

DATE: January 30, 2004

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 01-15549

## **DECISION OF ADMINISTRATIVE JUDGE**

**PAUL J. MASON**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Nygina T. Mills, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

The failure to present any evidence demonstrating repayment of delinquent debts results in a finding against Applicant under the financial considerations guideline. Applicant's deliberate falsification of his security clearance application (SCA) has not been mitigated even though the falsification occurred over four years ago. Finally, Applicant's long career in the shipbuilding industry does not mitigate his recent criminal conduct that occurred in March 2002. Clearance is denied.

### **STATEMENT OF CASE**

On July 31, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, amended April 4, 1999, issued a Statement of Reasons (SOR) to Applicant. The SOR 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 Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant furnished his answer to the SOR on June 15, 2003. Applicant elected to have his case decided on a written record. The Government provided Applicant a copy of the File of Relevant Material (FORM) on September 17, 2003. Applicant received the FORM on October 6, 2003. His response to the FORM was due on November 5, 2003. No response was received.

### **RULINGS ON PROCEDURE**

The Government exhibits shall be marked by 'Item' followed by the number of the exhibit.

### **FINDINGS OF FACT**

The SOR alleges financial considerations (Guideline F), personal conduct (Guideline E) and criminal conduct (Guideline J). Applicant denied subparagraphs 1.a., 1.b., 1.c., 1.f., 1.g., 2.a., 2.b., and 3.a. He admitted 1.d. and 1.e. Having weighed and balanced the FORM, I render the following factual findings:

Applicant is 50 years old and has been employed as an ship builder by a defense contractor since June 1976. He seeks a top secret clearance.

**Financial Considerations.** Applicant owes seven creditors (listed under paragraph 1) \$4081.00. Applicant's explanation in support his denial of 1.a. is that his medical insurance paid all but \$59.00 of the debt. However, Applicant presented no proof to buttress his claim. Applicant stated he would contact the creditor in 1.b. and satisfy the debt. He provided no proof. Applicant denies the 1.c. debt because he never received any notification from the creditor about the debt, and he recalled when he moved out of his apartment, a new tenant immediately moved in the next week. Applicant's explanations for not paying the delinquent debt are not persuasive.

Applicant was not aware of the medical hearing bill of \$140.00 (1.d.) but would pay the bill if it was determined to be his. He presented no evidence of measures taken to identify and resolve the debt.

Applicant provided absolutely no explanation for his denial of the fifth debt for \$923.00 and the sixth debt for \$879.00.

Applicant noted the seventh debt was created by an official at the bank (1.g.) seizing \$3000.00 of his bank funds without authorization. Unfortunately, Applicant presented no evidence to support this claim.

Having weighed and balanced all the evidence, including Items 7 and 8 showing Applicant's creditors, I find he owes the seven creditors listed under paragraph 1.

Applicant moved away from his wife to his girlfriend's house in 1992. He tried to support two households but discovered he could not keep current on the bills, particularly when his wife quit working in 1995 to take care of their child.

**Personal Conduct.** On August 11, 1999, Applicant signed a security clearance application. He answered 'no' in response to question 28.a. (In the last 7 years have you been over 180 days delinquent on any debt(s)?). He answered 'no' to question 28.b. (Are you currently 90 days delinquent on any debts?). I find Applicant's 'no' answers to be deliberate. He knew he had financial problems as far back as 1995.

**Criminal Conduct.** On March 7, 2002, Applicant was arrested and charged with molestation and possession of a controlled substance. On May 9, 2002, the Defense Security Clearance Office was advised of Applicant's arrest. (Item 9) He was indicted on the charges on November 5, 2002. On August 6, 2003, Applicant pled guilty to a reduced charge of contributing to the delinquency of a minor. Applicant was placed on six months probation, suspended; he was placed on six months non-reporting probation, and fined \$250.00. On September 7, 2003, the presiding judge consented to the county prosecutor's entry of a nolle prosequi on the possession of a controlled substance charge. Applicant declined to discuss the case on the advice of counsel but agreed to be interviewed after the trial as he was innocent of the crime.

**Character Evidence.** Applicant is lead project engineer assigned to repairing the naval vessel damaged in 1990. He also participated in the design and quality control of the speed boats used by countries for interdiction purposes. Applicant has been working on ships for 28 years. He has patched up differences with his wife of 32 years.

## POLICIES

Enclosure 2 of the Directive sets forth policy disqualifying conditions (DC) and mitigating conditions (MC) that must be given binding consideration in making security clearance decisions. These conditions must be considered in every case according to the pertinent guideline; however, the conditions are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts and circumstances, it should not be assumed that the conditions exhaust the entire realm of human experience or that the conditions apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Conditions most pertinent to evaluation of the facts in

this case are:

### **Financial Considerations**

Disqualifying Conditions (DC):

1. A history of not meeting financial obligations;
3. Inability or unwillingness to satisfy debts.

Mitigating Conditions (MC):

1. The behavior was not recent;
2. It was an isolated incident;
3. The conditions that resulted in the behavior were largely beyond the person's control;
4. The person has received counseling and there are clear indications the problem is being resolved or under control;
6. The individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

### **Personal Conduct**

Disqualifying Conditions (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.

Mitigating Conditions (MC):

1. The information was not substantiated or not pertinent to a determination of judgment, trustworthiness, or reliability;
2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;
3. The individual made prompt, good-faith efforts to correct the falsification before being confronted by the facts.

### **Criminal Conduct**

Disqualifying Conditions (DC):

1. A single serious crime or multiple lesser offenses;

Mitigating Conditions (MC):

1. The criminal behavior was not recent;
2. The crime was an isolated incident;
3. There is clear evidence of rehabilitation.

### **General Policy Factors (Whole Person Concept)**

Every security clearance case must also be evaluated under additional policy factors that make up the whole person

concept. Those factors (found at pages 16 and 17 of Enclosure 2 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (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 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.

### **Burden of Proof**

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information in the future. The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must establish a *prima facie* case under financial considerations (Guideline F), personal conduct (Guideline E) and criminal conduct (Guideline J) that establishes doubt about a person's judgment, reliability, and trustworthiness. Then, the Applicant must remove that doubt with evidence in refutation, explanation, mitigation, or extenuation that demonstrates that the past adverse conduct is unlikely to repeat itself and Applicant presently qualifies for a security clearance.

### **CONCLUSIONS**

**Financial Considerations.** An inability to pay debts on time may indicate the debtor is overextended and has exposed himself to the risk of having to engage in illegal acts to generate funds. Applicant has a history of not meeting his financial obligations (DC 1) as demonstrated by his indebtedness in the amount of almost \$4081.00 to seven creditors. The age of the debts varies. The debt described in 1.d. is seven years delinquent while the other debts are three and four years delinquent. (Item 7) Considering the age of the debts, DC 1 is clearly applicable. DC 3 is also applicable based on the statements of intention by Applicant to resolve the debts with no documented action supporting his intention.

While there are five mitigating conditions with potential application to these facts, none apply. Though the delinquent debts are more than two years old, Applicant has not presented any evidence to show he has adopted different habits to avoid financial difficulty in the future. The seven delinquent debts remove C 2 from consideration.

MC 3 may apply extenuate and mitigate financial trouble when resulting from unanticipated events. Applicant attributes his financial problems to his extra-marital affair, trying to support two households, and launching an unsuccessful trucking venture. Though Applicant has identified three events that can potentially extenuate financial hardship, these three events provide negligible extenuation because they were not unforeseen. Rather, Applicant pursued the affair on his own volition. His decision to try to support two homes was Applicant's choice. Finally, Applicant decided to establish a trucking business while having this affair and when he was trying to keep two relationships together. In sum, MC 3 falls short of establishing Applicant's case in mitigation.

MC 4 must be removed from consideration as there has been no evidence of counseling or other indicators to infer or suggest the financial problems are under control.

MC 6 receives no attention under the facts as there is no evidence Applicant has taken any action to even contact the creditors to set up a payment plan. Subparagraphs 1.a. through 1.g. are found against Applicant.

**Personal Conduct.** The two credit bureau reports (Items 7 and 8) indicate Applicant has had credit problems since 1985. Applicant moved out of his wife's house in 1992. He even admitted he was having problems paying the bills when his wife stopped working to take care of the child in 1995. I find he deliberately falsified financial questions 28.a., and 28.b. of the SCA.

While there are three conditions that could potentially mitigate the deliberate omissions, none are applicable. MC 1 is inapplicable because the financial delinquencies are independently proven by the credit bureau reports. MC 2 is not applicable because Applicant has not subsequently furnished correct information voluntarily. Significantly, he has not furnished any information about his debts.

MC 3 is inapplicable since Applicant has not made a good-faith effort to correct the falsification before being confronted with the facts. Subparagraphs 2.a., and 2.b. are found against Applicant.

**Criminal Conduct.** A history or pattern of criminal conduct creates doubt about a person's judgment and trustworthiness. Applicant's criminal conduct falls within MC 2 as a serious crime. Even though Applicant claims he was not guilty of molestation, he pled guilty albeit to the lesser included offense of contributing to the delinquency of a minor. The other charge was dismissed.

MC 1 cannot be applied to the facts of this case because the crime occurred less than two years ago. Though Applicant receives limited extenuation due to the isolated nature of the conduct (MC 2), there is inadequate evidence of successful rehabilitation to validate a finding in Applicants favor. First, Applicant's claim of innocence in the face of his plea of guilty raises serious doubts about Applicant's judgment and his respect for the law. Second, even though an applicant has a constitutional right not to provide information, Applicant's refusal to supply information as to what happened runs afoul of an applicant's duty to be forthright and honest during all phases of the security investigation. Hence, Applicant's decision not to explain the details of this offense has a negative impact on his overall credibility. Third, according to the conditions of his sentence, Applicant is still on probation and subject to the original sentence of incarceration should he violate the terms of his probation. Subparagraph 3.a. is found against Applicant. In reaching the above findings, Applicant's 28-year-career in the shipbuilding industry has been carefully evaluated, but is insufficient to overcome the adverse evidence under the specific guidelines and the general factors of the whole person concept.

### **FORMAL FINDINGS**

Formal Findings required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are:

Paragraph 1 (financial considerations, Guideline F): AGAINST THE APPLICANT.

- a. Against Applicant.
- b. Against Applicant.
- c. Against Applicant.
- d. Against Applicant.
- e. Against Applicant.
- f. Against Applicant.
- g. Against Applicant.

Paragraph 2 (personal conduct, Guideline E): AGAINST THE APPLICANT.

- a. Against Applicant.
- b. Against Applicant.

Paragraph 3 (criminal conduct, Guideline J): AGAINST THE APPLICANT.

- a. Against 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 a security clearance.

Paul J. Mason

Administrative Judge