

DATE: September 3, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-13657

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Jonathan A. Beyer, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's falsification of clearance applications in January 2000 and August 2002 suggested he could not be relied upon to disclose the truth if it conflicted with his personal interests. Clearance denied.

STATEMENT OF THE CASE

On 23 October 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⁾ that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 8 November 2002, Applicant answered the SOR and requested an administrative decision on the record. Applicant did not respond to the File of Relevant Material issued 28 March 2003. The record closed on 5 July 2003, the date the response was due at DOHA. The case was assigned to me on 21 July 2003.

FINDINGS OF FACT

Applicant admitted the allegations the SOR. Accordingly, I incorporate these admissions as findings of fact.

Applicant--a 49-year old employee of a defense contractor--seeks access to classified information. He has not previously had a clearance.

On 8 January 2000 and again on 28 August 2002, Applicant falsified a Security Clearance Application (SCA)(SF 86) (Items 4, 5) by answering "no" to a question requiring Applicant to disclose any bankruptcy in the last seven years. In fact, he had filed a Chapter 7 bankruptcy petition in February 1997, obtaining a discharge in May 1997.

On 30 July 2002 (Item 6)⁽²⁾, when questioned about his bankruptcy and his failure to disclose it, Applicant acknowledged getting in over his head with his credit cards. He also stated "I think you are asking to (sic) many

personal questions, even though its (sic) your job, the reason for not putting the bankruptcy on the paper is its (sic) my personal business and didn't think that is any one elses (sic) business."

The record is otherwise silent on Applicant's character or work performance.

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.

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 that 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 E. Applicant knew he had filed bankruptcy in 1997, yet decided that information was none of the Government's business. While the failure to disclose did not prevent the Government from discovering the bankruptcy, and the bankruptcy itself was found to have no current security

significance, neither fact is relevant to an assessment of Applicant's fitness for access to classified information. The Government has an interest in examining all relevant and material adverse information about an Applicant before making a clearance decision. The Government relies on Applicants to truthfully disclose that adverse information. Further, an Applicant's willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the Government relies upon in order to perform damage assessments and limit the compromise of classified information. Applicant's conduct suggests he is willing to put his personal needs and assessment of his privacy issues ahead of legitimate Government interests. I resolve Guideline E against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline E: 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 2 January 1992--amended by Change 3 dated 16 February 1996 and by Change 4 dated 20 April 1999 (Directive).
2. Executing a letter drafted 7 July 2002. Applicant executed a false clearance application in January 2000, and was interviewed by the DSS in July 2002. He later executed a second false clearance application in August 2002. The record is silent about why Applicant was asked to execute an updated clearance application.