

KEYWORD: Financial; Personal Conduct; Criminal Conduct

DIGEST: Applicant became financially overextended in an effort to support two households following a marital separation in 2001. By late 2003, he owed \$21,635 in delinquent consumer credit debt. While he settled two of the accounts for less than their full balances in February 2006, significant financial considerations persist. Personal conduct and criminal conduct concerns raised by his deliberate omission of all but one \$40 debt from his security clearance application are mitigated where he readily acknowledges the indebtedness and his error in falsifying his application to increase his chance of getting hired by the defense contractor. Clearance is denied.

CASENO: 05-04349.h1

DATE: 06/06/2006

DATE: June 6, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-04349

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant became financially overextended in an effort to support two households following a marital separation in 2001. By late 2003, he owed \$21,635 in delinquent consumer credit debt. While he settled two of the accounts for less than their full balances in February 2006, significant financial considerations persist. Personal conduct and criminal conduct concerns raised by his deliberate omission of all but one \$40 debt from his security clearance application are mitigated where he readily acknowledges the indebtedness and his error in falsifying his application to increase his chance of getting hired by the defense contractor. Clearance is denied.

STATEMENT OF THE CASE

On October 29, 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. [\(1\)](#)

On November 17, 2005, Applicant answered the SOR and requested a hearing before a DOHA administrative judge. The case was assigned to me on December 20, 2005, and on January 6, 2006, I scheduled a hearing for February 7, 2006. At the hearing, five government exhibits and one Applicant exhibit were admitted. Testimony was taken from Applicant, as reflected in a transcript received on February 17, 2006. The record was held open following the hearing until February 24, 2006, for Applicant to document debt repayment. On February 22, 2006, Applicant timely submitted documentation (Exhibits B, C, and D) that was accepted into the record without any objections from the government.

FINDINGS OF FACT

Applicant was alleged under Guideline F to owe \$21,635 in delinquent debt, and under Guideline E to have deliberately falsified his August 2004 security clearance application (SF 86) by responding "No" to inquiry into any debts over 180 days delinquent within the preceding seven years, and by responding "Yes" to any debt currently over 90 days delinquent but listing only that debt in ¶ 1.o. Applicant was alleged under Guideline J to have committed a felony violation of 18 U.S.C. § 1001 by making those inaccurate statements on his SF 86. Applicant admitted having owed the alleged delinquencies with the exception of the \$10,116 debt in ¶ 1.k. He also admitted that he intentionally falsified his SF 86. Applicant's admissions are incorporated as findings of fact. After a thorough consideration of the evidence of record, I make the following additional findings:

Applicant is a 30-year-old carpenter employed by a defense contractor since 2004. Applicant requires a secret-level security clearance for his present duties.

Applicant left high school in 11th grade, and in May 1994 started working as a high area attendant at a local casino at around \$8.75 an hour. He subsequently earned his GED in 2000. Applicant married in July 1998. His spouse stayed at home to care for their children, a son born in October 1998, and a daughter born in August 2001.

Applicant and his spouse separated in 2001, [\(2\)](#) and he moved into his own apartment. He continued to support his spouse and children financially as she was not employed. Applicant could not afford to maintain two households on his wages, and he began to rely on credit to pay for necessities. In November 2001, he began working part-time, anywhere from two to five days weekly as an ambulance driver. By February 2002, several consumer credit accounts had become delinquent and were charged off. In June 2002, Applicant took out an automobile loan for \$17,000, to be repaid at \$404 a month. Applicant made his car payments on time for the most part, but other accounts became delinquent, as shown in the following table.

Debt in SOR	Delinquency history	Payment status
¶ 1.a. \$1,320 credit card balance charged off Feb 02	Opened Nov 99, \$908 charged off, \$1,159 balance ay 03, \$1,304 balance Jun 05	Plan to repay through CCCS, no payments as of Feb 06
¶ 1.b. \$2,141 credit card balance charged off Feb 02	Opened Jul 01, \$1,725 charged off, \$1,889 balance ay 03, \$2,116 balance Jun 05	Plan to repay through CCCS, no payments as of Feb 06
¶ 1.c. \$1,330 for collection from creditor in ¶ 1.d.	Opened as collection debt \$1,330 in Oct 02, still owed Jun 05	No payments as of Feb 06
¶ 1.d. \$1,331 credit	Opened May 99, high credit \$1,828, \$1,331 charged off and	

account charged off Mar 02	referred to collection (see ¶1.c.) Oct 02	Same debt as ¶ 1.c.
¶ 1.e. \$391 telephone debt for collection Jun 02	Opened Feb 01, \$391 charged off reported balance Jun 05	Plan to repay through CCCS, no payments as of Feb 06
¶ 1.f. \$419 credit card balance for collection Jul 02	Opened Feb 99, \$419 charged off Jul 02, balance \$519.29 Feb 06	Paid \$260 in settlement Feb 06
¶ 1.g. \$610 credit card balance charged off Aug 02	Opened Oct 01, high credit \$918, \$897 charged off, balance \$674 as of Aug 04, \$650.88 balance Feb 06	Paid \$391 in settlement Feb 06
¶ 1.h. \$654 judgment Jan 05	Installment account opened Jul 03, \$619 for collection Oct 03, \$654 judgment Jan 05	Unpaid as of Feb 06
¶ 1.i. \$480 for collection Oct 02	Installment account opened Sep 02, \$420 for collection Oct 02	Unpaid as of Feb 06
¶ 1.j. \$520 in collection Nov 02	\$520 balance in collection as of Nov 04	Unpaid as of Feb 06
¶ 1.k. \$10,116 charged off May 03	\$16,274 secured auto loan taken out Feb 02, car repossessed and \$10,116 charged off 03, zero balance reported as of Jul 05	Account closed, debt not actively collected, no payments made
¶ 1.l. \$577 credit card balance charged off Jul 03	Opened Dec 01, \$577 charged off and transferred Jul 03	Unpaid as of Feb 06
¶ 1.m. \$1,185 for collection Nov 03	Unsecured loan \$1,320 taken out Feb 00, \$1,185 past due balance for collection, still owed Jun 05	Unpaid as of Feb 06
¶ 1.n. \$521 for collection Dec 03	Collection debt placed Sep 03, \$521 balance, unable to locate consumer as of Dec 03	Unpaid as of Feb 06
¶ 1.o. \$40 past due 90 days	Debt owed attorney	Assumes paid, no proof presented

In January 2003, Applicant left his job with one casino to work for another in the area as a security guard. His hourly wage was about \$8.75 an hour. In July 2003, he was forced to resign due to excessive absenteeism related to migraine headaches. Applicant collected unemployment until January 2004, when he started working in nights receiving for a major discount retailer.

Applicant started working as a carpenter diver for his current employer at about \$11 an hour in 2004. Needing a secret clearance for his duties, Applicant completed a security clearance application in about May 2004 that was later reviewed and signed by him on August 5, 2004. Applicant responded negatively to question 38 (any financial delinquencies over 180 days in the last 7 years). He listed an automobile repossession for \$7,000 owed in September 2003 (¶ 1.k.) in answer to question 35 (any property repossessed in the last 7 years), and one delinquent credit card of \$40 in response to question 39 (any debt currently delinquent over 90 days).

A check of Applicant's credit on August 26, 2004, revealed as charged off and/or placed for collection the debts alleged in the SOR, with the exception of ¶ 1.o. that Applicant had listed on his SF 86. When interviewed about these debts by a Defense Security Service (DSS) special agent on November 15, 2004, Applicant acknowledged all of the delinquencies, which he attributed to the costs of maintaining two households after his marital separation, and a period of unemployment after he lost his job at the casino. He indicated he was paying on two of the debts--\$30 on a small claims judgment against him for ¶ 1.h. and \$40.00 on ¶ 1.g. Applicant provided a personal financial statement, estimating a monthly net remainder of \$407, averring however that he must have underestimated his expenses as he did not have that amount at the end of the month. Hoping he would be able to make payment arrangements, he had an appointment scheduled within the week with a consumer credit counseling service (CCCS), but he also expressed his intent to file for bankruptcy if forced to do so.

Applicant met with a CCCS counselor on November 19, 2004. Based on an estimated monthly remainder of \$475, he proposed to repay his debts with a payment of \$150 monthly for 40 months to the CCCS. Since he was \$400 past due on his rent and two weeks behind in his car payment, no plan was finalized at that time. In January 2005, a judgment was entered against him in the amount of \$654 for the debt in ¶ 1.h.

A check of Applicant's credit on July 11, 2005, showed no progress in resolving his indebtedness as he could not afford to make the payment to CCCS. Applicant was asked to respond to DOHA financial interrogatories concerning the status of his debts and any agreement to repay them through the CCCS. On September 8, 2005, Applicant indicated that since CCCS would not work with him until he caught up on his living expenses, he tried unsuccessfully to resolve them without CCCS assistance. With the exception of ¶ 1.h., which he indicated should have been paid through deductions from his wage earnings, no payments had been made on any of the delinquencies since 2003. Applicant had an appointment with CCCS scheduled for September 12, 2005. He acknowledged he had not been candid about his delinquencies on his SF 86 because he feared he would not be hired by the defense contractor if he had reported his debts and he planned to take care of them as soon as he could.

Applicant met with the CCCS counselor as scheduled. With an estimated \$475.99 remaining each month after payment of expenses, including a \$297 car payment, ⁽³⁾ Applicant proposed to resolve \$4,194 of his debt (¶¶ 1.a., 1.b., 1.e., and 1.g.) at \$150 per month to CCCS. As those debts were paid off, others would be added to the debt management plan.

In about November 2005, Applicant traded in his 1996 model-year minivan vehicle for a 2000 Dodge Durango. His car payments are about \$360 per month.

On February 8, 2006, the collection agency for ¶ 1.f. offered to settle the \$519.29 balance on payment of \$259.65 on or before February 28, 2006. On February 13, 2006, the assignee attempting to collect ¶ 1.g. offered to settle the \$650.88 balance for \$391 if received by February 28, 2006. Applicant paid the settlement amounts by separate checks dated February 19, 2006.

Applicant pays \$150 weekly to his spouse to support their two children. He has been timely in his support payments and was caught up in his rent. Applicant earns \$16.94 hourly at the defense contractor and \$7.75 hourly as a part-time ambulance driver two days a week. He did not work as an ambulance driver for part of the summer in 2005 as he was on first shift at the defense contractor for training. Applicant moved into a friend's home in January 2006, reducing his monthly rent from \$525 to \$500 a month. He has about \$100 left over each month after paying his current expenses and child support. As of February 2006, Applicant had about \$200 in checking funds but nothing in savings.

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. Applicant overextended himself on consumer credit following a marital separation, as he could not afford to maintain two households on his wages of less than \$10 an hour at a local casino. By late 2002, Applicant had accumulated delinquent debt totaling about \$7,831 to 10 creditors (SOR ¶¶ 1.a., 1.b., 1.d., 1.e., 1.f., 1.g., 1.h., 1.i., 1.j.). In 2003, his vehicle was repossessed for failure to make timely payments, and a \$10,116 balance was charged off (¶ 1.k.). Additional consumer credit debt of \$2,283 (¶¶ 1.l., 1.m., 1.n.) was placed for collection in 2003. 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.

Mitigating condition ¶ 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. The separation and associated costs of maintaining a separate residence extenuate the incurring of the debt. The salient issue in this case is whether Applicant has done enough to resolve his indebtedness such that the financial pressures no longer pose a significant security risk. As of his DSS interview in November 2004, Applicant had paid \$40 on ¶ 1.g, He also claimed to have paid \$30 on ¶ 1.h., although that debt was later reduced to judgment. To his credit, he sought the assistance of CCCS a few days after his interview, but CCCS would not work with him at that time because he was behind in his rent and car payment. As of September 2005, he had made no further payments on his delinquencies. After being asked by DOHA to report any efforts to resolve his debts, he returned to CCCS, this time making about \$16.54 an hour, and was offered similar terms. Applicant did not complete the paperwork required to continue the process. Instead, he traded in his vehicle for a 2000 model-year truck on which he has \$360 monthly payments.

Applicant is credited with making payments totaling \$651 after his February 2006 hearing to settle ¶¶ 1.f. and 1.g. While favorable findings are returned as to those subparagraphs accordingly, and they show good faith with regard to acknowledging and addressing his debts (*see* ¶ E2.A6.1.3.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), they are not enough to demonstrate a track record of repayment from which one could conclude that he is likely to resolve his delinquencies in the foreseeable future. To the contrary, significant financial pressures persist, given he owes delinquent debt of about \$20,000 on an income that is apparently insufficient for him to pay CCCS \$150 per month. Even if the creditor in ¶ 1.k. does not pursue the balance remaining after the repossession, and assuming he has paid the minor \$40 debt in ¶ 1.o., he still owes over \$9,000 in delinquent debt. He has shown good financial judgment in reducing his rent by \$25 per month, but he has only \$200 in checking available to him in the event of an emergency. His recent acquisition of a car loan at monthly payments of \$360 has left him with little to devote to his old debts. SOR ¶¶ 1.a., 1.b., 1.c. (and 1.d. to the extent it shows the original delinquency rather than an additional amount owed), 1.e., 1.h., 1.i., 1.j., 1.k., 1.l., 1.m., 1.n. and 1.o. are resolved against him.

Under Guideline E, personal conduct, the government alleges, and Applicant admits, that he deliberately falsified his SF 86 by failing to disclose all but the most minor of his delinquent debts. In response to DOHA interrogatories, Applicant explained his negative response to question 38 (any delinquency over 180 days in the last 7 years) as follows:

I was told that if a person had a lot of bad debts [the defense contractor] would not hire them and I really wanted the job so I did not put them on and I was gonna take care of them as soon as I could.

In response to his failure to list them under question 39 (any debts currently over 90 days delinquent), Applicant indicated, "I did not want them to keep me from getting a job at [the defense contractor]. I know I just should have put them one there but I was scared." Guideline E DC ¶ E2.A5.1.2.2. *The deliberate omission, concealment, or falsification of relevant and material fact 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.*

Criminal conduct concerns are implicated as well (*see* ¶ E2.A10.1.2.1. *Allegations or admission of criminal conduct, regardless of whether the person was formally charged* and ¶ E2.A10.1.2.2. *A single serious crime or multiple lesser offenses*), as a deliberate false statement to the U.S. government violates 18 U.S.C. § 1001.⁽⁴⁾ Reform of the personal conduct and criminal conduct concerns is demonstrated by his acknowledgment of the debts and intentional falsification, however. When he was interviewed by the DSS agent on November 15, 2004, Applicant acknowledged the debts reported as delinquent on his credit report. Given his SF 86 was signed in August 2004, his admission to delinquent debt in November 2004 is regarded as a prompt correction. Whereas it is not clear from the record whether he volunteered the information up-front or had to be confronted with the adverse credit information, DC E2.A5.1.3.3. *The individual made prompt, good faith efforts to correct the falsification before being confronted with the facts*, cannot be applied in his favor. Yet, while Applicant's self-interest in gaining employment with the defense contractor does not justify or excuse his knowing false statement, he is not likely to repeat the behavior. In responding to DOHA interrogatories, he showed he understands his obligation of candor ("I know I should have put them on there, but I was scared.") When questioned at his hearing, Applicant readily admitted to the falsifications. When asked about the falsifications, he indicated he did not have a reason for the falsifications, but immediately thereafter acknowledged that he believed he was more likely to be hired if he did not disclose the debts. (Tr. 48) Under the criminal conduct

guideline, MC ¶ E2.A10.1.3.2. *The crime was an isolated incident*, and ¶ E2.A10.1.3.6. *There is clear evidence of successful rehabilitation*, apply. Favorable findings are therefore returned as to ¶¶ 2.a., 2.b., and 3.a. of the SOR.

FORMAL FINDINGS

Formal findings as required by Section 3, Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: Against the Applicant

Subparagraph 1.k.: Against the Applicant

Subparagraph 1.l.: Against the Applicant

Subparagraph 1.m.: Against the Applicant

Subparagraph 1.n. Against the Applicant

Subparagraph 1.o.: Against the Applicant

Paragraph 2. Guideline E: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Paragraph 3. Guideline J: FOR THE APPLICANT

Subparagraph 3.a.: 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.
2. Applicant indicated on his SF 86 that he had lived from September 2001 at the address to where he had moved after his marital separation. (Ex. 1) Applicant told a DSS agent in November 2004 that he and his spouse separated in 2000. (Ex. 2) His credit report of July 2005 indicates Applicant was living at the address as of February 2001. (Ex. 4) He and his spouse likely separated sometime in early 2001.
3. Applicant reported to the CCCS that he had a monthly vehicle payment of \$297. (Ex. A) The latest credit report of record (Ex. 4) indicates Applicant had a car loan of \$17,000 opened in June 2002, to be repaid at \$404 per month.
4. 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.