

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant and his spouse filed for Chapter 7 bankruptcy in mid-October 2005. They listed \$33,748 in unsecured nonpriority claims, including more than \$18,000 in medical debt. Financial considerations are mitigated where the financial difficulties are attributable in large part to noncovered medical treatment for his spouse and her inability to work due to her medical condition. Personal conduct concerns persist where he did not disclose any indebtedness on his February 2002 security clearance application. Clearance is denied.

CASENO: 05-03061.h1

DATE: 04/18/2006

DATE: April 18, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-03061

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Thomas Albin, Esq.

SYNOPSIS

Applicant and his spouse filed for Chapter 7 bankruptcy in mid-October 2005. They listed \$33,748 in unsecured nonpriority claims, including more than \$18,000 in medical debt. Financial considerations are mitigated where the financial difficulties are attributable in large part to noncovered medical treatment for his spouse and her inability to work due to her medical condition. Personal conduct concerns persist where he did not disclose any indebtedness on his February 2002 security clearance application. Clearance is denied.

STATEMENT OF THE CASE

On June 28, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons under Guideline F, financial considerations, and Guideline E, personal conduct, why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant, [\(U\)](#) and recommended referral to an administrative judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

On July 22, 2005, Applicant, acting pro se, responded to the SOR and requested a hearing before a DOHA administrative judge. On August 2, 2005, counsel for Applicant entered his appearance. The case was assigned to me on October 14, 2005, and I scheduled a hearing for October 21, 2005, Applicant having waived the 15-day notice requirement. At the hearing, six government and four Applicant exhibits were admitted into the record, and testimony was taken from Applicant and his spouse. A transcript of the hearing was received on November 4, 2005.

FINDINGS OF FACT

Applicant is alleged under Guideline F, financial considerations, to owe \$12,871 in unpaid delinquent consumer credit debt. Under Guideline E, personal conduct, Applicant is alleged to have deliberately falsified his February 2002 security clearance application (SF 86) by responding "No" to questions 38 (any delinquency over 180 days in the last 7 years) and 39 (any current delinquency over 90 days). In his July 2005 answer, Applicant admitted the debts, which he attributed to his spouse's numerous hospitalizations and consequent loss of her income. He averred resolution was forthcoming through bankruptcy and his spouse's application for social security disability. Applicant denied knowingly falsifying his SF 86. Applicant's admissions to delinquent debt are 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 carpenter trade instructor who has been employed by a defense contractor most recently since early March 2002. He worked for the company previously as a carpenter from January 1986 to March 1997 when, anticipating a layoff, he left for a carpenter position with a local company.

In November 1988, Applicant and his first spouse divorced after two years of marriage. Their daughter, who was born in August 1987, lives with Applicant's former spouse. Applicant paid \$60 weekly in child support until August 2005, when she turned 18. In June 1990, he married his present wife, who has a daughter by a previous marriage. She received only sporadic child support for about a year for her daughter, who turned 18 in May 2005. Applicant and his spouse have a son born in December 1990. Her daughter and their son were residing with Applicant and his wife as of October 2005.

Applicant's spouse has had significant medical problems since the early 1990s. In addition to several emergency room visits, she has been admitted to a local hospital 21 times since late December 1990. An overnight stay for chest pain in April 2002 led to a \$6,000 hospital debt when she had no insurance coverage. Recent gastrointestinal difficulties (she has a permanent feeding tube) led to eight inpatient stays between September 2004 and June 2005, including a month-long hospitalization from mid-April 2005 to mid-May 2005. She was unable to work full time since about 1999 because of her medical condition and related treatments.

After he was laid off from his work with the defense contractor in March 1997, Applicant worked for a couple of local companies. Their income was not sufficient to cover all of their financial obligations, including credit card debt incurred primarily for groceries, gasoline, and clothing for the children. Applicant's spouse handled the family's finances, although Applicant opened the bills. She assured him that she had their finances under control, but several accounts were charged off in the 1999/2000 time frame. A financial history of those debts alleged in the SOR follows:

Debt	Delinquency history	Status as of Oct 05
¶ 1.a. \$145 collection debt	\$145 past due with no activity since Aug 98, in collection as of Apr 05	Not listed on Oct 05 credit report or bankruptcy

¶ 1.b. \$2,672 credit card debt	Opened Oct 95, high credit \$552; \$2,330 past due balance written off Apr 99; balance \$2,672 as of ay 05	Listed on Oct 05 bankruptcy as \$2,070 balance
¶ 1.c. \$5,616 collection debt	Opened Feb 98, \$2,447 high credit, account sold Apr 99; in collection as of Nov 00, balance \$5,853 as of Oct 05	Not listed by creditor or collection agency on Oct 05 bankruptcy (2)
¶ 1.d. \$1,456 in collection for VISA and asterCard accounts with same bank	VISA opened Oct 98, \$552 high credit, written off Jun 99; \$641 in collection Nov 00; \$831 as of Jun 04. MasterCard opened Nov 97, \$658 high credit, written off Sep 99, \$678 in coll Apr 01; \$749 as of ar 03	VISA account listed on Oct 05 bankruptcy as \$646 balance
¶ 1.e. \$849 revolving charge in collection	Opened Apr 00, \$849 high credit, placed for collection Sep 00, still owed as of Oct 05	Listed on Oct 05 bankruptcy
¶ 1.f. \$1,710 credit card debt in collection	VISA opened Apr 97, high credit \$1,519 to profit and loss Nov 00, balance \$1,790 in collection as of Sep 05	Listed on Oct 05 bankruptcy as \$1,568 balance
¶ 1.g. \$423 credit card debt	Opened Dec 03, \$423 charged off as of Aug 04, no activity since Apr 04	Listed on Oct 05 bankruptcy as \$424 balance

In May 2000, Applicant's spouse paid a May 1996 judgment of \$651 for anesthesia services she incurred. From September 2000 to September 2001, Applicant was employed by a company with a benefit package that included financial assistance. Applicant had one session of financial counseling and he and his spouse began the process of filing for bankruptcy with the help of an attorney in the benefit plan. Applicant's spouse took responsibility for meeting with the attorney and gathering the records for a bankruptcy filing. She had trouble getting all the information together. Applicant assumed the bankruptcy was proceeding and she did not inform him otherwise. In September 2001, Applicant was laid off from the job. He collected unemployment compensation for the next five months, but it was not enough to cover their living expenses.

In conjunction with his rehire by the defense contractor in 2002, Applicant executed a security clearance application (SF 86) on February 13, 2002. Applicant responded "No" to questions 38 (over 180 days delinquent on any debt in the last seven years), 39 (currently over 90 days delinquent on any debts), and 33 (any bankruptcy filing within the preceding 7 years).

The Defense Security Service (DSS) checked Applicant's credit record on February 17, 2002. Listed on his credit report were several unpaid bad debts, those in SOR ¶¶ 1.b., 1.c., 1.d. (in collection). A subsequent credit check on March 27, 2003, revealed the debts were still outstanding, although Applicant was making \$336 payments as agreed on an automobile loan taken out in November 2002 for \$14,290.

In or before June 2003, Applicant was interviewed by a DSS special agent about his delinquent financial obligations.

Aware they were behind on some payments but not sure how far behind, Applicant learned that significant debt was still on his credit report (¶ 1.b. \$2,672, ¶ 1.c. \$4,332, ¶ 1.d. \$707 and \$749, ¶ 1.e. \$849, ¶ 1.f. \$1,509). He attributed his debt to his spouse's medical problems, which prevented her from working full time; the costs incurred in her care, including a \$6,000 balance for inpatient stay in 2002 when they had no medical insurance; and to his unemployment from September 2001 to early March 2002.

After his meeting with the DSS agent, Applicant discussed their finances with his spouse. Upset that he might lose his job because of her handling of their finances and her failure to pursue the bankruptcy, she assured him she would take care of the bankruptcy right away. Since they had delayed so long, she learned from their bankruptcy attorney that they would have to commence the process again and pay another fee.

With his spouse's assistance, Applicant prepared a personal financial statement that he provided the DSS agent during a subsequent interview on June 18, 2003. They estimated a monthly net remainder of \$165 after payment of monthly living expenses and one debt, an automobile loan.

Applicant added that his spouse was handling their finances, and they had consulted with a lawyer to whom they provided financial record information, but to date they had not been placed in any formal repayment plan or filed for bankruptcy. Her spouse had not had success of late contacting the lawyer/financial counselor. Applicant did not rule out the possibility of resolution through nonprofit debt consolidation.

In December 2003, Applicant opened a revolving charge account. A \$423 balance was charged off by the creditor in April 2004 (SOR ¶ 1.g.). In January 2004, Applicant took out an automobile loan of \$10,800, taking on monthly payments of \$264. In February 2004, a medical judgment was awarded against Applicant in the amount of \$826. It was satisfied in January 2005.

Between September 2004 and June 2005, Applicant's spouse experienced gastrointestinal difficulties that led to her hospitalization eight times and to several additional emergency room visits. Applicant incurred co-pay costs of \$250 per inpatient admission and \$50 for emergency room visits when she was not admitted. Because of her medical problems, she was unable to return in the fall to her part-time position serving lunch at a local parochial school three or four hours per day. She turned over handling of the day-to-day financial obligations to Applicant.

A check of Applicant's credit on May 2, 2005, disclosed Applicant had not paid those debts alleged in the SOR, including a previously unreported collection debt of \$145 (SOR ¶ 1.a.). Applicant reportedly owed an aggregate balance of \$12,246. He also was reportedly past due \$529 on his car loan taken out in January 2004. An updated credit report of October 11, 2005, showed a charged off balance of \$3,946 on the automobile loan. The vehicle had been totaled in an accident leaving him with a deficiency balance. Also reported was an outstanding medical judgment of \$550 awarded in April 2005. Those debts in ¶¶ 1.c. \$5,853, 1.d. \$831, 1.e. \$849, 1.f. \$1,791, and 1.g. \$423 were still listed as charged off or in collection. Applicant was current on the automobile loan taken out in November 2002.

In July 2005, Applicant's spouse filed for social security disability. A decision to grant or deny her benefits had not been forthcoming as of October 21, 2005. In September 2005, Applicant's stepdaughter started attending a local community college. They paid about \$500 for her college textbooks.

With \$600 borrowed from Applicant's mother-in-law to cover the fees, Applicant and his spouse filed a joint petition for Chapter 7 bankruptcy in mid-October 2005, listing \$33,748 in unsecured nonpriority claims, of which \$18,592 is medical debt incurred since 2000. They listed current expenditures exceeding their income by \$445 each month, absent any overtime earnings. Applicant and his spouse testified to lower costs for rent (\$400 vs. \$500), utilities (\$400 vs. \$500) and clothing (\$100 vs. \$200) than what is listed on their petition, and he averages a little less than 10 hours of overtime per month. Applicant and his spouse are counting on her being granted social security disability benefits, as she continues to have out-of-pocket medical costs of \$300 per month.

Applicant and his spouse have two vehicles: a 1994 model year truck that is paid for and a 1999 minivan on which they were making payments. With a refinancing of their loan in 2005, they lowered the payments from \$336 monthly to \$252. They rent a duplex apartment from her mother. In return for a low rental obligation, Applicant maintains the premises.

Applicant has been a volunteer firefighter in his community since July 1983. While his service is unpaid, he receives an abatement of any property and motor vehicle taxes up to \$1,000 annually. Since he rents from his mother-in-law, he has received an abatement only of car taxes, about \$250 at their highest. The chief of the volunteer fire department attests to Applicant's honesty, loyalty and integrity.

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. As reflected in the SOR, Applicant has several consumer credit debts that have been delinquent since the 1999/00 time frame (¶¶ 1.b., 1.c, 1.d., 1.e., 1.f.). While his spouse credibly testified she kept the extent of their financial problems from him, Applicant opened the bills, so he was not totally ignorant of their financial situation. Moreover, although it was reasonable for him to rely on the assurances of his spouse that she would pay their obligations, he is legally responsible for the debt and showed poor judgment in not following up to ensure they were paid. 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.

The reliance on consumer credit alleged in the SOR was directly within their control, although the credit purchases were primarily by his spouse and for necessities such as gasoline, groceries, and clothing. Unforeseen medical expenses for his spouse and the loss of her income due to illness clearly had a negative affect on their ability to maintain timely payments on their consumer credit obligations, and to address them once they became seriously delinquent. Unable to work full-time since about 1999, his spouse has been unemployed since August 2004 due to recurrent gastrointestinal difficulties. In April 2002, she incurred a \$6,000 medical bill when they had no insurance coverage. Her co-pays for medication cost them about \$300 per month, and they have had to pay financial judgments in favor of medical service providers. 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, but financial pressures may be such to preclude an affirmative finding, even where debts are incurred or persist because of medical emergencies.

As reflected in the joint bankruptcy petition filed in October 2005, Applicant's debt is more extensive than the SOR reflects. He and his spouse owe about \$18,592 in medical debt in addition to the unpaid consumer credit accounts alleged. Applicant has addressed those concerns by his recent bankruptcy filing. Assurances from his bankruptcy attorney of no impediment to discharge are not a guarantee of discharge, and a resolution that leaves creditors unpaid is entitled to less weight in mitigation than systematic efforts to repay obligations. Applicant and his spouse have ongoing medical costs for medication and future substantial co-pay obligations are not out of the question given her recurrent medical problems. Applicant and his spouse have little, if any, discretionary income available to draw on in case of an emergency. They had to borrow the \$600 from her mother to file for the bankruptcy. However, in Applicant's favor, efforts to resolve their debts commenced in 2002, well before the SOR was issued. Applicant met with a financial counselor and they retained an attorney to file for bankruptcy. The delay in filing is not held against him where his spouse had been handling it and she had significant medical problems from August 2004 to June 2005. There is no evidence of over-reliance on credit since he took over the handling of the family's financial situation in August 2004. As of August 2005, he no longer has to pay child support of \$60 per week. Further improvement in their financial situation is expected if his spouse is awarded social security disability. Even if she is denied benefits, Applicant and his spouse have taken some steps to reduce their spending (such as refinancing their car loan to lower their monthly payment) to where they should be able to pay their day-to-day obligations, provided Applicant remains employed by the defense contractor. MC ¶E2.A6.1.3.4. *The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control* applies. I find for Applicant with respect to SOR ¶¶ 1.a., 1.b., 1.c., 1.d., 1.e., 1.f. and 1.g.

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. The credit check run only days after he completed his SF 86 listed some unpaid accounts rated as bad debts (those in SOR ¶¶ 1.b., 1.c., 1.d.). Applicant has consistently denied any intentional concealment of his indebtedness. In his Answer to the SOR, he stated:

In regard to Guideline E, question #38 and #39 were answered to the best of my ability based on the information that I had at the time. In short, [bankruptcy attorney X] had been retained to begin bankruptcy proceedings, and I was under the impression that the debts I had at that time would be erased. I was unaware that a final fee was needed to be paid to [bankruptcy attorney X] and therefore the bankruptcy had not been filed yet.

At his hearing, he testified similarly on direct examination:

I was under the understanding that because of the bankruptcy proceedings that I believe were being undergone, I believe that those debts now basically were nonexistent. So in my own judgment I felt those debts did not exist anymore, so that is why I answered the questions the way I did. (Tr. 68)

He testified that he assumed the bankruptcy had been filed, and first learned they had not filed "more than likely as a result of that meeting with [the DSS special agent]." (Tr. 85)

Nothing in the language of questions 38 or 39 exempts from reporting delinquent debts included in a bankruptcy. Even so, a good faith belief that he did not have to report debts included on a bankruptcy would negate the knowing and willful intent required under 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.* However, his explanation cannot be reconciled with his negative response to question 33 on the SF 86, "In the last 7 years, have you filed a petition under any chapter of the bankruptcy code (to include Chapter 13)." When asked to address this inconsistent position (assuming debts did not have to be listed because of a bankruptcy filing and then denying the bankruptcy), Applicant responded, "That was on my - -?" (Tr. 78). After being directed specifically to question 33 on his SF 86, Applicant responded, "That is the way I answered it." Had Applicant intended to disclose this information, it stands to reason he would have indicated somewhere on the SF 86 that he was attempting to resolve his debts through bankruptcy. When asked by Department Counsel why he did not address the debts or pending bankruptcy in the general remarks section of the form, Applicant responded:

I probably should have, but with no guidance, just conferring with my wife to try to figure out the questionnaire, because besides those questions, everything else that questionnaire asks, it sometimes can be a bit overwhelming trying to get that completed. So basically for anything other than just a lack of guidance, I probably should have sought [sic] better guidance in answering these questions.

(Tr. 79) Any inference that he conferred with his spouse on the SF 86 undercuts his claim that he was unaware of his financial situation and the status of the bankruptcy until his DSS interview. There is no testimony from Applicant's spouse that he conferred with her as to how to answer the SF86, and she is unlikely to have concealed from him the status of their bankruptcy if he had asked her. His spouse testified that sometime around Applicant's "security meeting," she told him she would take care of the bankruptcy right away. While she was not certain of dates, other evidence indicates the discussion took place after his initial interview with the DSS agent. Given the absence of a consistent credible explanation for his SF 86 omissions, I am unable to find for him with respect to SOR ¶¶ 2.a. and 2.b.

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

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. This VISA card debt was reported on Applicant's October 2005 credit report under the name of the original creditor with a \$2,359 balance and under the name of the collection agency with a reported \$5,853 balance, likely due to interest. (See Ex. 6) Applicant included on his bankruptcy petition a delinquent VISA card balance of \$2,340 that does not appear on any of his credit reports under either the account or creditor name reflected on the bankruptcy. This could be a separate debt or a transfer of that debt in SOR ¶ 1.c.