

DATE: August 2, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-22402

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR

APPEARANCES

FOR GOVERNMENT

Matthew E. Malone, Esquire, Department Counsel

Pamela C. Benson, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's falsification of his clearance application suggests he could not be relied upon to speak the truth if the truth presented potential adverse consequences to his personal interests. While his 1997 bankruptcy filing appears due to circumstances beyond his control, his resumption of financial difficulties after the bankruptcy is partly due to his own financial irresponsibility and his continued financial mismanagement after obtaining good employment in October 2000. Clearance denied.

STATEMENT OF THE CASE

On 10 December 2001, 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 3 January 2002, Applicant answered the SOR and requested a hearing. The case was assigned to me on 19 January 2002, and received by me the same day. On 1 March 2002, I issued a notice of hearing for 12 March 2002.

At the hearing, the Government presented nineteen exhibits--admitted without objection-- and no witnesses; Applicant presented two exhibits--admitted without objection--and the testimony of one witness, himself. DOHA received the transcript on 20 March 2002.

PROCEDURAL ISSUES

At the hearing, I advised Applicant that scheduling problems had caused him to receive less than the 15 days notice of hearing required by the Directive, entitling him to a continuance if he was not prepared to proceed to hearing. Applicant was prepared to go to hearing and waived the notice defect (Tr. 5-6).

FINDINGS OF FACT

Applicant admitted the allegations of the SOR, except for subparagraphs 2.g.⁽²⁾ and 2.o.⁽³⁾ Accordingly, I incorporate these admissions as findings of fact.

Applicant--a 35-year old employee of a defense contractor--seeks access to classified information.

On 28 November 2000, Applicant falsified a Security Clearance Application (SCA)(SF 86)(G.E. 1) by answering "no" to a question requiring him to disclose any property repossessions in the last seven years (question 35),⁽⁴⁾ and "no" to two questions requiring Applicant to disclose any accounts 90 days past due (question 39) or 180 days past due in the last seven years (question 38). In fact, he failed to disclose thirteen past due debts totaling over \$26,000.00. He also falsified the answer to a question designed to elicit adverse employment actions in the last 10 years (question 20) by disclosing his firing from a civilian job in October 2000, but failing to disclose that he was involuntarily discharged from his state's National Guard as a result his arrest and conviction for domestic violence.

The SOR alleges Applicant's thirteen delinquent credit accounts totaling approximately \$26,500.00, and falling delinquent after Applicant's Chapter 7 Bankruptcy discharge in May 1997. Applicant attributed his bankruptcy to his divorce, child support obligations, and changes in his employment (G.E. 2). He attributed his continued financial difficulties after his bankruptcy to vehicle problems, low paying jobs, and periods of unemployment, but expected to be in better financial shape since obtaining his new job [in October 2000](G.E. 2).

However, the expected improvement in financial standing has not materialized. Two small personal loans totaling \$170.00, delinquent since 1999 (subparagraph 2.b.) and 2000 (subparagraph 2.c.), were supposed to have been paid by January 2002 (Answer), but had not been paid by the time of the hearing (Tr. 37-38). In his Answer to the SOR, Applicant asserted that the repossession debt in subparagraph 2.d. was included in his bankruptcy--an assertion not corroborated by the bankruptcy records (G.E. 14). He also asserted that the past due rent alleged in subparagraph 2.e. was included in the bankruptcy records and the bankruptcy records appear to confirm that claim. Applicant does not intend to pay the debt alleged in subparagraph 2.f.; however, the evidence tends to corroborate Applicant's assertion that he had no agreement with the woman he was living with to pay rent and related expenses, and that she only asserted the debt after she charged Applicant with domestic violence (Answer; Tr. 36-37). Applicant's Answer stated an intent to contact the creditors at subparagraphs 2.h., i., j., k., and l., but as of the date of the hearing he had not contacted the creditors at subparagraphs 2.h., j., and l. (Tr. 41, 43, 45-46); he claimed to have contacted the creditors at subparagraphs 2.i. and 2.k. and agreed to pay \$25.00 to each bi-weekly, but had not begun payments because he had not yet received written confirmation from the creditors (Tr. 41-44). Applicant was to have started payments to the creditor at subparagraph 2.n. in January 2002 (Answer), but had not made any payments as of the date of the hearing (although he expressed an intent to begin by the end of March 2002)(Tr. 46-47). Applicant asserted that his child support debt (subparagraph m.) would be satisfied by withholding his 2001 Federal Income Tax refund (Answer); an 8 February 2002 withholding document from Financial Management Service (A.E. B) appears to confirm that this debt has been satisfied (amount of Federal Tax refund exceeds amount sent to child support services).

At the hearing, Applicant conceded that he had not sought any credit counseling to deal with his financial problems, and did not really have a budget (Tr. 49-50). He acknowledge having bad habits with his money, and not making any payments to creditors except the creditor at subparagraph 2.g.

On 22 August 1999, Applicant was charged with domestic violence and child endangerment as a result of an altercation with a woman he was living with. Appellant was convicted of both offenses, fined over \$1,000.00, given a suspended jail sentence, and awarded five years probation which does not expire until September 2004.

The record contains no evidence of Applicant's 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:

CRIMINAL CONDUCT (GUIDELINE J)

E2.A10.1.1. A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

E2.A10.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A10.1.2.1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;

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

E2.A10.1.3. Conditions that could mitigate security concerns include:

None.

FINANCIAL CONSIDERATIONS (GUIDELINE F)

E2.A6.1.1. 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.

E2.A6.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A6.1.2.1. A history of not meeting financial obligations;

E2.A6.1.2.3. Inability or unwillingness to satisfy debts;

E2.A6.1.3. Conditions that could mitigate security concerns include:

E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment. . . divorce or separation).

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 past due accounts, including a judgment, going back many years, and failed to disclose them. He also failed to disclose the circumstances of his unfavorable departure from the state National Guard. The omissions had the potential to influence the course of the background investigation. I find Guideline E. against Applicant.

The Government has established its case under Guideline F. The record evidence establishes Applicant's history of indebtedness and his current substantial inability to address that indebtedness. While circumstances beyond his control may have contributed to the original indebtedness, resolved by his 1997 bankruptcy, his current financial difficulties are due--at least in part--to his mishandling of his finances. While the child support arrearage has been paid, seizure of income tax refunds is not indicative of a responsible financial plan. I accept Applicant's statement that the rent account at subparagraph 2.e. was included in the bankruptcy and that the alleged debt at subparagraph 2.f. does not represent even a moral obligation to pay, much less a legal obligation (in contrast to the personal loans alleged at subparagraphs 2.b., and c.). Of the remaining debts, only one (subparagraph 2.g.) is being paid, and only since August 2001. Only two other accounts have even been discussed with creditors, and both of those so recently that Applicant had not received confirmation from the creditors that they were prepared to accept Applicant's offer of \$25.00 bi-weekly. Even two personal loans totaling less than \$200.00 remain unpaid.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and not isolated; indeed they are ongoing. It does not appear that Applicant has stopped digging himself into a financial hole, much less started to pull himself out of it. His belated--and incomplete--efforts to repay his creditors or otherwise resolve his debts does not constitute a good-faith effort within the meaning of the Directive. I find Guideline F. against Applicant.

The Government has established its case under Guideline J. Applicant's criminal conduct is recent, and his probation runs two more years. I find Guideline J. against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline J: Against the Applicant

Subparagraph a: Against the Applicant

Paragraph 2. Guideline F: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: For the Applicant

Subparagraph f: For the Applicant

Subparagraph g: For the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

Subparagraph j: Against the Applicant

Subparagraph k: Against the Applicant

Subparagraph l: Against the Applicant

Subparagraph m: For the Applicant

Subparagraph n: Against the Applicant

Subparagraph o: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: 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 January 2, 1992--and amended by Change 3 dated 16 February 1996, and by Change 4 dated 20 April 1999 (Directive).
2. Applicant denied subparagraph 2.g. because on 14 August 2001 he compromised the account from \$6,500.00 to \$3,006.00, with \$300.00 down, and payments of \$150.00 per month beginning in September 2001. Applicant made the required down payment on 25 August 2001, and has made the required monthly payments through the February 2002 payment (except for the January 2002 payment, for which the putative money order receipt contains no entries indicating the money order was actually issued)(A.E. A).
3. Applicant apparently denied subparagraph 2.o. because his expenses have gone up and his income gone down in the intervening time since issuance of the SOR (Tr. 47-49).
4. Although Applicant failed to disclose multiple automobile repossessions, the SOR did not allege this falsification, and consequently, I do not consider it on the merits of this case. However, I do consider it on the issue of Applicant's general credibility.

