

DATE: April 2, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-13299

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Robert Tuitter, Esq., Department Counsel

FOR APPLICANT

James Mucka, Personal Representative

SYNOPSIS

Applicant allegedly failed to disclose certain debts on his security clearance application in 1998, and in 2001 purportedly told an investigator a false reason for the non-disclosure of his purported debt. Applicant's thought his debts were paid and was unaware of them. When informed, he paid them promptly. Applicant immigrated in 1991, learned English, completed college, and obtained his first job. In establishing his first home he acquired the two minor (under \$100) debts at issue. Applicant successfully mitigated all concerns about his debts. Clearance granted.

STATEMENT OF THE CASE

On September 25, 2002, the Defense Office of Hearings and Appeals (DOHA), under 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. The SOR detailed reasons under Guideline E (Personal Conduct) 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 Applicant, and recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn statement, dated October 11, 2002, Applicant responded to the SOR allegations. He requested his case be decided on the written record in lieu of a hearing. Then, in a written request dated January 8, 2003, he changed his decision and requested a hearing. This case was originally assigned to Administrative Judge Roger Willmeth on January 22, 2003. It was reassigned to Administrative Judge Paul Mason on the same day. Due to caseload considerations this case was reassigned to me on February 21, 2003. A hearing was established immediately for Applicant on February 28, 2003 in Arlington, Virginia. Applicant appeared, presented two witnesses plus his own testimony, and three exhibits ⁽¹⁾, all of which were admitted into evidence. The Government presented three exhibits ⁽²⁾, all of which were admitted into evidence. I received the transcript (Tr.) on March 7, 2003.

FINDINGS OF FACT

Applicant admitted to the allegations in the SOR. Those admissions are incorporated herein as findings of fact. At the hearing, Applicant further explained his answers to the SOR and the circumstances surrounding them. After a complete review of the evidence in that hearing record, I make additional findings of fact:

Applicant is 33 years old and married. He owns a home. He came to the United States as a refugee from Vietnam in 1991. Since his arrival, he has completed college, obtained an excellent paying job, married, and settled into the American way of life. His wife recently started her own nail salon business. Applicant is a computer software contractor for the United States Government, and a good worker for his employer. (Tr. at 27, 28, 32, Exhibit C)

Applicant completed his security clearance application on December 28, 1998. He answered Question 28a (debts over 180 days delinquency) as "no". He answered Question 28b (debts over 90

days delinquency) as "no". In fact, two debts were owed and more than 90 days in duration. Those debts were to a collection agency for a mattress purchase made by Applicant in the city in which he first worked, in the amount of \$76.00, and \$15.87 owed to a department store. The \$147.00 shown as owed in the SOR was actually the maximum amount Applicant ever charged on the department store account. The \$15.87 is the balance actually owed at the time the security clearance application was signed on December 28, 1998. Applicant paid the \$15.87 on February 25, 1999, and his credit record is clear on that debt. The \$76.00 to the collection agency was paid at some time after January, 1999 when Applicant saw the debt on the first credit report he ever read on himself. The collection agency debt does not show on Applicant's current credit report, and shows as a zero balance on the Government's Exhibit 3 credit report as of October, 1996. Applicant was found by one creditor, American Express, and he paid that bill immediately. (Exhibit A; Exhibit 3 at 5; Exhibit B at 1 to 32; Tr. 46,47,51,56-59)

Applicant believed when he completed the security clearance application that he had no outstanding delinquent debt. Applicant's credit record shows low or no balances on all his debts, except his current mortgage. He paid off his two automobiles in 14 and 17 months, respectively.

(Tr.19, 47, 48, 60; Exhibit 3 at 2 to 8; Exhibit B at 1 to 15)

Applicant does not have a problem with security requirements and regulations at his work location. He is a good employee and quite knowledgeable in his computer software field. (Tr.18, 27 to 30)

Applicant immigrated to the United States from Vietnam in 1991 with his mother and two brothers. His father emigrated in 1981 to the United States, and then was able to bring the other family members to the United States. Applicant lived in a northern state and got a college degree there. He then took a job in a southern state, where he got married. He lived there about three months in 1996, until he got another job in a contiguous southern state. His new employer paid for two months rent in an apartment, and later Applicant moved again in that same state, until he moved to a mid-Atlantic state in 1997. He currently owns a home there. Applicant's moves in 1996 and 1997 did not allow his mail to catch him, and he admits he did not file a forwarding address card with the post office when he moved from his city of first employment because he was not certain where he was going to be living. Applicant speaks English with a Vietnamese accent. He studied English at night after he came to the United States in 1991. He has difficulty understanding his co-workers sometimes and they rephrase for him. Applicant became a United States citizen on October 16, 1998. Buying the mattress in the city in which he was first employed was Applicant's first experience with American credit procedures. (Exhibit 3 at 4 and 9; Exhibit 1 at 2; Tr.21,36,37,48-49,54,55)

Applicant believed he did not owe the debts which are the subject matter of the SOR when he completed the security clearance application. Applicant tried to explain to the Defense Security Service investigator about his moving and the bills not following him, but was then advised by the investigator to write on his statement that he did not answer the security clearance application Question 28 truthfully because he feared he would not get his security clearance. Based upon his demeanor at the hearing, and after examining the pattern of his debt repayments in the evidence, I find Applicant's explanation to be credible and persuasive on this issue. (Tr. 19, 47, 48; Exhibit 2; Exhibit B)

POLICIES

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. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (See Directive, Section E2.2.1. of Enclosure 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 condition 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 other behavior specified in the Guidelines.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

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

E2.A5.1.1.2. Refusal to complete required security forms, releases, or provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personal security or trustworthiness determination.

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, falsification or misrepresentation 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:

E2.A5.1.3.1. The information was unsubstantiated. . . ;

E2.A5.1.3.2. The falsification was an isolated incident, not recent, and the individual has subsequently provided correct information voluntarily;

E2.A5.1.3.3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts;

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to each allegation set forth in the SOR:

With respect to Guideline E and its applicability to subparagraphs 1.a.1, 1.a.2, and 1.b., I conclude the Government did

not prove its case. This case is truly one in which the evidence must be looked at totally and not piecemeal. That total picture shows a hardworking immigrant who embarked on his first job after college graduation, and found himself moving among three states in the space of about three months. He also married and made his first purchases on credit. The total record also shows a man who is conscientious about paying his bills timely, and in fact paid off his two automobile purchases early. Applicant is not a person who avoids his financial responsibilities, and these two bills which are the subject of this SOR are obviously oversights caused by his moving and the failure of the creditors to find him.

More particularly, Applicant started in the work force in 1996 and immediately moved from one southern state to another state for employment purposes. His bills did not follow him fast enough. He testified that one creditor found him and he paid the bill immediately. Reviewing his credit record, I see he has few debts, and has paid off his automobile loans in less than 18 months in both cases. His biggest debt is his home mortgage. Again, Applicant is clearly a man who pays his debts and bills, and these two unpaid bills are an anomaly which Applicant convincingly explained.

He had only been in the United States five years at that time he entered into the purchases which gave rise to this SOR, learning English and getting an education. I do not find any persuasive evidence in the record that he would default knowingly on a \$15.87 debt. I also find his testimony credible and convincing when he explains that the \$76.00 owed to the collection agency was only the interest on his mattress purchase. His naivete on credit matters, English inexperience, and his personal inexperience in the American credit culture contributed to these two minor debts being unpaid. I am persuaded by the evidence on the record that he honestly thought he did not owe these two debts when he completed the security clearance application.

In fact, the testimony at the hearing showed his initial concern was that an American Express debt, which was not the subject of the SOR, was the Government's concern. But that debt had been paid years earlier.

These same conclusions apply to both incidents alleging failures to answer truthfully Question 28 of the security clearance application. It should be noted that Applicant was charged with what was thought to be the correct amount in subparagraphs 1.a.2 and 1.b pertaining to the department store account. However, the evidence in the record shows the correct amount unpaid amount was \$15.87 not the \$147. I should also note that Applicant completed his application 39 months ago, and has corrected all data since then and immediately after it was brought to his attention.

Therefore, Disqualifying Condition (DC) E2.A5.1.2.2. is not applicable. Applicant has more than mitigated these incidents with his evidence and very credible testimony. Mitigating Conditions (MC) E2.A5.1.3.1, 2 and 3 are applicable.

Regarding allegations of Paragraph 1.c. of the SOR that Applicant lied on his security clearance application about these two debts to protect his security clearance, I find his testimony and that of his witnesses credible and persuasive. Applicant was persuaded by the investigator to write that explanation after Applicant explained to him the reason why these two debts showed on his credit report. In examining his answer to the SOR and hearing his testimony at the hearing, I had to examine everything carefully and completely to understand the sequence of events and Applicant's explanation. I can understand why any agent would find it difficult to capture all of this information and summarize it on a statement. Therefore, I do not give credence to that explanation in the statement. I find and conclude Applicant did not know those two debts set forth in subparagraphs 1.a.(1). and 1.a.(2). were due and owing when he completed the security clearance application, as explained in the above paragraphs. English is a second language for Applicant, and being confronted by a government investigator after growing up in a Communist country could be overawing for Applicant. Therefore, he complied with the suggestion from the agent to explain the apparent non-disclosure of these debts with a convenient catch-all phrase. I conclude that DC E2.A5.1.2.3. is not applicable to this Applicant's case. Instead, I conclude MC E2.A5.1.3.4. is applicable and the finding must be for the Applicant.

I should also note that Applicant had a company vice-president assist him in his presentation to me, and his supervisor and facility security officer testified on his behalf. They were very credible witnesses. Their testimony showed that Applicant's work is vital to their company which provides essential services to the national defense establishment. It is reasonable to conclude that Applicant's employment is necessary in support of the national interest, and it is clearly

consistent with the national interest, based on all of the evidence, to renew Applicant's security clearance.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline E: For the Applicant

Subparagraph 1.a.: For the Applicant

Subparagraph 1.a.(1): For the Applicant

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

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

DECISION

In light of all the circumstances and facts presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Philip S. Howe

Administrative Judge

1. Applicant Exhibit A: February 25, 2003 letter from a creditor; Applicant Exhibit B: Applicant's credit report from February 25, 2003;

Applicant Exhibit C: Applicant's January 31, 2003 performance appraisal.

2. Department's Exhibit 1: Applicant's SF 86, dated December 28, 1998; Department's Exhibit 2: Applicant's sworn statement of February 27, 2001; Department's Exhibit 3: Applicant's credit report dated March 3, 1999.