

DATE: August 27, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0750

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant owes approximately \$ 19,500.00 on ten accounts. The Applicant's financial problem began in the 1997 while he was in his final year of graduate school and continues to present. The Applicant is current on one account but there is no indication the other accounts are being resolved. Clearance is denied.

STATEMENT OF THE CASE

On March 30, 2001, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding ⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On May 8, 2001, the Applicant answered the SOR and elected to have his case decided on the written record, in lieu of a hearing.

The Applicant received a complete copy of the file of relevant material (FORM) dated June 6, 2001, and was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. The Department Counsel presented six exhibits (Items). The Applicant's response to the FORM was due on July 19, 2001. No response has been received. I was assigned the case on July 24, 2001. The record in this case closed on July 19, 2001.

FINDINGS OF FACT

The SOR alleges financial considerations (Guideline F). The Applicant admits the allegations.

The Applicant is 35-years-old, has worked for a defense contractor since November 1998. He is seeking to obtain a security clearance.

The Applicant owes approximately \$19,500.00 on ten accounts. The accounts were opened between April 1990 and November 1996. (Item 6) While in graduate school, the Applicant received and accepted a number of unsolicited credit card applications. Only two of the ten accounts were opened prior to the Fall of 1993 when the Applicant started

graduate school. He used the credit cards to purchase a computer, software, hardware, to attend his brother's funeral, for clothing, automobile maintenance, and other matters. Until his final year in graduate school, the Applicant was able to keep the accounts current by making minimum payments. Following graduation, he was employed for five months and then unemployed for approximately nine months ending in November 1998.

Due to budget constraints, the Applicant chose to maintain payments on his student loan account and three additional accounts. On these four accounts, the Applicant has made regular, monthly payments. In April 2001, the Applicant started a debt consolidation process with automatic deduction covering these four accounts. (Item 2) Only one (SOR subparagraph 1.a.) of the four accounts is of concern in the SOR.

In May 2001, the Applicant entered into an agreement with a nonprofit credit counseling service. (Item 2) The agreement includes six accounts, three of which are listed in the SOR. For the accounts listed in the SOR, the Applicant will pay: \$38.00 per month on a \$3,384.00 credit card debt (SOR subparagraph 1.c); \$64.00 per month on a \$1,447.00 credit card debt (SOR subparagraph 1.d); and another creditor \$137.00 per month on two credit card accounts (SOR subparagraphs 1.a. and 1.f.) with the company. The Applicant's credit report (Item 6) indicates the Applicant had three accounts with this company. One account opened in January 1995 lists no "payment manner." The Applicant pays a second account with the same company, also opened in January 1995, as agreed. The balance on this account is \$4,376.00. The third account, with a balance of \$4,572.00, is a "bad debt." Although the Applicant provided a copy of the paperwork establishing the agreement with the credit service, there is no evidence showing the Applicant has made any payments pursuant to the agreement. Nor is there any indication the creditors have accepted this agreement.

The Applicant admits owing \$5660.00 on six other accounts listed in the SOR. A repayment arrangement has not been made on these accounts. The Applicant owes: \$280.00 (SOR subparagraph 1.b.) on a telephone account; \$284.00 (SOR subparagraph 1.i.) on a defunct department store account; \$510.00 (SOR subparagraph 1.g.) on a credit card account; \$1199.00 (SOR subparagraph 1.h.) on a credit card account; \$1663.00 (SOR subparagraph 1.e.) on a credit card account; and, \$1724.00 (SOR subparagraph 1.j.) on a credit card account.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, access, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to an Applicant's lack of security worthiness.

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. 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.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

FINANCIAL CONSIDERATIONS (Guideline F) The Concern: 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.

Conditions that could raise a security concern and may be disqualifying also include:

1. A history of not meeting financial obligations. (E2.A6.1.2.1.)
3. Inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)

Conditions that could mitigate security concerns include:

None Apply.

BURDEN OF PROOF

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the Applicant who must remove that doubt and establish his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of 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." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline F (Financial Considerations). Under Guideline F, 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 financial obligations. The United States must consider whether individuals granted access to classified information are through financial irresponsibility in a position where they may be more susceptible to mishandling or compromising classified information or material for financial gain.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk that is inconsistent with the holding of a security clearance. Here, Applicant's overall history of financial difficulties, which started in 1997 and continues to the present, provides concern. The Applicant owes approximately \$19,500.00 on ten accounts. The Applicant's financial problems began in the Fall of 1993 when he was sent credit cards while in graduate school. The Applicant used the credit cards for various matters some of which enhanced his learning experience at graduate school. By making the minimum payments, he was able to keep his accounts current. After graduate school he was employed for five months and then unemployed for nine months which added to his financial problems. The Applicant's nine months of unemployment was a condition beyond his control, but that condition ended more than two and a half years ago, in November 1998, and his financial problems continue. Therefore Mitigating Condition (MC) 3-⁽²⁾ does not apply.

The Applicant acknowledged the debts in the SOR are his debts. He has kept his student loan and three other accounts current. Since the Applicant has kept the credit card account listed in SOR subparagraph 1.a. current, I find for him as to that account. The Applicant has entered into an agreement with a credit service which requires him to make monthly payments of \$294.00 and the credit service will make payments to five creditors. Three additional accounts (SOR subparagraphs 1.c., 1.d., and 1.f.) totaling \$9,400.00 are included in the credit service agreement. There is no evidence the Applicant is currently making payment pursuant to the agreement nor is there any evidence the creditors, listed in the agreement, have accepted this arrangement. Without such evidence, it is not possible to find the Applicant has initiated a good-faith effort to repay his creditors. MC 6-⁽³⁾ does not apply. I find against the Applicant as to SOR subparagraphs 1.c., 1.d., and 1.f.

The Applicant owes approximately \$5660.00 on six accounts listed in the SOR for which he has not paid nor established a good faith repayment arrangement with the creditors. I find against the Applicant as to SOR subparagraphs 1.b., 1.e.,

1.g., 1.h., 1.i. , and 1.j.

None of the other mitigating factors apply in the Applicant's favor. The conduct is recent (MC 1)⁽⁴⁾ in that the debts are still owed. It is not an isolated incident (MC 2)⁽⁵⁾ because there are ten debts. The Applicant has not received any financial counseling, and there is no indication the Applicant's financial problems are under control. (MC 4)⁽⁶⁾ Affluence was not alleged. (MC5)⁽⁷⁾ Because the Applicant has failed to present sufficient mitigation to overcome his financial irresponsibility, Criterion F is resolved against the Applicant.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

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

Paragraph 1 Guideline F (Financial): AGAINST THE APPLICANT

Subparagraph 1.a.: For 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.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: 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 the Applicant.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 as amended.

2. MC 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). (E2.A6.1.3.3.)

3. MC 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.)

4. MC 1. The behavior was not recent.

5. MC 2. It was an isolated incident.

6. MC 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.

7. MC 5. The affluence resulted from a legal source. (E2.A6.1.3.5.)