

DATE: December 17, 2002

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 01-09555

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Marc Curry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant owed approximately \$13,300.00 to six creditors, which included six judgments. The financial considerations have been mitigated. When he completed a security clearance questionnaire, he failed to indicate his delinquent debts, civil court actions, and a 1994 arrest. He was also arrested in 2000. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from his 2000 arrest and falsifications. Clearance is denied.

STATEMENT OF THE CASE

On January 7, 2002, 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 February 27, 2002, the Applicant answered the SOR and requested a hearing. The case was assigned to me on May 20, 2002. A Notice of Hearing was issued on June 7, 2002, scheduling the hearing which was held on July 1, 2002.

The Government's case consisted of eight exhibits (Gov Ex). The Applicant relied on his own testimony and 10 exhibits (App Ex). DC moved to withdraw⁽²⁾ SOR subparagraphs 2.b, 2.d, 2.e, 2.f, 3.a, and 3.b. The motion was granted and these allegations were dismissed. DC moved to amend SOR subparagraph 3.c. to indicate the SF 86 had been electronically submitted on or about January 29, 1999. The transcript (tr.) of the hearing was received on July 9, 2002.

FINDINGS OF FACT

The SOR alleges financial consideration (Guideline F), personal conduct (Guideline E), and criminal conduct (Guideline J). The Applicant admits some of the debt and denies the remaining allegations.

The Applicant is 33-years-old, has worked for a defense contractor since April 1997, and is seeking to maintain a top-secret security clearance. The Applicant has a customer service-oriented attitude. He is competent, enthusiastic, popular, well respected, hard working, and eager to learn and

help. He has made significant contributions to accomplishing his employer's mission. (App Ex J)

As of May 1996, the Applicant's \$361.00 department store debt (SOR subparagraph 1.a) had been charged off as a bad debt. The debt was paid in full in December 1999 (App Ex G). As of March 1997, the Applicant's \$1,205.00 rental debt (SOR subparagraph 1.b) at a previous apartment had been charged off as a bad debt. This debt has been paid. (App Ex A). The Applicant failed to pay his rent (SOR subparagraph 1.e) at another apartment. In July 1995 a \$2,226.36 judgment (SOR subparagraph 1.f) was entered against the Applicant. In March 2002, the Applicant started paying \$40.00 per month on this debt. The remaining balance is \$850.00. The repayment plan is agreeable to the creditor.

The Applicant has two debts with the same credit union. The first debt of \$636.00 (SOR subparagraph 1.d) was charged off in June 1995. The credit union secured a \$594.00 judgment (SOR subparagraph 1.j) on this debt. The Applicant is making payment on this debt and owes approximately \$300.00. The second debt relates to a vehicle the Applicant purchased and financed through the credit union (SOR subparagraph 1.c). The Applicant was young and upset when the vehicle's engine locked up and he had to pay for a non-running car. He made no payments between June 1995 and June 1998 resulting in a debt of \$3,0412.00. In December 1996, the credit union secured a \$3,044.00 judgment (SOR subparagraph 1.k) for this debt. The Applicant has a monthly allotment of \$20.00 going to the credit union to pay his two debts. (App Ex E, F).

In November 1996, a department store secured a \$1,813.75 judgment (SOR subparagraph 1.g) against the Applicant. In December 1999, the judgment was satisfied by garnishment. (App Exs B and H) In November 1995, a hospital secured a \$3,258.00 judgment (SOR subparagraph 1.h) against the Applicant and in July 1996 the same hospital secured a \$3,537.09 judgment (SOR subparagraph 1.i). These are the same debt, one includes an amount for interest and the other does not. The Applicant denied these were his debts, alleging they were his brother's debts. As of December 1999, these judgments have been satisfied. (App Ex C)

In August 1994, the Applicant was arrested (Gov Ex 6) and charged (SOR subparagraph 2.c) with "hindering and resisting arrest." The Applicant's girlfriend had been living with him when he asked her to leave. She asked two police officers, one of which she was dating at the time, for help to get her property from the Applicant's apartment. When his former girlfriend tried to take property which did not belong to her, the Applicant attempted to stop her, and there was a scuffle. At trial, the judge stated the police had no reason to be present. The Applicant was found not guilty of the charges. (App Ex I)

In January 2000, a fight occurred between the Applicant and another man during which the Applicant struck the other man with his keys. As the other man drove away, he ran over the Applicant with his car, breaking the Applicant's collar bone and knocking him unconscious. (Gov Ex 3) The Applicant was in jail one week before a witness testified the other man had been trespassing, was in violation of a restraining order, and had started the fight. The Applicant was charged (SOR subparagraph 2.a) with felony first degree assault (dismissed) (Gov Ex 5), misdemeanor second degree assault (not prosecuted), and misdemeanor assault with a deadly weapon (not prosecuted). (App Ex I)

In January 1999, the Applicant responded to a Questionnaire for National Security Positions, Standard Form (SF) 86 (Gov Ex 2) and failed to indicate his August 1994 arrest. Question 26 asked the Applicant about his arrests during the prior seven years. He failed to list the arrest because he had been found not guilty and the judge told him it would not be a part of his record. (Gov Ex 4) The Applicant's 2000 arrest occurred subsequent to the completion of the SF 86.

In an SF 86 signed in October 2001, (Gov Ex 1) the Applicant answered "no" to question 38, which asked if, during the prior seven years, he had been more than 180 days delinquent on any debt. On his prior SF 86, dated January 1999, the Applicant had answered "yes" to question 38. He also answered "no" to question 40 on his October 2001 SF 86, which asked if, during the prior seven years, he had been a party to any "public record civil court actions" not elsewhere listed on the form. Six judgments had been entered against the Applicant between June 1995 and December 1996. The Applicant did not understand what was meant by public record civil court actions and did not equate the question to judgments for unpaid debts.

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, assess, 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 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:

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. (E2.A6.1.3.4.)

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

Criminal Conduct (Guideline J) The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

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

a. Allegations or admission of criminal conduct, regardless of whether the person was formally charged.

b. A single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns include:

d. The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur.

f. There is clear evidence of successful rehabilitation.

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. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

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.A5.1.2.2.)

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 his financial obligations. The United States must consider whether individuals granted access to classified information are because of financial irresponsibility in a position where they may be more susceptible to mishandling or compromising classified information or material for financial gain. The Applicant owed approximately \$13,300.00 to six creditors which included six judgments. Because of these proven debts, which have extended over a long period of time, Disqualifying Conditions (DC) 1⁽³⁾ and 3⁽⁴⁾ apply.

The Applicant has paid off approximately \$7,000.00 of the debt. The Applicant has paid the \$361.00 owed a department store (SOR subparagraph 1.a) and the \$1,813.75 judgment to another department store (SOR subparagraph 1.g). In November 1995 and July 1996, a hospital secured judgments (SOR subparagraph 1.h and 1.i) for the same debt. These judgments have been satisfied as of December 1999. (App Ex C) He has settled and satisfied the \$1,205.00 owed to a prior landlord (SOR subparagraph 1.b). Because these debts have been paid in full or have been settled and satisfied, Mitigating Condition (MC) 6⁽⁵⁾ applies. I find for the Applicant as to SOR subparagraphs 1.a, 1.b, 1.g, 1.h, and 1.i

There is evidence he has reached an agreement with his other two creditors. When he was young, he purchased a car and refused to pay for it when the engine locked up. The debt (SOR subparagraphs 1.e and 1.k), became a judgment. He owes the same credit union \$300.00 on a different debt (SOR subparagraph 1.d) which also became a judgment (SOR subparagraph 1.j). He has established a \$20.00 monthly allotment to pay the credit union.

The Applicant is paying a former landlord \$40.00 per month on a \$2,226.34 judgment (SOR subparagraph 1.f), which is the same debt listed is SOR subparagraph 1.e. He still owes approximately \$850.00. The fact the Applicant is making payments on the \$4,500.00 he owes the credit union and his former landlord is an indication the problem is being resolved. MC 4⁽⁶⁾ applies to these two creditors. I find for the Applicant as to SOR subparagraphs 1.c, 1.d, 1.e, 1.f, 1.j, and 1.k. All of the financial allegations have been mitigated.

The Government has satisfied its initial burden of proof under Guideline J, (Criminal Conduct). Under Guideline J, the security eligibility of an applicant is placed into question when that applicant is shown to have a history or pattern of criminal activity creating doubt about his judgment, reliability, and trustworthiness.

In August 1994, the Applicant was arrested when two police officers came to help the Applicant's former girlfriend move out. The Applicant was arrested and charged (SOR subparagraph 2.c) with hindering and resisting arrest. In January 2000, the Applicant was involved in a fight with another man. Because of these two arrests, DC a⁽⁷⁾ and b⁽⁸⁾ apply.

SOR subparagraphs 2.b, 2.d, 2.e, and 2.f were withdrawn. Although charged as a result of the January 2000 fight, the felony assault charge (SOR subparagraph 2.a) was dismissed and the two misdemeanor assault charges were not prosecuted. The Applicant had struck the other man with his keys before being run over which broke his collar bone and knocked him unconscious. The charges being dismissed or not prosecuted are not the same as a finding of not guilty. Because this incident is recent and there is insufficient evidence in the record to conclude the factors leading to the violation are not likely to recur, MC d.⁽⁹⁾ does not apply. Some evidence of rehabilitation has been established, but the record is insufficient for me to conclude there is "clear evidence of successful rehabilitation" sufficient to apply MC f.⁽¹⁰⁾ I find against the Applicant as to SOR subparagraph 2.a.

In August 1994, when the Applicant's former girlfriend moved out, the Applicant was arrested and charged (SOR subparagraph 2.c) with hindering and resisting arrest. This arrest was a domestic disturbance, which occurred more than eight years ago. MC a.⁽¹¹⁾ applies to his arrest. At trial, the Applicant was found not guilty of the charges. I find for the Applicant as to SOR subparagraph 2.c.

In January 1991 and October 2001, the Applicant gave false answers on his Std. Forms 86. By certifying falsely that his responses were true, complete and correct to the best of his knowledge and belief, and made in good faith, the Applicant violated Title 18, Section 1001⁽¹²⁾ of the United States Code. His false answers are felonious conduct under the laws of the United States. Because of this serious misconduct, there should be compelling reasons before a clearance is granted or continued. Candor is important, and the Applicant was unable or unwilling to be candid about his background. The

period of time from the most recent falsification--October 2001--to the closing of the record, less than one year, is insufficient to mitigate the Government's case. Accordingly, subparagraph 2.g. is resolved against the Applicant.

The Government has satisfied its initial burden of proof under guideline E, (Personal Conduct). Under Guideline E, the security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal conduct which creates doubt about the person's judgment, reliability, and trustworthiness. The Applicant was arrested in 1994 and failed to list this arrest on his January 1999 SF 86. The Applicant's other arrest in January 2000 is not at issue because it occurred after the SF 86 had been completed. On his October 2001 SF 86, the Applicant failed to indicate he had financial difficulties more than 180 days delinquent, even those he had answered "yes" to this same question when he completed his January 1999 SF 86. Because of these falsifications, DC 2-[\(13\)](#) applies.

SOR subparagraphs 3.a and 3.b were withdrawn. The Applicant had been arrested in 1994 and should have answered "yes" to Question 26.on his January 1999 SF 86. The question asks if the Applicant had ever been arrested, charged, or convicted. The Applicant knew he had been arrested and charged. Even though he was found not guilty of the charge and irrespective of what the judge might have told him, the Applicant was obligated to report this arrest. I find against the Applicant as to SOR subparagraph 3.c.

In October 2001, the Applicant answered "no" to Question 38. which asked if during the prior seven years he had been more than 180 days delinquent. He had been so delinquent and in fact had indicated this on his prior SF 86. The Applicant has not satisfactorily explained why he answered "no" to the question. The question is meant to elicit the Applicant's entire financial picture and does not include just those debts which the Applicant is currently paying. The government is asking him to disclose his financial delinquencies, which he failed to do. Because of his deliberate falsification and because none of the mitigating conditions apply, I find against the Applicant as to SOR subparagraph 3.d.

The Applicant also answered "no" to question 40., which asked if he had been a party during the previous seven years to any "public record civil court action" not listed elsewhere on the form. The Applicant did not understand what was meant by "public record civil court actions" and did not equate the question to judgments for unpaid debts. The question's wording did not ask about law suits, collection actions, or judgments, which might have helped the Applicant understand what information the question was seeking. Although the Applicant had six judgments against him, he did not think this question was eliciting that information. I find his explanation plausible and find he did not falsify his answer to question 40. I find for the Applicant as to SOR subparagraph 1.e.

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 Consideration): FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: For the Applicant

Subparagraph 1.i.: For the Applicant

Subparagraph 1.j.: For the Applicant

Subparagraph 1.k.: For the Applicant

Paragraph 2 Guideline J (Criminal Conduct): AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Withdrawn

Subparagraph 2.c.: For the Applicant

Subparagraph 2.d.: Withdrawn

Subparagraph 2.e.: Withdrawn

Subparagraph 2.f.: Withdrawn

Subparagraph 2.g.: Against the Applicant

Paragraph 3 Guideline E (Personal Conduct): FOR AGAINST THE APPLICANT

Subparagraph 3.a.: Withdrawn

Subparagraph 3.b.: Withdrawn

Subparagraph 3.c.: Against the Applicant

Subparagraph 3.d.: Against the Applicant

Subparagraph 3.e.: 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 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. The Applicant has a twin brother with a very similar name and these allegations relate to that brother and no the Applicant.
3. DC 1. A history of not meeting financial obligations. (E2.A6.1.2.1.)

4. DC 3. Inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)
5. MC 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.)
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. (E2.A6.1.3.4.)
7. DC a. Allegations or admission of criminal conduct, regardless of whether the person was formally charged.
8. DC b. A single serious crime or multiple lesser offenses.
9. MC d. The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur.
10. MC f. There is clear evidence of successful rehabilitation.
11. MC a. The criminal behavior was not recent.
12. Title 18, Section 1001 of the United States Code provides whoever, knowingly and willfully - (2) makes any materially false, fictitious, or fraudulent statement or representation, shall be fined under this title or imprisoned or both.
13. DC 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.A5.1.2.2.)