

DATE: June 17, 2002

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 01-01587

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Catherine M. Engstrom, Esquire, Attorney-Advisor to Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's multiple falsifications of his security clearance application and his multiple falsifications during three subject interviews suggested Applicant could not be relied upon to tell the truth if the truth presented potential adverse consequences to his personal interests. Applicant's fitness for access to classified information was further cast into doubt where Applicant had over \$46,000.00 in delinquent debt which Applicant neither explained nor arranged to pay. Finally, Applicant was potentially subject to foreign influence where he had business interests in two foreign countries, one where his mother resided for six months of the year. Clearance denied.

STATEMENT OF THE CASE

On 22 June 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⁾ that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 11 July 2001, Applicant answered the SOR and requested an administrative decision on the record. Applicant did not respond to the Government's File of Relevant Material (FORM)--issued 12 October 2001. The record in this case closed 24 November 2001--the day the response was due at DOHA. The case was assigned to me on 17 December 2001; I received the case on 18 December 2001 to determine whether clearance should be granted, continued, denied, or revoked.

RULINGS ON PROCEDURE

In paragraph II. of the FORM, Department Counsel moves--pursuant to Enclosure 3, Paragraph 17 of the Directive--to amend subparagraphs 2.a.(3) and 2.d. by amending the citation to Army Regulations to change an obvious typographical error. I grant that motion. Department Counsel also moves to amend subparagraph 2.c. by adding language which would make the allegation read as a falsification of question 22 of Applicant's SF 86. However, granting Department Counsel's request would have the practical effect of deleting the present subparagraph 2.c., which deals with Applicant's alleged falsification of question 21 of Applicant's SF 86. Consequently, I deny this motion.⁽²⁾

FINDINGS OF FACT

Applicant generally admitted the allegations of the SOR with explanation, but did not answer the falsification allegation of subparagraph 2.g. (although he admitted the underlying debts), did not answer the criminal allegations of paragraph 3, and did not answer the financial allegation of subparagraph 4.a. (although he admitted these debts in his answer to subparagraph 2.g.; accordingly, I enter denials as to these allegations, but incorporate the admissions as findings of fact.

Applicant--a 43-year old employee of a defense contractor--seeks access to classified information. He had sixteen years active service in the U.S. Army before being discharged for misconduct (albeit with an honorable discharge) in August 1994.

On 28 August 1997, Applicant falsified a Questionnaire for National Security Position (QNSP)(SF 86) when he answered "no" to six questions designed to elicit 1) Applicant's foreign business interests (question 17); 2) his history of psychiatric treatment (question 21); 3) any adverse employment history (question 22); 4) his history of disciplinary action under the Uniform Code of Military Justice (UCMJ), including non-judicial punishment (question 23e); 5) his history of arrests, charges, or convictions not covered in other questions (question 23f); and 6) financial delinquencies over 90 or 180 days (questions 28a, 28b).

In fact, Applicant had an ownership interest in a Haitian motorcycle taxi company.⁽³⁾ He had received psychiatric counseling for three weeks from December 1993 to January 1994. He had been discharged from the Army by reason of misconduct (albeit with an honorable discharge) in August 1994. He had received non-judicial punishment under the UCMJ in March 1994 for disobeying a lawful order of his commanding officer (part of the basis for his misconduct separation). He was arrested and charged with stalking and trespassing in December 1993, as well as being arrested in May 1997 for unpaid traffic fines. He was over 180 days delinquent on three accounts totaling over \$5,000.00, 90 days delinquent on a nearly \$10,000.00 automobile loan, and had been over 90 days delinquent on his state and federal income taxes for 1994.⁽⁴⁾

In addition to his omissions from his QNSP, Applicant provided false information about his arrest record, record of disciplinary action under the UCMJ, foreign business interests, and delinquent finances during three subject interviews held on 20 March 1999, 23 March 1999, and 9 May 1999. In each instance, Applicant initially denied any adverse information, later minimized his adverse conduct, and did not provide correct information until confronted by other record documentation of adverse conduct.

Applicant also has a history of financial indebtedness. In addition to the five accounts totaling nearly \$20,000.00 which Applicant omitted from his QNSP, Applicant has three additional accounts totaling over \$13,000.00 which fell delinquent after completion of his QNSP. All told, Applicant has two small delinquent accounts which he has paid (subparagraphs 2.g.(2) and 4.e.), but seven delinquent accounts totaling over \$46,000.00.⁽⁵⁾ Neither his sworn statement (Item 6) nor his Answer to the SOR (Item 3) contains any information on why these accounts fell delinquent. Applicant has not provided a comprehensive explanation of his finances nor an explanation of any payment plan, despite a Personal Financial Statement (Item 10) showing nearly a \$3,000.00 monthly surplus of income over expenses.

In late 1993-early 1994, Applicant was involved in several adverse encounters with law enforcement officials as a result of his continued attentions to a female acquaintance after the female had indicated that she was not interested. The most cogent description of Applicant's conduct is contained in the mental status examination performed by the Army between December 1993 and January 1994 (Item 22). On 8 December 1993, Applicant was given a sheriff's order to stay away from the female's workplace (Item 23), which he violated on 9 December 1993 by entering her workplace. On 10 December 1993, Applicant's military commander gave him an order to comply with the sheriff's "do not trespass" order, which Applicant disobeyed on 13 December 1993. On 14 December 1993, Applicant was arrested and charged with stalking and trespassing. He later pleaded guilty to trespassing (on the advice of counsel) and the judge deferred finding for one year on condition that Applicant have no further contact with the female. On 7 January 1994, Applicant's military commander gave Applicant a written order to comply with the court's restrictions. On 6 February 1994, Applicant's violated the terms of his probation and the military order by having contact with the female. While the civil charges were later dismissed, Applicant received non-judicial punishment (NJP) for violating the commander's written order. Applicant's appeal of his NJP was denied. In August 1994, Applicant was discharged for misconduct as a result of

his January 1993 trespassing offense (and related conduct) and his March 1994 NJP (Item 17). Applicant's petition to the Army Board for Correction of Military Records (ABCMR) to set aside his discharge was denied (Item 21). Applicant received an honorable discharge, but is not eligible for re-enlistment. (Item 18).

Applicant has an ownership interest in a Haitian motorcycle taxi business. Applicant originally obtained the motorcycles in Haiti while he was stationed there. He went into business with two other men, and in exchange for providing motorcycles Applicant was to receive \$500.00 per month. Applicant's PFS of May 1999 (Item 10) reflected that Applicant was receiving these payments. Applicant asserts that he has had no payments since 2000 and has no involvement with the enterprise, but has not provided any documentation corroborating that he no longer has an interest in the foreign enterprise. In addition to the Haitian taxi business, Applicant also owns approximately \$3,500.00 in a Qatari investment company.

Applicant had a French national girlfriend from September 1998 to November 1998 who was a student volunteer at the French Consulate in Doha, Qatar. He has had no contact with this woman since December 1998. Applicant's mother (a U.S. citizen) resides in Haiti six months of the year. Applicant sends her approximately \$300.00 every other month to help support her. Applicant was married to his current wife in May 1982, and has been separated from her (although not legally) since June 1992. Applicant has two adult step-children (ages 24 and 28) who are Haitian citizens, but who reside in the U.S. with their mother (Item 5). Applicant has had little contact with his step-children since 1992.

The record contains no evidence of Applicant's work performance or other character evidence.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. 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.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

FOREIGN INFLUENCE (CRITERION B)

E2.A2.1.1. The Concern: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

E2.A2.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A2.1.2.1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident in, a foreign country;

E2.A2.1.2.8 A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence.

E2.A2.1.3. Conditions that could mitigate security concerns include:

E2.A2.1.3.1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that would force the individual to choose between loyalty to the person(s) involved and the United States;

E2.A2.1.3.5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

PERSONAL CONDUCT (GUIDELINE E)

E2A5.1.1. The Concern: 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. A5.1.2. Conditions that could raise a security concern and may be disqualifying include:

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, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, . . . in connection with a personnel security or trustworthiness determination;

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

CRIMINAL CONDUCT (GUIDELINE J)

E2.A10.1.1. A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

E2.A10.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A10.1.2.1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;

E2.A10.1.2.2. A single serious crime or multiple lesser offenses.

E2.A10.1.3. Conditions that could mitigate security concerns include:

None.

FINANCIAL CONSIDERATIONS (GUIDELINE F)

E2.A6.1.1. 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.

E2.A6.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A6.1.2.1. A history of not meeting financial obligations;

E2.A6.1.2.3. Inability or unwillingness to satisfy debts;

E2.A6.1.3. Conditions that could mitigate security concerns include:

None.

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 the 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.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where 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 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

The Government has established its case under Guideline E. Applicant provided false answers to six different questions on his QNSP, and deliberately failed to disclose relevant and material adverse information. Applicant's explanations neither excuse nor mitigate those omissions which had the potential to influence the course of the background investigation. Further, Applicant compounded his initial falsifications, by providing false and dissembling answers during three different subject interviews. I find Guideline E. against Applicant

The Government has established its case under Guideline F. The record evidence clearly establishes Applicant's indebtedness. Applicant offers no cogent explanation of how seven different accounts--totaling over \$46,000.00--became delinquent and remain delinquent notwithstanding Applicant's apparent positive cash flow. With the exception of two small paid accounts, Applicant provides no corroboration of his claimed payments to two creditors (covering three accounts), and he provides no information whatever for the remaining accounts. I conclude Applicant has taken little or no steps to address his indebtedness, despite having the apparent means to at least begin the process. I resolve Guideline F. against Applicant.

The Government has established its case under Guideline J. Applicant's deliberate falsification of his QNSP and providing false information during his subject interviews to an agency of the federal government on matters within that agency's jurisdiction clearly violate 18 U.S.C. §1001. The falsifications had the potential to influence the course of the background investigation--in areas of legitimate concern to the Government. Applicant's trespassing and stalking offenses in 1993--while clearly less significant than the falsification--nevertheless cast doubt on Applicant's fitness for access to classified information, particularly where Applicant continues to minimize his responsibility for his conduct and where Government records demonstrate a more serious course of conduct by Applicant. I find Guideline J. against the Applicant.

The Government has also established its case under Guideline B. Although Applicant's brief involvement with a French national in 1998 raises the specter of a security concern, no present security concern remains where the contact ended over three years ago, and there appears to have been very little--either in terms of length or seriousness of the relationship--to support an ultimate conclusion of security concern. Similarly, Applicant's step-children may be Haitian nationals, but they appear to have been residing in the U.S. for some period of time, both are adults, and Applicant has had very little contact with them since separating from his spouse nearly ten years ago. It is difficult to contemplate a situation where this relationship could be brought to bear to influence Applicant to compromise classified information.

However, Applicant's business investments and his relationship with his mother present different issues. Applicant's closeness to his mother is established by the fact that he contributes regularly to her support, \$300.00 every other month. She resides in Haiti six months of the year, presenting a situation where Applicant might be subject to foreign influence. Furthermore, Applicant has business interests in Haiti, which while not large, are still significant, particularly in view of his mother's situation. In addition, Applicant has more substantial holdings in Qatar which also raise the prospect of foreign influence. The Government having established its case, Applicant has a heavy burden to demonstrate that the mitigating conditions apply to his case. I conclude that Applicant has failed to meet that burden and I have some lingering doubts about Applicant's susceptibility to foreign influence. Accordingly, I resolve those doubts against Applicant and resolve Guideline B. against Applicant.

FORMAL FINDINGS

Paragraph 1. Criterion B: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: For the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: For the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

Subparagraph j: Against the Applicant

Paragraph 3. Criterion J: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Paragraph 4. Guideline F: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: 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.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996, and by Change 4 dated 20 April 1999 (Directive).
2. Although I note that subparagraph 2.d. alleges a falsification of question 22 of Applicant's SF 86 in language adequate to put Applicant on notice of his alleged conduct.
3. Although, the SOR also alleges Applicant's shares in a Qatari investment company, the record evidence reveals that Applicant acquired these shares in 1998, after he executed the QNSP.
4. Applicant has offered a variety of explanations for his falsifications, but none vitiate the essential point that he was aware of the "yes" answers to these questions and deliberately withheld the correct information. His self-serving attempts to understate the seriousness of the underlying conduct he attempted to hide, and to characterize the conduct as not reportable, are belied by the independent documentation provided by the Government which demonstrates the seriousness of the conduct. His assertions that he did not intend to mislead the Government are not credible in view of the length and breadth of information he attempted to hide.
5. Applicant asserts that the state taxes alleged at subparagraph 2.g.(5) have been paid, but provides no corroboration of that claim. In similar fashion, he asserts that he is paying \$200.00 per month to the IRS (subparagraph 2.g.(5) and \$200 per month to the single creditor who holds the accounts at subparagraph 4.c. and d., but provides no corroboration. He provides no information on the status of the remaining delinquent accounts.