Guideline F that Applicant owed delinquent debt totaling \$6,508 on eight accounts, which she was unable to repay because her monthly expenses exceeded her income by \$74. Under Guideline E, Applicant was alleged

to have deliberately falsified her July 2002 security clearance application (SF 86) by omitting her delinquent debts over 90 days (question 39), or those over 180 days in the preceding seven years (question 38). Applicant admitted the allegations of delinquent debt. She also acknowledged she had responded "No" to questions 38 and 39 on her SF 86, but denied the intentional falsification adding, "I told the security officer, I did it by accident." Applicant's admissions to delinquent indebtedness are incorporated as findings of fact. After a thorough review and consideration of the evidence of record, I make the following additional findings:

Applicant is a 36-year-old administrative aide who has been employed by a defense contractor since November 1989. Initially hired as a machine operator, she transferred to an administrative aide position in 1990. She seeks to retain the secret-level security clearance she has held since July 1990.

Applicant was married in November 1990 and divorced in October 1993. She and her ex-husband, who is on social security disability, have a daughter born in January 1992. Applicant had a son in September 1996 from a subsequent relationship that did not result in marriage.

Unable to afford the \$400 weekly that it cost her to keep her two children in daycare, Applicant sent her daughter to live with her mother during the work week when her daughter was five years old, thereby having to pay daycare only for her son. Applicant had her daughter on the weekends and holidays until she turned 11 and returned to live with Applicant full-time. Applicant received child support for her two children, and paid the expenses of her daughter's care even when her daughter was living with her mother.

Managing to get by financially, Applicant purchased an automobile in April 2000, taking out a \$13,606 installment loan. She made her payments until about September 2000, when her ex-husband stopped paying his child support for their daughter because of his disability. Applicant contacted the lien holder and tried to change the repayment terms of her automobile loan without success. The car was subsequently repossessed by the lender in January 2001, leaving her with a deficiency balance of about \$5,595 (¶ 1.c.).

With the fathers of her two children in arrears on their child support obligations, Applicant struggled financially and several accounts became delinquent, as set forth in the following table.

Debt as alleged in SOR	Delinquency history	Payment status
¶ 1.a. \$213 revolving charge bad debt	Opened Nov 99, account cancelled by grantor Jan 00 as 120 days past due, unpaid balance \$213	Satisfied by \$223.17 payment by debit card Feb 06
¶ 1.b. \$461 cellular phone debt in collection	Last activity Nov 00; \$461 balance for collection; \$530 owed as of Dec 02	Satisfied by \$530.49 payment Feb 06
¶ 1.c. \$5,000 balance after car repossession	Installment loan \$13,606 taken out Apr 00; car repossessed Jan 01 after no activity since Sep 00; balance \$5,595 charged off to profit and loss; \$0 balance listed as owed on Aug 02 and Mar 05 credit reports	No payments. As of Oct 03 and Mar 05 did not intend to satisfy debt; now intends to pay if able to arrange affordable repayment terms
¶ 1.d. \$272 collection debt	Revolving charge debt of \$273 purchased Mar 01; placed for collection Mar 02	No payments as not certain of original creditor.
¶ 1.e. \$98 collection debt placed by insurance company	One month premium of \$98 assessed by insurer after she switched to less expensive auto insurer, placed for collection Sep 02	Satisfied with \$97.80 payment Feb 06.
¶ 1.f. \$214 telephone debt	Account opened Feb 98, \$214 bad debt with last activity Nov 02	Satisfied with \$214.80 payment Feb 06
¶ 1.g. \$166 telephone debt	Account opened Dec 02, \$166 bad debt with last activity Sep 03	Satisfied with \$166.20 payment Feb 06

¶ 1.h. \$84 telecommunications debt	\$84 for collection Apr 02, no activity since Mar 01	Tried to pay it Feb 06, but creditor could not confirm debt; money is set aside to repay debt
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To renew her secret-level clearance, Applicant filled out a handwritten questionnaire that she turned in to her employer. The information she provided was then entered onto a security clearance application (SF 86) which she signed on July 29, 2002. In response to the financial record inquiries, Applicant disclosed her vehicle had been repossessed in October 2000 for \$5,000 owed (¶ 1.c.). In the general remarks section, it was added that Applicant had not been notified of the deficiency balance, if any, owed after the resale of her vehicle following the repossession. Negative responses were entered to questions 38, any financial delinquencies over 180 days in the last seven years, and 39, debts currently over 90 days delinquent.

A check of Applicant's credit on August 7, 2002, disclosed the debts in ¶¶ 1.a. (reported 120 days past due), 1.b., 1.d., and 1.h., but a zero balance on her auto loan following a profit and loss write off by the creditor. A credit check of September 11, 2003, disclosed additional delinquencies of \$214 (¶ 1.f.) and \$98 (¶ 1.e.).

On October 14, 2003, Applicant was interviewed by a special agent of the Defense Security Service (DSS) about the outstanding delinquencies. Applicant did not contest the validity of those debts in ¶¶ 1.a., 1.b., 1.d. (which she was told was originally owed a retailer), 1.f., and 1.g. She denied knowledge of ¶ 1.h., contested the validity of the insurance debt (¶ 1.e.), and expressed her intent to not pay a deficiency balance of about \$5,000 (¶ 1.c.) following the repossession of her vehicle in 2000. Applicant attributed her failure to disclose any of the delinquent debts on her SF 86 to not knowing about them, or forgetting that she owed money since she had not received any bills ("I just simply forgot I owed them money. I have not recieved [sic] a bill from any of the above on the matters of owing money."). Applicant provided a personal financial statement reporting monthly expenses that exceeded her income by \$74, excluding any payment on her delinquent debts.

In January 2004, Applicant and her two children moved from a two-bedroom into a three-bedroom apartment, which meant an increase in her rental obligation from \$675 to \$750. Unable to afford the first and last months' rent for her new apartment and pay the rent on the apartment she was vacating, Applicant did not pay the rent for her last month at her old apartment. The landlord garnished her wages in 2005 to recover the debt. Her current boyfriend moved in with Applicant and her children at her new address. She did not notify her creditors of her new address. A March 22, 2005, check of Applicant's credit reflected no new delinquency, but no progress on resolving her old debt. She was reported to have a zero balance on the auto loan for the vehicle that had been repossessed as \$5,595 had been charged off by the creditor.

In 2005, Applicant's daughter received \$1,296 in social security benefits because of her father's disability. Under court order to pay \$20 weekly in child support plus \$2.00 weekly toward arrearage, Applicant's ex-husband paid \$1,066.20 in total to Applicant for their daughter's care in 2005. As of January 14, 2006, he was \$315.72 in arrears. The father of Applicant's son is under court order to pay \$73 in child support and \$25 toward his arrearage each week. During the entire year of 2005, he paid only \$200 in child support for his son, leaving a balance owed of \$13,205.67 as of January 14, 2006. Applicant's \$4,000 tax refund for tax year 2004 was intercepted by the Internal Revenue Service to repay a tax debt for 2003. She was out of work for four months during that year and "messed up on a couple of things." (Tr. 97)

A few days before her security clearance hearing in February 2006, Applicant satisfied the debts in ¶¶ 1.a., 1.b., 1.e., 1.f., and 1.g. with a loan taken from her income tax return preparer in anticipation of an expected tax refund of about \$3,400 for tax year 2005. She paid \$1,300 of that amount to her parents in repayment of monies borrowed to buy Christmas presents. She has the funds set aside to pay the debt in ¶ 1.h. but had to come up with the account number to do so and had not been successful. She had made no payment on ¶ 1.d. as she had not been able to ascertain to whom it was owed. She is not certain whom to contact to make arrangements with respect to repaying ¶ 1.c.

Applicant's annual salary from her job with the defense contractor is about \$38,000 before taxes. She earned \$43,000 in 2004 because of overtime earnings. Applicant's boyfriend pays less than half of their household expenses because he is obligated to pay child support himself. Applicant drives a 1993 model-year vehicle that she bought second-hand from a friend so that she could have a car. She had been walking to work. As of February 2006, she has \$10.68 in savings and

about \$1,300 on deposit in her checking account. Her monthly income is sufficient to cover her living expenses, which include \$70 per month in prescription co-pay costs for her son. Applicant owes her previous cable television provider for service rendered at her previous address. She does not know how much she owes but has received no demands for repayment. She intends to repay her debts when able to make arrangements to do so.

Applicant has been a very good worker for the defense contractor. Willing to do what is necessary to get the job done, she received a \$200 monetary award for her efforts in August 2005, and was among those commended by the fleet support organization for a job well done in connection with the review and updating of fleet manuals in August and September 2004.

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 her 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 concerns arise when the applicant is shown to have a history of excessive indebtedness, recurring financial difficulties, or a history of not meeting her 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 at risk of having to engage in illegal acts to generate funds. Applicant has struggled financially since the mid-1990s. In about 1997, she sent her daughter to live with her mother during the workweek as she was unable to afford daycare for two children. She was unable to count on her son's father to pay his child support regularly, and while she financed the purchase of a compact car in April 2000, she did not pay on a department store charge account (¶ 1.a.). After her ex-husband stopped making his child support payments for their daughter, she could not make her automobile loan payments so the car was repossessed. The lender elected to write off the \$5,595 balance (¶ 1.c.) after resale, and has not actively pursued her for the debt. However, she had to cancel her cellular phone service and a \$461 balance was referred for collection in November 2000 (¶ 1.b.) A debt of \$272,

incurred apparently on a department store revolving charge, was placed for collection in March 2001 (¶ 1.d.). A telecommunications debt of \$84 was placed for collection in April 2002 (¶ 1.h.). Three additional debts (¶¶ 1.f., 1.g., and 1.e.) were written off or placed for collection after Applicant completed her SF 86. 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.

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)* applies, as Applicant's financial situation was negatively affected by the fathers of her two children not remaining current in their child support obligations. Applicant provided documentation from the state showing the father of her son to be \$13,205.67 in arrears in his child support as of January 2006. Under court order to pay \$73 a week, his payments have been sporadic at best for some time. The child support arrearage is more than double her delinquent debt, even considering the \$5,595 written off by the car lender. Had Applicant received timely support for her two children, she likely would have made her car payments on time.

In her favor, Applicant satisfied those debts in ¶¶ 1.a., 1.b., 1.e., 1.f., and 1.g., albeit just days before her security clearance hearing with an advance loan of her expected income tax refund for 2005. Such belated resolution of the debt necessarily raises questions as to whether it was prompted primarily by a good faith desire to satisfy her debts (*see MC ¶ E2.A6.1.3.6., The individual initiated a good faith effort to repay creditors or otherwise resolve debts*) or rather by a desire to retain her clearance and potentially her job. In other words, were it not for the clearance issue, the debts would not have been paid. The individual who addresses debts only when forced to do so also may disregard future financial obligations when those pressures are no longer present.

Applicant's failure to address her debts earlier was due largely to the lack of available funds. As reflected in her personal financial statement of October 2003, Applicant was living from paycheck to paycheck. She estimated expenses that exceeded her income by \$74. Although she managed to make ends meet by juggling her finances, she did not have the funds to pay off her delinquent debt in 2003. In January 2004, her rent increased by \$75 per month when she moved to a three-bedroom apartment so that her daughter (then age 12) and her son (then age 7) could have separate bedrooms. She was also required to come up with the first and last months' rent for her new apartment. She did not have the funds to pay her last month's rent on her old place, and her wages were garnished to collect it in 2005. Applicant testified she earned \$6,000 in overtime pay that year, although it is not clear whether this represents net or gross earnings. In 2005, Applicant's tax refund was intercepted by the IRS. While her boyfriend was sharing living expenses, her share was more than half and she had little, if any, in overtime earnings. That fall, Applicant borrowed \$1,300 from her parents, a majority of which was spent on Christmas gifts for her children. While the amount spent on gifts is difficult to justify given her financial situation, her delay in addressing her debts has been adequately explained to credit her with a good faith resolution under ¶ E2.A6.1.3.6.

The Directive does not require that an applicant be debt free, but there must be adequate assurances that the financial problems are being resolved and are not likely to recur. Of the \$5,951 in delinquent debt that has not been paid, \$5,595 is for the repossessed automobile. As reflected in her credit reports, the debt has been written off by the creditor. As of October 2003, Applicant did not intend to satisfy the debt. However, she is now alert to the security concerns presented by her circumstances and her responsibility to address those issues, including the balance of the vehicle loan if the debt is confirmed by the creditor. She has already put aside the funds to pay off the other two delinquent debts still outstanding (¶¶ 1.d. and 1.h.). Had she known where to send the payments, they would likely have been paid before her hearing. Her credit report of March 2005 does not show any continued reliance on credit that could undermine her ability, given the time, to resolve the automobile debt. While she has had to borrow from her parents in the past, she testified to being on sounder financial footing of late. The fact that she had to take an advance of her income tax refund to pay some of her debts confirms she has little in reserve, but she is not falling further behind. She walked to work after her car was repossessed until a friend gave her a good deal on a 1993 model-year vehicle. That car is paid for. Under the whole person concept, Applicant also deserves credit for her contributions to her defense employer. She has held a secret clearance for several years while facing the financial pressures caused in large part by the lack of child support, and has not violated the government's trust. The security concerns raised by her delinquent debt are sufficiently mitigated by her improved financial situation (she is no longer operating at a deficit each month) and her efforts to resolve her delinquent debts. SOR ¶¶ 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h. and 1.i. are resolved in her favor.

Under Guideline E, personal conduct, the government alleges Applicant deliberately falsified her July 29, 2002, SF 86 by denying any financial delinquencies in response to questions 38 (any financial delinquency over 180 days within the last 7 years) and 39 (currently over 90 days delinquent on any debts). Within a week or so of Applicant signing the typewritten SF 86, her credit report disclosed the bad debts in ¶¶ 1.a. and 1.d., the balance of her auto loan (¶ 1.c.), and two debts in collection (¶¶ 1.b. and 1.h.). Applicant disclosed the repossession debt on her SF 86 in response to question 35, but listed no other delinquency on her SF 86. When asked by the DSS agent about the debts in October 2003, Applicant indicated she had forgotten she owed the debt in ¶ 1.a. On being informed by the agent that the debt in ¶ 1.d. had originally been for a delinquent revolving charge with a national retailer, Applicant responded, "I do know I owe them money." As for the debt in ¶ 1.b., Applicant indicated it resulted from breaking a cellular phone contract. She further explained at her hearing that she had been unaware of the debt. She has the same cellular provider currently and has received no bill showing a past due balance. (Tr. 54) Concerning her failure to report the debts on her SF 86, Applicant told the DSS agent, "(1) I did not know I had them, or (2) I just simply forgot I owed them money." (Ex. 3) When she answered the SOR, she indicated, "I told the security officer I did it by accident." At her hearing, she testified on direct examination that she could not explain her negative answers to questions 38 and 39, and averred she must have read the questions wrong. (Tr. 86) She testified similarly on cross examination ("I could've misread it back then. I don't know. I know I was delinquent in bills." Tr. 95).

Intentional falsification is not established by inadvertent mistake ("accident"), lack of recall, or good faith misunderstanding as to what was required, and the possibility of error must be considered where another person typed the form. However, it is Applicant's burden to overcome the inference of intentional omission that may fairly be drawn from her credit report of August 2002, which confirmed the existence of delinquent debts that should have been reported on her SF 86. Applicant placed the government on notice of financial problems by reporting the repossession (¶ 1.c.). While it would not relieve her of her obligation to report other known qualifying indebtedness in response to questions 38 and 39, it is not clear what she would gain by then denying any financial delinquencies, since the debts omitted were minor in amount in comparison to the repossession. She offered a different explanation in October 2003 for the negative responses to questions 38 and 39 (she forgot about the debt or did not know it was owed) than she did at her February 2006 hearing (she knew she had delinquent debt and could have misread the question). While seemingly inconsistent, they can be explained by Applicant not having had a good handle on what she owed in July 2002. On being presented with evidence of the delinquency in October 2003, Applicant made no effort to deny the debt, which had been written off or placed for collection well before she completed her SF 86. The debt in ¶ 1.a. stemmed from a charge account that had been opened only for two months before it was cancelled in January 2001 for her failure to pay the \$213 bill. The wireless phone debt of \$461 (¶ 1.b.) appears to have been originally placed for collection in February 2001, more than a year before her SF 86. There is no evidence of any active collection efforts before she completed her SF 86. As for the \$272 debt in ¶ 1.d., Applicant testified credibly she did not recognize the creditor, and had to be told by the DSS agent in October 2003 that it was for a credit card obligation with a national retailer. Her credit reports reflect the original creditor had sold her account back in March 2001, again well before she completed her SF 86.

Almost four years after her SF 86, with the facts of the delinquencies before her, Applicant cannot reasonably deny that the debts should have been listed, but it does not mean she intentionally concealed them back in 2002. While she testified at her hearing that she knew she had delinquent bills in July 2002, a general admission of being in debt does not prove the intent required for willful falsification, especially where she had disclosed repossession. Accordingly, the disqualifying condition pertinent to a knowing misrepresentation, ¶ 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, does not apply.* Favorable findings are returned as to ¶¶ 2.a. and 2.b. as well.

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

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 clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Elizabeth M. Matchinski

Administrative Judge

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