

DATE: May 8, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-19253

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's continuing financial problems require a denial of his clearance request. Clearance is denied.

STATEMENT OF THE CASE

On June 21, 2002, 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, (as administratively reissued on April 20, 1999), issued a Statement of Reasons (SOR) to 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 applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on July 11 and August 22, 2002, and elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's written case (FORM) on or about October 21, 2002. Applicant did not file a response to the FORM. The case was assigned to me on December 10, 2002.

FINDINGS OF FACT

Applicant is a 53 year old truck driver.

In February 2000, applicant filed a Chapter 7 bankruptcy petition. In June 2000, his debts were discharged by the bankruptcy court. In a signed, sworn statement that he gave to the Defense Security Service (DSS) in June 2001, applicant stated the following about his financial situation both before and after the bankruptcy process:

In February 2000 I filed Chapter #7 bankruptcy. Poor financial management and voluntary overspending were the primary causes of my financial difficulties. All of my existing debts at the time of the filing were discharged by the bankruptcy court. Since the discharge of my debts, I have obtained two new credit cards . . . Both of these credit cards

are currently over limit and I am about two months delinquent in my payment on both accounts.

In 1971, applicant was arrested and charged with Assault and Battery. In November 1972, he was arrested and charged with Simple Assault. On December 10, 1972, he was arrested and charged with Assault and Destruction of Property. On December 30, 1972, he was arrested and charged with Housebreaking.

In August 1985, applicant was arrested and charged with Assault with Intent to Commit Rape While Armed, and Kidnaping. He pleaded guilty to Kidnaping and was sentenced to three to nine years in prison. He served 32 months.

Applicant completed a Security Clearance Application (SCA) on July 27, 2000. Among the questions applicant was required to answer was question 21, which appeared on the SCA as follows:

21. Your Police Record - Felony Offenses

Have you ever been charged with or convicted of any felony offense? (Include those under the Uniform Code of Military Justice.) For this item, report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607.

Applicant responded "no" to this question. His response was false because he had been convicted of the felony offense, Kidnaping, in the 1980s. In his response to the SOR, applicant denied that he lied in response to Question 21. In his words, he misunderstood the question. However, in the aforementioned June 2001 signed, sworn statement that he gave to DSS, he stated that he didn't mention the kidnaping incident on the SCA because he was afraid that if he did, he might lose his job.

POLICIES

Enclosure 2 of the Directive sets forth Guidelines (divided into Disqualifying Factors and Mitigating Factors) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Disqualifying Factors and Mitigating Factors are applicable:

Criminal Conduct

Disqualifying Conditions

1. E2.A10.1.2.2: A single serious crime or multiple lesser offenses.

Mitigating Conditions

None.

Financial Considerations

Disqualifying Factors

1. E2.A6.1.2.1: A history of not meeting financial obligations.
2. E2.A6.1.2.3: Inability or unwillingness to satisfy debts.

Mitigating Factors

None.

Personal Conduct

Disqualifying Factors

1. E2.A5.1.2.2: The deliberate omission of relevant and material facts from any personnel security questionnaire.

Mitigating Factors

None.

CONCLUSIONS

With respect to Guideline F, the evidence establishes that applicant's financial difficulties, which by his own admission were caused by "poor financial management and voluntary overspending," led to the filing of a Chapter 7 bankruptcy petition in February 2000. The evidence further establishes that following the discharge of all of his existing debts in June 2000, applicant obtained at least two new credit cards, and as of June 2001, applicant was about two months behind on his payments to each of the credit card issuers. Applicant's history of financial difficulties reflects adversely on his judgment, reliability and trustworthiness, and suggests he cannot be relied upon to safeguard classified information. Applicant failed to offer any credible evidence that suggests his financial difficulties have been resolved. In the absence of such evidence, Guideline F is found against applicant.

With respect to Guideline J, the evidence establishes that applicant has a long history of arrests, as well as a single, serious felony conviction. Applicant's felony conviction, standing alone, raises serious and substantial doubts about his judgment, reliability and trustworthiness. These doubts are compounded by the fact that applicant engaged in felonious conduct when he intentionally concealed his felony conviction from the Government when he responded "no" to question 21 on the SCA he executed in July 2000. The recency and extent of applicant's criminal conduct precludes a finding that he currently possesses the good judgment, reliability and trustworthiness required of individuals with access to classified information. For this reason, Guideline J is found against applicant.

With respect to Guideline E, as noted above, the evidence establishes that applicant intentionally concealed the fact that he had been convicted of a felony from the Government when he completed the SCA in July 2000. The recency of this dishonesty, together with the lack of any evidence from individuals who know him well (e.g., family, friends, co-workers, supervisors) indicating that applicant is considered a reliable and trustworthy individual, precludes a finding that applicant currently possesses the good judgement, reliability and trustworthiness required of individuals with access to classified information. For this reason, Guideline E is found against applicant.

FORMAL FINDINGS

PARAGRAPH 1: AGAINST THE APPLICANT

PARAGRAPH 2: AGAINST THE APPLICANT

PARAGRAPH 3: 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.

Joseph Testan

Administrative Judge