

DATE: July 8, 2002

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 01-03106

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's falsification of his January 1999 Government employment application and his falsification of his August 1999 Security Clearance Application suggested he could not be relied upon to speak the truth if the truth raised questions adverse to his personal interests. His history of financial difficulties cast further doubt on his fitness for access to classified information. Clearance denied.

STATEMENT OF THE CASE

On 10 August 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 23 October 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 11 December 2001. The record in this case closed 8 February 2002--the day the response was due at DOHA. The case was assigned to me on 22 February 2002; I received the case on 25 February 2002 to determine whether clearance should be granted, continued, denied, or revoked.

RULINGS ON PROCEDURE

In paragraph III. of the FORM, Department Counsel moved--pursuant to Enclosure 3, Paragraph 17 of the Directive--to amend paragraph 1. by adding subparagraphs d. (debt to phone company turned over for collection in July 1995) and e. (debt to cable company turned over for collection in August 1999), and to amend paragraph 3. by adding subparagraph j. (long-term unauthorized absence from U.S. Marine Corps terminated by Applicant's arrest on a deserter warrant; subsequent discharge by OTH in lieu of court-martial). The evidence adduced by the Government in the FORM supported the proffered amendment, and on 5 June 2002, I granted the motion and gave the Applicant until 20 June 2002 to answer the amended SOR and provide any evidence in extenuation, mitigation, and rehabilitation. On 21 June 2002, I received copies of payment records purporting to document payment of the phone company and cable company debts; the envelope was postmarked 18 June 2002, so I consider the response timely filed. On 21 June 2002, Department

Counsel indicated no objection to my considering Applicant's response, which I have marked as Applicant's Exhibit A (A.E. A). Applicant provided no comment on the amendment to paragraph 3., so I will assume a denial of subparagraph j.

In paragraph V. of the FORM, Department Counsel concedes that the falsification allegations of subparagraphs 3.a. and 3.f. are factually insufficient because the alleged omissions involve conduct falling outside the scope of the question; consequently, Department Counsel requests that I find these two subparagraphs for Applicant. I grant that request.

FINDINGS OF FACT

Applicant admitted allegations 1.b., 2.a., 3.b., d., f., g., h.; he denied the remaining allegations. Accordingly, I enter denials as to these allegations, but incorporate the admissions as findings of fact.

Applicant--a 42-year old employee of a defense contractor--seeks access to classified information.

On 12 January 1999, Applicant falsified a Questionnaire for Public Trust Positions (QPTP)(SF 85P)(Item 6) when he claimed to be a high school graduate and answered "no" to two questions designed to elicit financial delinquencies over 180 days (question 22b) and his police record over the last seven years (question 20). In fact, Applicant never graduated from high school, had been arrested, charged, and convicted of driving while intoxicated in 1997 or 1998, and was indebted for past due rent of approximately \$3,170.00 charged off in about April 1996.⁽²⁾

On 30 August 1999, Applicant falsified a Security Clearance Application(SCA)(SF 86)(Item 5) when he answered "no" to two questions designed to elicit financial delinquencies over 90 or 180 days (questions 38, 39).⁽³⁾ In fact, Applicant was indebted for past due rent of approximately \$3,170.00 charged off in about April 1996.

On 19 March 1998, Applicant was arrested for driving while intoxicated.⁽⁴⁾ He was fined, given 1 year probation, ordered to perform 40 hours community service and undergo 26 weeks of alcohol counseling, and had his license restricted for 45 days. Applicant completed the required programs and has had no other alcohol-related incidents since the 1998 arrest.⁽⁵⁾

Applicant has a history of financial difficulties. In August 1988, Applicant entered into a consent withholding order to liquidate what was then over \$1,400.00 in child support arrearages (Item 13). It is not clear from the record whether the order was served on Applicant's then-employer. However, on 5 July 1990, the order was served on Applicant's new employer, but the amount of arrearages had grown to over \$1,900.00. The court order was apparently reissued on 7 July 1993 for Applicant to pay \$150.00 per month for child support.⁽⁶⁾

Applicant also owes \$3,170.00 on a past due rental account as of May 2001. Applicant's sworn statement described this debt as a lease he co-signed for his brothers, who stopped paying the rent when the landlord let the property fall into disrepair. At the time of his statement, Applicant had no intention of paying this debt.⁽⁷⁾

Applicant was also indebted \$138.00 to the phone company for an account turned over for collection in approximately July 1995. He owed \$392 to a cable company for an account turned over for collection in approximately August 1999. As of May 2001, neither of these accounts had been paid. On 21 June 2002, Applicant provided proof of a \$37.00 payment to the phone company collection agent on 8 June 2002, and what appears to be a final payment to the cable company on 11 June 2002. Applicant offers no explanation why these payments were not made before June 2002.

In 1979, Applicant began a long-term absence without leave from the Marine Corps, which terminated in 1980 when Applicant was arrested on a deserter warrant. Facing court-martial, Applicant requested an other than honorable discharge in lieu of court-martial, which he obtained in 1981.

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:

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.

ALCOHOL CONSUMPTION (GUIDELINE G)

E2.A7.1.1. The Concern: Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

E2.A7.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A7.1.2.1. Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use.

E2.A7.1.3. Conditions that could mitigate security concerns include:

E2.A7.1.3.1. The alcohol related incidents do not indicate a pattern;

E2.A7.1.3.2. The problem occurred a number of years ago and there is no indication of a recent problem;

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 F. The record evidence clearly establishes Applicant's financial difficulties, both in the past and more recently. Applicant offers no cogent explanation of how the various accounts became delinquent, or why he apparently took no meaningful action to address the indebtedness until recently. Further, the evidence of recent payments do not completely address the delinquent amounts, nor indicate the terms of any repayment plans. I resolve Guideline F. against Applicant. [\(8\)](#)

The Government has established its case under Guideline E. Applicant provided false answers on two different Government applications, 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. I find Guideline E. against Applicant. [\(9\)](#)

The Government has established its case under Guideline J. Applicant's deliberate falsification of his two applications 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. I find Guideline J. against the Applicant.

The Government has not established its case under Guideline G. Applicant's single DWI in 1998 has not been repeated, and there is no other record evidence to suggest that Applicant's consumption of alcohol poses a risk of mishandling classified information. I resolve Guideline G. for Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: For the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Paragraph 2. Criterion G: FOR THE APPLICANT

Subparagraph a: For the Applicant

Paragraph 3. Guideline E: AGAINST THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: For the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: For the Applicant

Subparagraph i: Against the Applicant

Subparagraph j: For the Applicant

Paragraph 4. Criterion J: AGAINST THE APPLICANT

Subparagraph a: 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. He was also alleged to have falsified the answer to a question designed to elicit judgments rendered in the last seven

years (question 22a). However, while the SOR alleged the filing of a request for judgment on 3 January 1994 (on a debt Applicant asserts is for cosigning a note on an automobile which was later repossessed), and Applicant admitted both the filing of the request for judgment and his omission, the Government's evidence (Item10) reflects that the request for judgment was dismissed with prejudice on 30 December 1997 for failure to prosecute. Consequently, there appears to have been no judgment within the reporting requirement for Applicant on his QPTP on 12 January 1999.

3. He was also alleged to have falsified the answer to a question designed to elicit unpaid judgments in the last seven years (question 37). However, while the SOR alleged the filing of a request for judgment on 3 January 1994 (on a debt Applicant asserts is for cosigning a note on an automobile which was later repossessed), and Applicant admitted both the filing of the request for judgment and his omission, the Government's evidence (Item10) reflects that the request for judgment was dismissed with prejudice on 30 December 1997 for failure to prosecute. Consequently, there appears to have been no unpaid judgment for Applicant to report on his SCA on 30 August 1999.

4. Applicant reported this arrest on his 1999 SCA as occurring in approximately October 1998 (Applicant was unsure of the day) and resulting in a sentence of community service and counseling. Applicant's sworn statement stated only that the arrest occurred in 1998, and required 40 hours of community service and 26 weeks of alcohol counseling.

5. Subparagraph 3.g. alleges--and Applicant admits--falsifying his 1999 QPTP by omitting a 12 September 1997 arrest by the same police department as made the arrest in 1998. However, the Government does not allege a 1997 DWI under Guideline G., nor is there any evidence in the record to support the existence of a 1997 DWI arrest. Applicant discusses only the one 1998 arrest. In the absence of more definitive proof that there was a 1997 arrest, I conclude that the falsification allegation incorrectly refers to the 1998 arrest (and in any event Applicant admits the falsification of the QPTP in this regard). And I conclude that there is only the one 1998 DWI arrest, with no alcohol related arrests either before or after 1998.

6. The evidence of this order is contained in an apparently undated motion for modification filed by Applicant to modify the child support because the child was now living with Applicant and not with the mother (Item 13). The record does not reflect any disposition of the motion for modification. In his answer to the SOR, Applicant produced a November 1993 court order discharging a July 1993 show cause order, and dismissing the supporting petition without prejudice for lack of prosecution. Unfortunately, the order does not otherwise describe the underlying action being considered, although the costs associated with the show cause order were assessed to the Applicant. The order does not support Applicant's claim that the arrearages were paid. Nevertheless, I note that Applicant was employed by the employer upon whom the July 1990 court order was served until June 1999, sufficient time to liquidate the arrearages.

7. In his answer, Applicant produced a July 2001 receipt from an attorney purporting to prove that Applicant was paying on the account (the receipt, for \$400.00 stated that it was for payment of rent, and reduced the outstanding balance to approximately \$2,557.00). However, the listed address for which the payment was received differs from the address listed in Applicant's statement, and there is no account number listed on the receipt to correlate with the account number listed in the credit bureau reports which cover this debt. Further, the money order stubs submitted by Applicant (showing \$100.00 money orders purchased on 22 June 2001, 22 June 2001, 18 August 2001, and 21 August 2001) contain no information that would indicate the payee or account for which the money orders were purchased. Certainly, Applicant has produced no evidence of any formal agreement with the creditor on this debt.

8. I resolve subparagraph 1.b. for Applicant for the reasons stated in my Findings of Fact.

9. Although I find the security significance of Applicant's 20 year old OTH discharge from the military to be minimal. I find subparagraphs a., b., f., and h. for Applicant for the reasons stated in my Rulings on Procedure and Findings of Fact.