

DATE: May 17, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-08871

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Catherine M. Engstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 53-year-old janitor, is indebted in the aggregate amount of \$9,314.00 on five accounts which fell delinquent and were charged off and/or placed for collection between April 1995 and June 1999. He deliberately did not disclose any financial delinquencies on his security clearance application executed in arch 2000. Applicant's ongoing failure to address financial accounts for which he remains legally responsible, and his lack of full candor about his financial difficulties, warrant denial of a security clearance on the basis of unmitigated financial considerations and personal conduct concerns.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated November 27, 2001, to the 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 the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on financial considerations (guideline F) because of unresolved indebtedness totaling about \$9,314.00 and personal conduct (guideline E) concerns for failure to disclose financial delinquencies as well as alcohol and drug-related arrests on a March 2000 security clearance application.

On December 4, 2001, Applicant responded to the allegations set forth in the SOR and requested a decision without a hearing. The Government submitted its File of Relevant Material (FORM), dated January 30, 2002, a copy of which was forwarded to Applicant with instructions to submit material in explanation, extenuation or mitigation within thirty days of receipt. ⁽¹⁾ Applicant did not respond by the March 9, 2002, due date, and on March 27, 2002, the case was assigned to me for a decision based on the written record.

FINDINGS OF FACT

After a thorough review of the evidence, and on due consideration of the same, I render the following findings of fact:

Applicant is a 53-year-old janitor who has been employed by a defense contractor since March 1983. Applicant seeks a Secret security clearance for his duties.

Applicant has a past history of illegal drug use (marijuana and barbiturates). Applicant used marijuana sporadically and ingested illegal barbiturates ("reds") from 1969 to 1974 on a two to three times weekly basis. Applicant enjoyed the sedating effects of the barbiturates, and he sold the drug to support his own habit during that time frame. Arrested in October 1969 for violation of controlled substances, Applicant was subsequently sentenced to six months. He appealed to superior court, and his case was continued. After a number of defaults, he appeared in superior court in March 1974 and the charge was dismissed. (2) Circa April 1971, Applicant was arrested and charged with possession of controlled substance (barbiturates) after the car in which he was riding was pulled over by the local police. In possession of barbiturates at the time, Applicant subsequently appeared in district court. His case was continued several times when he failed to appear, and the charge was eventually dismissed in May 1979. As Applicant got older, he stopped using the barbiturates. On at least two occasions in 1980/81, he experimented with cocaine, but disliked the effect. Between 1982 and 1985, Applicant snorted heroin approximately once to twice per month, which he purchased from various street dealers with monies earned from his job. After receiving treatment for his abuse of heroin in 1984 or 1985, Applicant ceased all illegal drug involvement.

Alcohol was Applicant's "drug of choice" even when he was involved with controlled dangerous substances. Applicant started with beer in 1968. In approximately 1970, he began to consume whiskey on a daily basis, drinking to intoxication on the weekends. Circa July 1970, Applicant was arrested for drinking in public, which was dismissed on payment of the fine. In May 1976, he was arrested for drinking in public. His case was continued without a finding until June 1976 when he was fined. Arrested later that Summer for drinking in public, Applicant was found guilty of the offense in late August 1976 and fined. In the early 1980s, Applicant on occasion imbibed alcohol in the mornings. After he commenced his employment with the defense contractor in 1983, Applicant made an effort to curb his consumption. In 1984/85 he entered a thirty-day inpatient treatment program for alcohol abuse. Following his discharge, he relapsed into alcohol use. He stopped drinking in October 2000 after he was diagnosed with cirrhosis of the liver.

By 1999, Applicant was experiencing marital difficulties with his spouse, to whom he has been married since 1983. In August 1999, Applicant was arrested for domestic assault and battery and malicious destruction of property after he pushed her during an argument. The charge was subsequently dismissed.

In conjunction with his employment as a janitor with a defense contractor, Applicant on March 20, 2000, executed a security clearance application, EPSQ version (SF 86), on which he responded affirmatively to question 21 regarding any felony offenses, listing his arrest in August 1999 for domestic violence. In answer to whether he had ever been charged with or convicted of any offense related to alcohol or drugs (question 24), Applicant listed a July 1970 drinking in public charge which had been dismissed. (3) He responded negatively to question 38 ["In the last 7 years, have you been over 180 days delinquent on any debt(s)?"] and question 39 ["Are you currently over 90 days delinquent on any debt(s)?"].

During the course of its investigation into Applicant's background for the security clearance, the Defense Security Service (DSS) ran a credit check in August 2000 which disclosed charged off and/or collection debts amounting to \$12,013.00. Listed as outstanding were a \$16.00 debt owed to a collection agency since August 1999; a charge off balance of \$825.00 on a joint credit card account opened in April 1995 and transferred to another lender; (4) a bad debt of \$4,347.00 on a joint account charged off by a finance company; a \$2,773.00 balance on a joint revolving charge account closed due to transfer or refinance also reported as "pd ch off"; (5) a \$134.00 collection balance on a joint revolving charge with a retailer opened in April 1995; an \$825 balance owed on a speciality clothing store joint account opened in April 1995; and \$3,093.00 owed to a collection agency on an individual account placed in June 1999.

In October 2000, Applicant and his spouse moved in with his mother-in-law. His spouse was thrown out of the

(6)

residence by her own mother, who suspected her daughter was using drugs. By February 2001, Applicant and his spouse were estranged, and he anticipated divorce proceedings in the near future.

On February 21, 2001, Applicant was interviewed by a DSS special agent about his arrests, illegal substance abuse, alcohol abuse, and financial indebtedness. Applicant provided details of his arrests on alcohol and drug-related charges in the past. Regarding his omission of alcohol and drug offenses from his SF 86, Applicant denied any intentional concealment, as follows:

I only recorded the arrest that I remembered the approximate dates of. I was not attempting to conceal the fact I had two alcohol related arrest and that I was also arrested on drug charges. I was unsure of actually how far to go back with these arrest and what to record. I feel I provided this information without hesitation during my interview process and did not withhold this information during the interview.

Shown his credit report which allegedly reflected a total of \$17,554.00 in bad debt, (7) Applicant did not dispute the report, but he maintained the debt was owed by his estranged spouse, who had "used credit cards and forged [his] name on them as a joint account." Applicant related he had no intention of satisfying the debt she accrued.

On November 27, 2001, DOHA issued an SOR to Applicant based on financial considerations for failure to resolve five accounts with an aggregate debt of \$9,314.00 and personal conduct for allegedly falsifying his security clearance application for not reporting all alcohol and drug offenses or any financial delinquencies on his SF 86. When he responded to the SOR, Applicant admitted all the allegations without comment.

As of December 2001, he had taken no action to resolve those debts listed on his credit report--debts for which he remains legally responsible.

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. See Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. See Directive 5220.6, Enclosure 2, Section E2.2.4.

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

Financial Considerations

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.

Personal Conduct

E2.A5.1.1. 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 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.

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

None.

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

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 its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion 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." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

CONCLUSIONS

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

Applicant is indebted in the aggregate amount of \$9,314.00 on five accounts which fell delinquent and were charged off and/or placed for collection between April 1995 and June 1999. Applicant does not challenge the existence of the debt, but maintains it was incurred by his now estranged spouse, who forged his signature to open joint accounts. Applicant

has the burden of proving that he should not be held legally responsible for the debts. At least one of the more substantial debts, a collection balance of \$3,093.00, is owed on an account opened in his name only. Even with respect to those accounts which were opened jointly (apparently with his spouse), Applicant provided no evidence to corroborate his claim that she opened them fraudulently or without his knowledge. While Applicant is currently estranged from his spouse, they were together as recently as October 2000, when they moved in with her mother. There is no indication Applicant and his spouse were experiencing marital discord in the 1995/96 time frame when some of these debts were incurred or that their finances were separately maintained. Furthermore, when presented with the adverse credit information in February 2001, Applicant did not deny knowing of the debts. At least by February 2001 if not before, Applicant was aware the bad debts were listed on his credit report. Yet, there is no evidence he has sought removal of any of these debts from his credit report. Applicant's failure to address known financial obligations for which he remains legally responsible warrants application of disqualifying conditions (DC) E2.A6.1.2. (a history of not meeting financial obligations) and E2.A6.1.2.3. (inability or unwillingness to satisfy debts) under financial considerations.

Under the Directive, security significant financial considerations are potentially mitigated if the behavior was not recent (E2.A6.1.3.1.), it was an isolated incident (E2.A6.1.3.2.), the conditions that resulted in the behavior were largely beyond the person's control (E2.A6.1.3.3.), 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 (E2.A6.1.3.4.), or the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (E2.A6.1.3.6.). As of February 2001, Applicant indicated he had no intent to satisfy these debts. Consistent with that intent, he has neither contacted his creditors nor made any payments. Given the absence of any good faith effort on his part to resolve these outstanding matters, adverse findings are warranted with respect to subparagraphs 1.a., 1.b., 1.c., 1.d., and 1.e. of the SOR.

When Applicant executed his SF 86 in March 2000, he responded no to whether he was then delinquent more than ninety days or had ever been delinquent more than 180 days on any debts. As reflected on his credit report, his individual debt of \$3,093.00 had been placed for collection in June 1999. That same month, an \$825.00 charge off balance on a joint account had been placed with a financial recovery company. With documentation of record reflecting these debts were more than 180 days delinquent at the time he completed the SF 86, and Applicant having admitted the allegation of falsification without any explanation, the only reasonable conclusion which can be drawn from the record is that his responses to questions 38 and 39 were knowingly false. The deliberate omission of relevant and material facts from any personnel security questionnaire raises significant personal conduct concerns. (See DC E2.A5.1.2.2.).

Applicant did not deny the bad debt when he was interviewed by a DSS special agent. While MC E2.A5.1.3.3. (the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts) has potential applicability where an applicant corrects during a DSS interview misrepresentations made on a recent SF 86, there is no evidence that Applicant volunteered the adverse financial information up-front before he was presented with his credit report. His efforts at rectification, moreover, were limited to a denial of any culpability with regard to incurring the debts. As noted, the \$3,093.00 collection debt is listed on his credit report as an individual rather than joint debt. In the absence of full and frank disclosure of his financial situation, an adverse finding is warranted as to subparagraph 2.a. of the SOR.

The Government alleged separate personal conduct concerns related to Applicant's failure to report May 1976 and August 1976 drinking in public offenses as well as charges filed against him for violation of controlled substances in October 1976, April 1972 and March 1974. While Applicant did not include on his SF 86 the 1976 alcohol-related offenses as well as his two drug-related offenses (the 1974 charge stemmed from the October 1969 incident), he disclosed on the form his recent 1999 arrest for domestic assault, and responded affirmatively to question 24, listing a 1970 drinking in public. (8) In response to question 24, he did not answer "No." Asked about the omissions during his subject interview, Applicant related he listed only those offenses where he could recall the approximate date. He also told the agent that he was "unsure of actually how far to go back with these arrest and what to record." Department Counsel submits it stretches credulity for Applicant to list a 1970 alcohol offense rather than the more recent 1976 offenses and at the same time claim he was unsure how far to go back. While he did admit to the allegations of the SF 86, his earlier explanations to the DSS agent must also be taken into account in evaluating whether he deliberately misrepresented his arrest record. Based on the information of record, I am not persuaded that Applicant had a clear recall of the 1976 alcohol offenses at the time he completed the SF 86. Applicant did not deny his arrests for drinking in

public when he was interviewed, but he also provided scant detail, and was unable to even recall the pleas he entered in court. Furthermore, under question 27 of the SF 86 applicants are required to report only that drug use which occurred "since the age of 16 or in the last 7 years, whichever is shorter." Especially where the drug offenses which he allegedly concealed were committed more than 25 years prior to him applying for a security clearance, Applicant's claim to being uncertain as to whether he had to list these dated offenses is accepted. Favorable findings are returned as to subparagraphs 2.b.(1), 2.b.(2), 2.b.(3), 2.b.(4) and 2.b.(5), as he did not deliberately omit relevant arrest information from his SF 86.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph 1.a.: Against 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

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.(1): For the Applicant

Subparagraph 2.b.(2): For the Applicant

Subparagraph 2.b.(3): For the Applicant

Subparagraph 2.b.(4): For the Applicant

Subparagraph 2.b.(5): For 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.

Elizabeth M. Matchinski

Administrative Judge

1. In the FORM, Department Counsel indicated Applicant has outstanding bad debt in the approximate amount of \$17,000.00. However, the aggregate debt alleged in the SOR amounts to only \$9,314.00.

2. The Government alleged in the SOR three drug-related arrests. The only evidence of record regarding any drug-related criminal activity is found in Applicant's signed, sworn statement of February 2001 where he admits to being arrested in approximately October 1969 and in approximately April 1971. According to Applicant, the October 1969 charge was dismissed by the superior court in approximately 1974. From my review of the limited information presented, subparagraph 2.b.(3) of the SOR does not represent a separate drug offense, but reflects rather the disposition on appeal of the offense reflected in subparagraph 2.b.(5).

3. Applicant discussed only two drinking in public offenses when he was interviewed by the Defense Security Service agent, both of which reportedly occurred in 1976. Applicant could have been mistaken about the date of his offense when he listed a 1970 drinking in public on his SF 86, but he also told the DSS agent he had listed on his security clearance application only those arrests he could recollect by date. Given he admitted to the three alcohol-related offenses alleged in the SOR, there is sufficient evidence to find he was arrested three times for drinking in public.

4. The credit report includes a \$825.00 collection debt placed in June 1999 which was subsequently charged off. The debt is listed in the SOR as owed the collection agent rather than the original lender.

5. The credit report includes three accounts with the same lender which had been charged off, only one of which had an outstanding balance listed. While Applicant reportedly had a \$2,773.00 outstanding balance on one account, the credit record indicates "account closed due to transfer or refina pd chg off credit card." The Government did not allege in the SOR that Applicant had an outstanding debt with this named creditor.

6. As of December 2001, Applicant was still residing at his mother-in-law's address. (See Items 4, 5). On a receipt signed February 7, 2002, Applicant provided the same street address, but a different house number.

7. It is not clear whether Applicant was shown the August 2000 credit report or an update. The Government did not allege and the August 2000 credit record does not support outstanding balances totaling \$17,554.00.

8. The Government alleged in subparagraph 2.b. that Applicant responded "No" to question 24. On the SF 86 found in Item 5, the Applicant is noted to have answered "YES" to question 24.