

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant fell behind in his financial obligations due to admitted financial irresponsibility in 1999 and 2000. By July 2004, he owed a total of about \$7,328 in delinquent consumer credit debt and \$6,625 in student loan debt. He has satisfied three of the seven debts and intends to make payments on his remaining debt, but it is too soon to conclude that his financial difficulties are safely in the past where he is behind in his current obligations. Alleged personal conduct concerns are not proven where Applicant's omission of his delinquent debt from his security clearance application was due to a misunderstanding of the nature of the financial record inquiries. Clearance is denied.

CASE NO: 05-04286.h1

DATE: 05/12/2006

DATE: May 12, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-04286

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant fell behind in his financial obligations due to admitted financial irresponsibility in 1999 and 2000. By July 2004, he owed a total of about \$7,328 in delinquent consumer credit debt and \$6,625 in student loan debt. He has satisfied three of the seven debts and intends to make payments on his remaining debt, but it is too soon to conclude that his financial difficulties are safely in the past where he is behind in his current obligations. Alleged personal conduct concerns are not proven where Applicant's omission of his delinquent debt from his security clearance application was due to a misunderstanding of the nature of the financial record inquiries. Clearance is denied.

STATEMENT OF THE CASE

On November 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, 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 owed delinquent debt totaling \$11,963.05 to six creditors and falsified his June 2004 security clearance application (SF 86) by denying any debt currently delinquent over 90 days and any delinquency over 180 days within the last seven years.

On December 9, 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 on January 17, 2006, I scheduled a hearing for March 3, 2003. At the hearing, six government exhibits and two Applicant exhibits were admitted. Testimony was taken from Applicant, his supervisor, and his union president, as reflected in a transcript received on March 16, 2006. The record was held open following the hearing until March 24, 2006, for Applicant to document debt repayment. Applicant timely submitted documentation, admitted as Exhibit C, confirming a zero balance with the creditor in SOR ¶ 1.d.

FINDINGS OF FACT

Applicant was alleged under Guideline F, financial considerations, to owe \$11,963.05 in delinquent debt, and under Guideline E, personal conduct, to have deliberately falsified his June 2004 security clearance application (SF 86) by responding "No" to inquiries into any debts currently over 90 days delinquent and any debts over 180 days delinquent within the preceding seven years. Applicant admitted having owed the alleged delinquencies with the exception of ¶ 1.g., but contended the debts in ¶¶ 1.b., 1.c., and 1.d. had been paid. He denied that he intentionally falsified his SF 86, and indicated he had misunderstood the questions. 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 factual findings:

Applicant is a 27-year-old outside electrician employed by a defense contractor since July 2004. Applicant requires a secret-level security clearance for his present duties.

A graduate of his local high school in June 1997, Applicant was hired as an assistant manager of a pet store in October of that year. Over the next few years, he opened several accounts that became delinquent due to admitted financial irresponsibility, as follows:

- In November and December 1998, Applicant took out student loans of \$2,625 (SOR ¶ 1.e.) and \$4,000 (¶ 1.f.), respectively, from the same lender to finance his college studies. Applicant attended a local university for a year and a half with repayment of his loans deferred during that time. He failed to make any payments on the loans when they became due, and he was considered in default in January 2001.
- A revolving credit card account opened in December 1999 was placed for collection in April 2000 with \$2,436 past due (¶ 1.b.). As of February 2004, the debt balance was \$2,661. By June 2004, it had been placed with another assignee, who reported a balance of \$2,709.
- A line of credit opened in December 1999 was charged off in the amount of \$2,217 and transferred in May 2002.
- A credit card account opened in May 2000 was charged off in the amount of \$899 and transferred (¶ 1.a.). As of June 2004, the debt balance was \$1,140.
- In September 2000, a \$352.43 judgment was awarded a medical provider against Applicant (¶ 1.c.).
- In about October 2000, Applicant had an unpaid \$222 natural gas debt that was placed for collection (¶ 1.d.).

Sometime in early 2001, Applicant obtained a loan from his employer, the pet store, to repair his vehicle. He made some payments on the loan until he was injured and had to stop working. The employer obtained a judgment of \$105 against him in May 2002. Applicant paid it in full in or about May 2002. In June 2002, a medical service provider placed a \$139 unpaid balance in collection. That debt was for treatment of a work-related injury covered by workmen's compensation.

Applicant worked in a succession of jobs (a tender for a masonry company, a driver for a pizzeria, a foreman for a fence company, a carpenter for a builder) from October 2001 until he went to work for his current employer in July 2004. He made no payments on any of his delinquent debts because he did not have the income.

Needing a secret clearance for his duties with the defense contractor, Applicant executed a security clearance application (SF 86) on June 16, 2004. Applicant responded negatively to the financial record inquiries, including whether when had been over 180 days delinquent on any debts in the last seven years (question 38) and whether he was currently over 90 days delinquent on any debts (question 39) because he mistakenly read the questions as pertaining only to open accounts and not those that had been closed or charged off by the credit grantor. Within days of completing his SF 86, Applicant married his spouse.

A check of Applicant's credit by the government on July 8, 2004, revealed the accounts that had been charged off, placed for collection, and/or reduced to judgment by his creditors. An installment automobile loan that he had opened in March 1999 had been paid off in February 2004 on agreed upon terms.

On December 7, 2004, Applicant was interviewed about the delinquent accounts by a special investigator for the Office of Personnel Management Investigations Service. Applicant admitted he had "just not paid [his] bills when [he] was younger," including a computer he purchased in November 2000 or his student loans. Applicant expressed no knowledge of the debts in ¶¶ 1.b. or 1.c., but admitted knowing about the unpaid student loans (¶¶ 1.e. and 1.f.), the gas services debt (¶ 1.d.), one credit card debt (¶ 1.a.), the doctor's bill incurred in 2001 which he claimed should have been covered by workmen's compensation (¶ 1.g.), and the \$105 judgment awarded his previous employer but since paid. At the time of his interview, Applicant was on temporary duty for his employer with his return to his home scheduled for February 2005. He had accepted the TDY assignment away from home and his spouse to earn the money to pay off his debts and to purchase a home with his spouse. Applicant expressed his intent to contact his creditors while on TDY so that he could begin repayment on his return in February 2005. Applicant provided a personal financial statement, estimating discretionary funds of \$2,831 that did not include any housing costs, as his spouse was living with her mother while he was on TDY so they could save up for a home.

In January 2005, Applicant was upgraded at work from an outside electrician 5th step learner to a 6th step learner. In response to interrogatories from DOHA, Applicant admitted on August 12, 2005, that he had made no payments on his delinquencies with the exception of satisfying the judgment owed his former employer. He averred he had arranged to satisfy the debt in ¶ 1.b. by October 2005, and the gas debt (¶ 1.d.) would be paid before the end of September 2005. He indicated he was working 84 hours a week to earn the money to pay the debts in the hope of clearing his credit and

gaining his security clearance. As for his failure to list his delinquencies in response to questions 38 and 39 on his SF 86, Applicant responded as to both questions, "I was under the mistaken impression that the question referred [sic] to open accounts."

In February 2005, Applicant and his spouse bought their home, a duplex unit. Applicant and his spouse rented out the second unit, with the rental income of \$800 monthly covering about half of their \$1,560 monthly mortgage payment. In June 2005, Applicant and his spouse took a vacation to Jamaica at a cost of \$2,200.

From July 5, 2005 through November 26, 2005, Applicant worked twelve hour days, seven days per week. Sometime in August 2005, Applicant took out an automobile loan of \$18,814 for a 2005 model-year truck, to be repaid at \$347 per month for seven years. As of September 12, 2005, a credit reporting service listed the \$139 judgment (§ 1.g.) and \$222 natural gas debt (§ 1.d.) as unpaid, and updated collection balances on the credit cards of \$2,864 (§ 1.b.) and \$1,226 (§ 1.a.). His student loan accounts, on which he reportedly owed \$2,625 (§ 1.e.) and \$4,507 (§ 1.f.) were listed as "defaulted loan-claim filed against guarantor."

Sometime in Fall 2005, Applicant contacted the student loan lender and offered to make monthly payments of \$50 per month toward the payoff balance of about \$8,000 as soon as he could afford to do so. On September 1, 2005, Applicant satisfied the debt in § 1.c. with a payment to the assignee of \$527.78. Applicant satisfied the debt in § 1.b. on October 31, 2005, with the money he earned from working overtime in the summer. A subsequent credit check on December 28, 2005, reported the account as paid after collection. Listed as still owed were the debts in §§ 1.a., 1.d., 1.e., 1.f., and 1.g. Subsequent to the hearing, Applicant provided proof of a zero balance owed to the creditor in § 1.d. Applicant contacted the assignee for debt § 1.g., but made no payment on the debt as it stemmed from an on-the-job injury sustained in December 2001 and covered by workmen's compensation.

Applicant started with the defense contractor at \$11.87 an hour. On the recommendation of his foreman, Applicant received an early paygrade increase in December 2005 because of his dedication and the quality of his job performance. As of March 2006, his hourly wage was \$14.58 and he was working 40 hours per week. He has made no payments on his student loan debts. Money was tight as of March 2006, as he and his spouse had to evict their tenant in October 2005 and they have had to cover the full mortgage payment. His spouse, who is employed as a manager for a retail sports store, was out of work for seven or eight weeks following the birth of their first child in December 2005. She had enough vacation and disability insurance to cover her maternity leave, but Applicant took two weeks of unpaid paternity leave. Applicant's spouse has a car payment of \$260 per month for a 2001 model-year compact car. Of her four active credit card accounts, three have outstanding balances totaling about \$4,800, \$3,500 of which was for home improvement to both units in their duplex. Applicant and his spouse have separate checking and savings accounts. The balances of Applicant's accounts are \$300 and \$10, respectively, as of March 2006. Applicant and his spouse's joint earnings are about \$60,000 annually.

As of early March 2006, Applicant was behind about \$160 in his utility bill and \$142 for his cable television costs. New tenants were expected to move into the other half of Applicant's duplex in April 2006 at a monthly rent of \$900. With that rental income and his spouse's return to work since late February, Applicant expects he will be able to make

payments on his delinquent obligations in the near future and to bring current his delinquent electric and cable obligations. Applicant spent his income tax refund of about \$3,000 for tax year 2005 on carpet replacement for their rental unit.

Applicant has a reputation on the job for being a hard worker and a team player. He is well thought of by both management and the hourly workers. Applicant's union steward, who described Applicant's work ethics as "top of the line," thought enough of Applicant to recommend him for employment with the union outside of the shipyard. Applicant has taken several road assignments for the financial incentives (bonus pay and per diem), which have been appreciated by his employer. As of his hearing, he was on a temporary duty assignment away from his spouse and infant child.

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 those who testified, 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 overextended himself on consumer credit (SOR ¶¶ 1.a. and 1.b.) when he was in his early 20s, single, and employed as an assistant manager for a pet business. He also defaulted on two student loans totaling \$6,625 taken out in 1998. In addition to the delinquent credit card and student loans, \$352.43 owed a medical provider and \$222 owed for natural gas services had not been satisfied as of June 2004 when he applied for a security clearance. Disqualifying conditions 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 had not satisfied any of his past due accounts as of his interview with the OPM investigator in December 2004. He is credited with taking steps at that time to improve his financial situation. He was on temporary duty in a distant state and his spouse was living with her mother so they would incur no housing costs while he was away. Income that could have been devoted to pay off old debts went into the purchase of a home in February 2005. While their \$1,560 monthly mortgage payment is sizeable given their joint earnings of about \$60,000 annually, Applicant showed good financial judgment in renting out a unit in their home at a rental income that covered a portion of the mortgage. Before the SOR was issued, Applicant had paid off the debts in ¶ 1.b., 1.c., and 1.d. with monies earned from working significant overtime hours in summer 2005. These efforts to resolve his debts fall within mitigating condition E2.A6.1.3.6. *The individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts*.

However, undermining that favorable evidence is his expenditure of \$2,200 for a vacation with his spouse in June 2005 while several delinquent debts (¶¶ 1.a., 1.e., 1.f., and 1.g.) remain unsatisfied. As of his interview with the OPM investigator, Applicant was on notice that the government was concerned about his past due debts, including the student loans. By August 12, 2005, he had not made any payments on the delinquencies, and the delay in addressing his debts is troubling. One of the first steps in reform is understanding the error in one's ways, and Applicant acknowledges he made a poor financial decision ("I've always done poorly financially, not with making money but with putting it in the right places. And the debt for the student loans I hadn't thought about in years." Tr. 58-59).

Nothing in the Directive requires that an applicant be debt free before he can be granted access, but there must be sufficient objective indicators that financial problems are being resolved and not likely to recur. As of March 2006, Applicant was behind in his electric utility and cable television payments. Applicant and his spouse's financial situation has been negatively affected by them having to cover the full cost of their mortgage since they evicted their tenants in October 2005 for habitual late payment of the rent. *See 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).* He also took two weeks of paternity leave without pay on the birth of their first child in December 2005. While his decision to take the paternity leave is understandable, it did not help the family's financial situation. Even assuming it will help secure tenants, Applicant's recent expenditure of their \$3,000 income tax refund on carpet for the rental unit is difficult to justify when he and his spouse are struggling to pay their living expenses. Although Applicant has incurred no new credit card debt, his spouse owes \$4,800 in credit card balances. While I find Applicant to be sincere in his intent to resolve his outstanding delinquencies, he has a track record of making financial decisions out of self-interest irrespective of whether they are financially sound (e.g., the vacation, the \$3,000 carpet, his truck in August 2005 at a high interest rate). He has not demonstrated a sufficiently positive change in his financial habits, and he lacks the financial resources at present to resolve his debts in the reasonably foreseeable future. Accordingly, SOR ¶¶ 1.a., 1.e., 1.f., and 1.g. are resolved against him. Favorable findings are returned as to those debts that have been paid (¶¶ 1.b., 1.c., 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 reasonably be drawn in this case based on the evidence. The credit check run three weeks after he completed his SF 86 listed as bad debts those delinquencies alleged in the SOR. Applicant has never denied the delinquencies with the exception of questioning his responsibility for ¶ 1.g., but he has consistently maintained that he thought the SF 86 inquiries pertained to new debt on open accounts. There is no evidence that as of June 2004 Applicant was behind in his day to day living expenses or that he had incurred delinquent consumer credit debt since 2000. Applicant's credibility on this issue is bolstered by his candor with the government about his debts and his reputation for honesty at the workplace. His claims to good faith misunderstanding of the SF 86 financial inquiries are accepted. Since his omissions were not knowingly false, I 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: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against 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 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.