

STATEMENT OF THE CASE

On March 28, 2007 the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant which detailed reasons 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 Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

In a signed and sworn statement, dated May 1 2007, Applicant responded in writing to the SOR allegations. He requested a clearance decision based on a hearing record.

On September 19, 2007, this case was assigned to this Administrative Judge to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on October 4, 2007, and the hearing was held on October 17, 2007, in San Jose, California.

At the hearing, Department Counsel offered eight documentary exhibits (Government's Exhibits 1 through 8), and no witnesses were called. Applicant offered 10 documentary exhibits, (Applicant's Exhibits A through J) and offered his own testimony. Since Applicant did not have copies of any of the documents that he offered, he was instructed to make two copies of each document, one for Department Counsel and one for the Administrative Judge. The record was held open until November 2, 2007, to allow Applicant to submit copies of these documents and any additional post hearing exhibits to help establish the status of debts that Applicant contended at the hearing were resolved. Applicant failed to meet the November 2nd deadline, and the decision was originally written with the assumption that no submissions would be forthcoming. However, Applicant did finally submit additional documents; the date on the envelope was November 7, 2007, and the documents were received in my office on November 9, 2007. While this is clearly beyond the time constraint allowed for additional evidence, I have considered the additional documentation in an effort to have a full and complete administrative record upon which to base the decision. Not all of the documents, previously identified as Applicant's Exhibits A through J, were resubmitted. Therefore, the new documents offered into evidence, which do include some of the previous documents, have been identified and entered into evidence as Exhibit A. The transcript (Tr) was received on October 25, 2007.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. The SOR contains 22 allegations, 1.a. through 1.v., under Guideline F, and five allegation, 2.a. through 2.e., under Guideline E. In his Response to the SOR (RSOR) Applicant admitted the following SOR allegations under paragraph 1: a., c., e., o., s., and v., and under paragraph 2: a., b., c., and d. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the documents and the live testimony, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is 41 years old. He is currently unmarried, and he has one daughter. Applicant has a Bachelor of Science degree. He is employed as a program manager operations engineer for a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Paragraph 1 (Guideline F - Financial Considerations)

The SOR lists 21 debts that Applicant owed as of the time the SOR was issued, 1.a. through 1.u. and one additional allegation 1.v., under Adjudicative Guideline F. The allegations will be discussed in the order that they were listed in the SOR:

When Applicant began testifying at the hearing, it became evident that he did not know the status of each of the debts listed on the SOR. Therefore, the record was held open to allow Applicant to opportunity to gather all of his records and submit to me a definitive response as to the status of each of these debts, and if he had evidence to establish the status of each debt, he was also to submit it into evidence (Tr at 41–51).

1.a. This overdue debt to Creditor 1 is listed in the SOR in the amount of \$112. In his RSOR Applicant admitted that this debt is due and owing. In his post hearing submission, (Exhibit A) Applicant argued that this debt has been disputed and it is due to be removed from his credit reports. The credit reports submitted with Exhibit A acknowledge the dispute, but do not indicate that the debt will be removed from the reports. I can not find that this debt has been resolved.

1.b. This overdue debt to Creditor 2 is listed in the SOR in the amount of \$306. In his RSOR Applicant denied this allegation. In Exhibit A, Applicant argued that this debt has been disputed and removed from his credit reports. Exhibit 5, a credit report offered by the Government, indicates this debt originally arose in 1997. This debt was not listed on the latest credit report offered by Applicant, dated August 27, 2007. However, since there is no information to indicate that this debt was no longer listed because it has been resolved in some manner, and since debts are often dropped from credit reports after seven year, this debt being older than that, I cannot determine that this debt has been satisfied.

1.c. This overdue debt to Creditor 3 is listed in the SOR in the amount of \$201. In his RSOR Applicant admitted that this debt is due and owing. In Exhibit A, Applicant argued that this debt has been disputed and removed from his credit reports. The August 27, 2007 credit report offered by Applicant, indicates that this debt was deleted from the credit report. Therefore, I find that this debt has been resolved.

1.d. This overdue debt to Creditor 4 is listed in the SOR in the amount of \$121. In his RSOR Applicant denied this allegation. In Exhibit A, Applicant argued that this debt has is not listed by any of the credit reporting services. The August 27, 2007 credit report offered by Applicant, indicates that this disputed debt was deleted from the credit report. Therefore, I find that this debt has been resolved.

1.e. This overdue debt to Creditor 5 is listed in the SOR in the amount of \$201. In his RSOR Applicant admitted that this debt is due and owing. I find that this debt, which is listed on the SOR, as the same creditor and the same amount as the debt listed as 1.c., above, is a duplication of that debt. Therefore, I find that this debt has been resolved.

1.f. This overdue debt to Creditor 6 is listed in the SOR in the amount of \$2,817. In his RSOR Applicant denied this allegation because of a dispute. In Exhibit A, Applicant argued that this debt, "Should not be includeed (*sic*) in assesement (*sic*) beyond threahold (*sic*)." Since I can not determine what this means, I cannot find that this debt has been satisfied.

1.g. This overdue debt to Creditor 7 is listed in the SOR in the amount of \$4,047. In his RSOR Applicant denied this allegation because of a dispute. In Exhibit A, Applicant argued that this debt is in "formal dispute process" and it will be resolved when the original creditor retrieves the record of the debt. Since there is no evidence that the debt will be resolved, I cannot find that this debt has been satisfied.

1.h. This overdue debt to Creditor 8 is listed in the SOR in the amount of \$1,048. In his RSOR Applicant denied this allegation. In Exhibit A, Applicant argued that this debt is resolved and has been deleted from the August 27, 2007 credit report. The credit report acknowledges that a different debt to this creditor is in dispute, but gives no indication that this debt is in dispute and will be removed from the report. I can not find that this debt has been resolved.

1.i. This overdue debt to Creditor 9 is listed in the SOR in the amount of \$367. In his RSOR Applicant denied this allegation. In Exhibit A, Applicant argued that this debt is "Resolving for settlement." I cannot find that at this time this debt has been resolved.

1.j. This overdue debt to Creditor 10 is listed in the SOR in the amount of \$487. In his RSOR Applicant denied this allegation. In Exhibit A, Applicant argued that this debt has been verified by Equifax reporting agency as not belonging to Applicant. I find this to be correct. Therefore, I find that this debt has been resolved.

1.k. This overdue debt to Creditor 11 is listed in the SOR in the amount of \$920. In his RSOR Applicant denied this allegation. In Exhibit A, Applicant argued that this debt is resolved and has been deleted from the August 27, 2007 credit report. The TransUnion credit reporting agency identified that this disputed debt would be deleted. Therefore, I find that this debt has been resolved.

1.l. This overdue debt to Creditor 12 is listed in the SOR in the amount of \$3,392. In his RSOR Applicant denied this allegation. In Exhibit A, Applicant argued that this debt has been deleted from the August 27, 2007 credit report. The TransUnion credit reporting agency identified that this disputed debt would be deleted. Therefore, I find that this debt has been resolved.

1.m. This overdue debt to Creditor 13 is listed in the SOR in the amount of \$26,163 for a judgement entered against Applicant on January 2001. At the hearing, Applicant testified that the creditor was going to make some kind of deal to resolve this debt by placing a lien on another piece of property that Applicant planned to sell. In Exhibit A, Applicant argued that he is in negotiations with the corporate attorney for this creditor, and that there is a lien on property, which is pending a sale and resolution. However, no evidence has been offered to establish that, at this time, this debt has been resolved.

1.n. This overdue debt to Creditor 14 is listed in the SOR in the amount of \$920. In his RSOR Applicant denied this allegation. In Exhibit A, Applicant argued that this debt has been verified as not his debt and deleted from the August 27, 2007 credit report. While this debt was not listed on the August 27, 2007 credit report, no information was included in the report to indicate that this debt was no longer listed because it has been resolved in some manner. Since this debt arose in November 2000, it could have been dropped from credit report without any resolution. Therefore, I cannot determine that this debt has been satisfied.

1.o. This overdue debt to Creditor 15 is listed in the SOR in the amount of \$201. In his RSOR Applicant admitted that this debt is due and owing. In Exhibit A, Applicant argued that this debt has been deleted from the August 27, 2007 credit report. The TransUnion credit reporting agency identified that this disputed debt would be deleted. Therefore, I find that this debt has been resolved.

1.p. This overdue debt to Creditor 16 is listed in the SOR in the amount of \$1,771. In his RSOR Applicant denied this allegation. In Exhibit A, Applicant argued that this debt has been resolved and deleted from the October 12, 2007 credit report (Exhibit 8). While this debt was not listed on Exhibit 8, no information was included in the report to indicate that this debt was no longer listed because it has been resolved in some manner. Since this debt arose in August 2000, it could have been dropped from credit report without any resolution. Therefore, I cannot determine that this debt has been satisfied.

1.q. This overdue debt to Creditor 17 is listed in the SOR in the amount of \$54. In his RSOR Applicant denied this allegation. In Exhibit A, Applicant argued that this debt has been resolved and deleted from the October 12, 2007 credit report (Exhibit 8). While this debt was not listed on Exhibit 8, no information was included in the report to indicate that this debt was no longer listed because it has been resolved in some manner. Since this debt arose in April 2000, it could have been dropped from credit report without any resolution. Therefore, I cannot determine that this debt has been satisfied.

1.r. This overdue debt to Creditor 18 is listed in the SOR in the amount of \$23,036. In his RSOR Applicant denied this allegation because of a dispute. In Exhibit A, Applicant argued that this debt is the same as that listed on 1.m., above. While both of these debts are greater than \$20,000, I can not see evidence that they are the same debt, although they may be. Additional evidence would be required to establish that this is the same debt as 1.m.

1.s. This overdue debt to Creditor 19 is listed in the SOR in the amount of \$365. In his RSOR Applicant admitted that this debt is due and owing. In Exhibit A, Applicant argued that this debt is “Resolving for settlement.” I cannot find that at this time this debt has been resolved.

1.t. This overdue debt to Creditor 20 is listed in the SOR in the amount of \$289. In his RSOR Applicant denied this allegation. In Exhibit A, Applicant argued that this debt was identified in the August 27, 2007 credit report as “paying as agreed” as of May 2004. I cannot find that at this time this debt is overdue.

1.u. This overdue debt to Creditor 21 is listed in the SOR in the amount of \$159. In his RSOR Applicant denied this allegation. In Exhibit A, Applicant argued that this debt has been resolved and deleted from the October 12, 2007 credit report (Exhibit 8). While this debt was not listed on Exhibit 8, no information was included in the report to indicate that this debt was no longer listed because it has been resolved in some manner. Since this debt arose in August 1999, it could have been dropped from credit report without any resolution. Therefore, I cannot determine that this debt has been satisfied.

1.v. Applicant prepared a Personal Financial Statement on December 18, 2007, (Exhibit 6) which indicates he has a monthly net remainder of \$2,800, after expenses. The Government alleges that he should have been able to resolve more of his debts. In his RSOR Applicant admitted this allegation, but he added that he needed to seek legal assistance for some of these debts. In Exhibit A, Applicant argued that he has been “proactively taking continuous mitigating steps” to resolve his debts.

Paragraph 2 (Guideline E - Personal Conduct)

2.a. Applicant completed a signed, sworn Security Clearance Application (SCA) on September 13, 2004. Question #38 asks, “In the last 7 years, have you been over 180 days delinquent on any debt(s)?” Applicant answered, “No” to this question and listed no debts (Exhibit 1). Clearly, at the time he completed the SCA, Applicant was or had been over 180 days delinquent on the debts listed on the SOR, and he should have included these debts. In his RSOR Applicant admitted this allegation.

2.b. Question #39 asks, “Are you currently over 90 days delinquent on any debt(s)?” Applicant answered, “No” to this question and again listed no debts (Exhibit 1). At the time he completed the SCA, Applicant was still delinquent on the debts listed on the SOR, and he should have included all of these debts. In his RSOR Applicant admitted this allegation.

Applicant’s explanation for his responses to Questions #38 and #39 was that since he was disputing or paying some of these debts, he did not want to list them on the SCA as legitimate. He could give no reasonable explanation for why he did not list those debts that he was not disputing, or why he could not give information about the debts on which he claimed to be making payments.

2.c. Applicant was arrested on January 1, 1997, and charged with (1) Fraud, Use of Credit Card over \$100, (2) uttering Forged Instrument, (3) Grand Theft-Attempt 3rd Degree, and (4) Forgery. On January 23, 1997, Applicant was charged with one count on Grand Theft-Attempt 3rd

Degree, a felony, to which Applicant plead Not Guilty. On January 27, 1997, the judge in the case withheld adjudication and Applicant was placed on a pretrial diversion program. The case was Nolle Prossed on April 7, 1998. In his RSOR Applicant admitted this allegation.

Applicant's explanation at the hearing of this event was that his girlfriend, at the time, gave him a credit card to use to purchase several items. Applicant used the card for several purchases and signed his name each time, even though, according to Applicant, not only was this credit card not his, but it belonged to someone other than his female companion. He contended that he was not aware that the card did not belong to his girlfriend, but he could give no reasonable explanation for why he would sign his name for a card that he believed belonged to his girlfriend, who was with him when the purchases were made.

2.d. Question #21 of the SCA asks, "Have you ever been charged with or convicted of any felony offense?" Applicant was instructed to "report information regardless of whether the record in your case was sealed or otherwise stricken from the record." Applicant answered, "No" to this question and failed to list the 1997 felony charge as set forth in paragraph 2.c., above. In his RSOR Applicant admitted this allegation.

2.e. During a June 15, 2005 interview with an authorized investigator for the Department of Defense Applicant did not fully disclose the events as described in paragraph 2.c., above. He failed to disclose the full extent of his misuse use of the credit card on four separate occasions. In his RSOR Applicant denied this allegation contending that he omitted this information because he was found Not Guilty.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (See Directive, Section E2.2.1. of Enclosure 2).

BURDEN OF PROOF

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to Applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of Applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following with regarding Guidelines F and E:

(Guideline F - Financial Considerations)

With respect to Guideline F, the Government has established that Applicant has had a history of financial difficulties and many long overdue debts. The evidence shows that Applicant has made an effort to resolve these debts through payment or dispute. However, at this time there are still a great many long overdue debts that do not appear to be resolved.

Regarding the Disqualifying Conditions (DC) under Guideline F, I conclude both DC 19. (a) and (c) apply because of Applicant's history of unwillingness to satisfy his debts, and his history of not meeting financial obligations. While Mitigating Condition (MC) 20. (d) is applicable to Applicant under Guideline F, because he has initiated a good-faith effort to resolve his debts, it is not controlling because of the long history of overdue bills and the current significant unresolved debts. I, therefore, resolve Guideline F against Applicant.

(Guideline E - Personal Conduct)

With respect to Guideline E, the evidence establishes that Applicant provided inaccurate information to the Government in response to questions, #38, 39, and 21 on the SCA that he executed in September 13, 2004. I conclude that when Applicant completed the SCA, he knowingly and wilfully provided false and materiel information to the Government. He also was not truthful with the information that he provided to the Government investigator.

In reviewing the DCs under Guideline E, I conclude that DC 16. (a) applies because of Applicant's deliberate omission, concealment, and falsification of relevant facts from a personnel security questionnaire, which was used to determine security clearance eligibility. DC 16. (b) also applies because Applicant deliberately provided false information to an investigator. I can not find that any Mitigating Condition (MC) applies in this paragraph. I resolve Guideline E against Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1, Financial Considerations, Guideline F: Against Applicant

- Subparagraph 1.a.: Against Applicant
- Subparagraph 1.b.: Against Applicant
- Subparagraph 1.c.: For Applicant
- Subparagraph 1.d.: For Applicant
- Subparagraph 1.e.: For Applicant
- Subparagraph 1.f.: Against Applicant
- Subparagraph 1.g.: Against Applicant
- Subparagraph 1.h.: Against Applicant
- Subparagraph 1.i.: Against Applicant
- Subparagraph 1.j.: For Applicant
- Subparagraph 1.k.: For Applicant
- Subparagraph 1.l.: For Applicant
- Subparagraph 1.m.: Against Applicant
- Subparagraph 1.n.: Against Applicant
- Subparagraph 1.o.: For Applicant
- Subparagraph 1.p.: Against Applicant
- Subparagraph 1.q.: Against Applicant
- Subparagraph 1.r.: Against Applicant
- Subparagraph 1.s.: Against Applicant
- Subparagraph 1.t.: Against Applicant
- Subparagraph 1.u.: Against Applicant
- Subparagraph 1.u.: Against Applicant

Paragraph 2, Personal Conduct, Guideline E: Against Applicant

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e.: Against Applicant

DECISION

In light of all the circumstances and facts presented by the record in this case, it is clearly not consistent with the national interest to grant or continue a security clearance for Applicant.

Martin H. Mogul
Administrative Judge