

DATE: December 27, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-03183

DECISION OF ADMINISTRATIVE JUDGE

JOHN R. ERCK

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

A security concern is raised by Applicant's inability to pay off numerous financial obligations in accordance with the terms originally agreed upon. While his financial problems were initially caused by events beyond his control--a downturn in the business Applicant had been operating for approximately eight years, and his wife's loss of employment--he has done little to address his delinquent debts since his employment and income have stabilized (the past 30 months). Neither the security concern raised by Applicant's numerous overdue debts, or the security concern raised by his failure to disclose his debts, a repossession, and legal actions filed against him, on a February 1999 SF 86, are mitigated by the facts and circumstances of this case. Clearance is denied.

STATEMENT OF THE CASE

On June 7, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, "*Safeguarding Classified Information Within Industry*," dated February 20, 1960, as amended, and modified, and Department of Defense Directive 5220.6, (*Defense Industrial Personnel Security Clearance Review Program*" (*Directive*), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary finding under the Directive that it is clearly consistent with the national interest to grant a security clearance for Applicant and recommended referral to an Administrative Judge to determine whether a security clearance should be granted, denied or continued.

Applicant answered the SOR in writing on June 19, 2002, and requested a hearing before a DOHA Administrative Judge. The case was assigned to this Administrative Judge on August 19, 2002. On September 23, 2002, a hearing was convened for the purpose of considering whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government's case consisted of eight exhibits. Applicant relied on his own testimony and on eight exhibits. A transcript (Tr.) of the proceeding was received on October 3, 2002.

FINDINGS OF FACT

The SOR alleges a security concern is raised under Guideline F by Applicant's failure to satisfy several financial obligations in accordance with the terms originally agreed upon, and that a security concern is raised under Guideline E by his failure to disclose these delinquent financial obligations in response to pertinent questions on the SF 86 (*Security Clearance Application*) he completed in February 1999. In his answer to the SOR, Applicant admitted all alleged financial delinquencies, except the delinquency alleged in subparagraph 1.e. [\(1\)](#), and he admitted lying in response to pertinent questions on the SF 86. I accept Applicant's admissions, and after a complete and thorough review of the evidence of record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is 38 years old and has been employed since February 1999 as a dispatcher for a trucking company that transports classified equipment. He has not previously applied for a security clearance.

Before he began working for his current employer, Applicant had been a self-employed entrepreneur in an agricultural related business activity for approximately eight years (1990 to 1998). Income in this activity is subject to the vicissitudes of commodity prices and weather. Applicant's fortunes began their steep decline in 1996 when low commodity prices and difficult winters, with more than the usual amount of snow and moisture, made the production activity more difficult and more expensive than normal. In addition to the loss of income he experienced because of the troubles within his industry, Applicant's family experienced a second financial blow in 1997 when his wife lost her job. Debts began to accumulate that Applicant and his wife could not pay. These debts and Applicant's efforts to resolve them are as follows:

- An indebtedness of \$511.00 to Creditor A, the State A Department of Taxation for income tax payable in 1996 (on income earned during 1995). At his administrative hearing, Applicant admitted owing additional amounts for succeeding tax years (Tr. 53). He testified he had been making payments "on and on" to State A under a "payment plan," but admitted he did not have any documentation of the plan, and did not provide any evidence of his payments.
- An indebtedness of \$101.00 to Creditor B, a dentist for services provided to Applicant's son. He does not intend to pay this bill because of maltreatment his son received from the dentist.
- An indebtedness of \$1,243.00 to Creditor C; Applicant does not recognize this creditor, and claims to have no knowledge of the origin of this debt. He has never attempted to contact the credit reporting agency to determine the origin of this debt (Tr. 55-56).
- An indebtedness of \$1,016.00 to Creditor D, a local utility company for a home heating system that has never functioned properly. After Creditor D's unsuccessful attempts to repair the system, Applicant and a friend undertook to repair the system on their own. He advised Creditor D he would not pay the above debt unless he was reimbursed for his expenses. Creditor D initiated legal proceedings against Applicant to collect this debt in early 1999. At his administrative hearing, Applicant presented a copy of the Notice of Dismissal terminating this litigation as of September 28, 1999 (App. Exh. A).
- An indebtedness of \$419.00 to Creditor E, a provider of medical services. In his SOR answer, Applicant stated the original balance on this account had been satisfied, but admitted a current debt of \$62.00--which he intended to satisfy at the end of the month. [\(2\)](#) At his administrative hearing, Applicant documented a current balance on this account of \$74.00 (App. Exh. G).
- An indebtedness of \$271.00 to Creditor F, a bank, as the result of a dishonored check. Applicant claims this debt was satisfied when their home mortgage was "restructured" (SOR answer and Tr. 58).
- An indebtedness of \$3,858.00 to Creditor G, a credit card. Applicant admits he and his wife were unable to make payments on this account when they originally due. Now that the account has been charged off as a bad debt, he does not intend to pursue it (Tr. 46, SOR answer).
- An indebtedness of \$743.00 to Creditor H, a collection agency. Applicant states this debt was incurred for the purchase of a new refrigerator which malfunctioned after two months. He refused to pay the \$312.00 it would have cost to repair the refrigerator, instead telling the retailer, from whom he had purchased the refrigerator, to pick it up. They never did,

and the refrigerator continues to set in his garage. He does not intend to pay this debt.

- An indebtedness of \$1,201.00 to Creditor I, a national department store. When Applicant and his wife could not make payments on this account according to the terms originally agreed upon, the account was turned over for collection and Applicant was offered a lower pay-off amount. They could not even afford the lower amount and Creditor I has not contacted him since that offer. He does not intend to pay off this debt (Tr. 47, SOR answer).

- An indebtedness of \$1,913.00 to Creditor F⁽³⁾, a bank, on a line-of-credit account Applicant opened and used when he was operating his own business. This is the bank which holds the mortgage on Applicant's home and in which he has two checking accounts. He insists an employee of the bank advised him the indebtedness on the line of credit had been written off, and that he should not "worry about it." (Tr. 48, SOR answer).

- An indebtedness of \$2,500.00 to Creditor H, a credit company affiliated with one of the U.S. auto manufacturers. This debt represents the balance owed by Applicant on a motor vehicle he voluntarily allowed the dealer to repossess in April 1998--when he could not make payments, and the dealer resold. Because Applicant could not pay off the balance, he offered to make small payments. The dealer did not respond to Applicant's offer, and Applicant does not intend to pay off this debt.

When Applicant began working for his current employer in February 1999, his employer requested him to complete an SF 86 (Gov. Exh. 1). He completed the form and certified:

My statements on this form, and any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I understand a knowing and willful false statement on this form can be punished by fine or imprisonment or both.

However, Applicant's answers were not true, complete, and correct. In response to question 35 which asked Applicant if he had had any property repossessed for any reason within the last seven years, Applicant answered "no." And in response to question 38 which asked him if he had been more than 180 days delinquent on any debt in the last seven years, Applicant also answered "no".

In his first signed, sworn statement (Gov. Exh. 2) to the Defense Security Service (DSS), in his SOR answer, and in testimony at his administrative hearing, Applicant admitted he had not provided truthful information about his financial circumstances on his SF 86. He has volunteered various explanations for this omission: he did not provide the information because he believed it would jeopardize his employment opportunity with his current employer (Gov. Exh. 2); he was young and inexperienced and did not realize how important "these disclosures really were" (SOR answer); and he was embarrassed about his outstanding debt and financial circumstances and did not want his employer to know about them. On the first occasion he was interviewed by the DSS (July 19, 1999), Applicant stated he intended to "repay all legal obligations" as soon as his financial situation improved (Gov. Exhs 2). However, as indicated in the above discussion of the specific debts, Applicant does not **now** intend to repay most of the delinquent debts listed on his credit report--since they have been charged off by the creditors and he does not currently have the money to pay them (Tr. 60).

Although there is no evidence in the record about Applicant's duty performance, he stated in his SOR answer that he loves his job, and has grown to love those he works with. He considers them his second family. The owner of the company and his wife are wonderful people who take good care of (Applicant) and his family (SOR answer).

POLICIES

The Adjudicative Guidelines of 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 decisions with reasonable consistency which are clearly consistent with the national interest. In making these overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but also in the context of the factors set forth in Section 6.3 of the Directive. 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 Applicant's lack of security

worthiness.

The following Adjudicative Guidelines are deemed applicable to the instant matter:

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.

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.A6.1.2.1. Inability or unwillingness to satisfy debts;

Conditions that could mitigate security concerns include:

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).

PERSONAL CONDUCT

(Guideline E)

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.

Conditions that could raise a security concern and may be disqualifying also 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, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Conditions that could mitigate security concerns include:

None applicable.

Burden of Proof

The Government has the burden of proving any controverted facts alleged in the Statement of Reasons. If the Government establishes its case, the burden of persuasion shifts to Applicant to establish his security suitability through evidence which refutes, mitigate, or extenuates the disqualifying conduct and demonstrates it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate 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 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 an Applicant.

CONCLUSION

Having considered the record evidence under the appropriate legal precepts and factors, this Administrative Judge concludes the Government has established its case with regard to Guidelines F and E. In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in Section E2.2., as well as those referred to in the section dealing the Adjudicative Process.

A security concern is raised by Applicant's failing to satisfy his financial obligations in a timely manner. The SOR alleged Applicant was behind in financial obligations totaling more than \$17,000.00 to 11 different creditors. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant credibly presented evidence his current financial problems were brought on initially by events beyond his control. The collapse of his business over a prolonged time period, together with his wife's 1997 loss of employment were unforeseeable events that gradually and certainly sapped Applicant's economic vitality. Applicant is also given the benefit of the doubt with respect to several debts where he appears to have a legitimate grievance with the service or product provided. Clearly, there were extenuating circumstances present at the inception of his financial problems. If there was credible evidence that he has been making a sincere effort toward resolving his delinquent debts in the more than 30 months he has been receiving a steady paycheck (since he began working for his current employer), the security concern raised by these delinquent debts--many of which resulted directly or indirectly from his business failure--could be mitigated. But there is little evidence of such an effort. In the past three years, Applicant has succeeded in having a legal action against him (by Creditor D) dismissed, and he has resolved or paid off two small debts (totaling less than \$700.00) to Creditors E and F. These minimal attempts at debt repayment fall short of the "good-faith effort" described in mitigating guideline E.1.A6.1.3.6. Guideline F is concluded against Applicant.

An additional security concern is raised by Applicant's failure to disclose his delinquent financial obligations and the two pending civil actions that had been filed against him, on the SF 86 he completed in February 1999. His failure to provide honest and truthful answers to some of the questions on the security questionnaire suggests questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations. Such conduct could indicate Applicant may not properly safeguard classified information.

Applicant is credited with admitting he had not been truthful when he completed his SF 86 and omitted information about his past-due debts and pending legal actions, and he is credited with apologizing for his deceit. Honesty at this point in the security clearance process does not quiet the issues raised by his misconduct. Because he did not disclose his financial problems until the DSS special agent questioned him about his debts, Applicant does not benefit from mitigating guideline E2.A5.1.3.3.⁽⁴⁾ According to his testimony and the information on his credit report, Applicant had been coping with financial problems for several years before February 1999. Being unable to pay his bills as they became due was a fact of life he faced every day as his business was failing. His financial problems were not a matter he could easily forget or overlook. His reasons for omitting information about his financial circumstances are self-serving and hollow. Applicant's testimony explaining that he did not disclose his financial problems because he was embarrassed by his debts and wanted to keep this information from his employer, and because he did not appreciate the significance of providing honest and truthful information, fails to mitigate the security concern raised by his deliberate omission of important and pertinent information about his financial circumstances. Guideline E is concluded against Applicant.

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) AGAINST THE APPLICANT

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

' Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. For the Applicant

Subparagraph 1.g. For the Applicant

Subparagraph 1.h. For the Applicant

Subparagraph 1.i. Against the Applicant

Subparagraph 1.j. For the Applicant

Subparagraph 1.k. Against the Applicant

Subparagraph 1.l. Against the Applicant

Paragraph 2 (Guideline E) AGAINST THE APPLICANT

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against the Applicant

Subparagraph 2.c. 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 Applicant's security clearance.

John R. Erck

Administrative Judge

1. Applicant states he has no knowledge of this debt, and no knowledge about the creditor to whom the obligation is owed (See SOR answer and Tr. 33).
2. Applicant submitted his answer to the SOR on June 10, 2002.
3. This is the same bank that holds the mortgage on Applicant's home.
4. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts;