

DATE: May 7, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-22609

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Juan J. Rivera, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to resolve a series of debts dating back several years. Applicant's history of not meeting his financial obligations, despite the small amounts of each of these debts, his apparent ability to have paid them over the past several years, and his proclaimed willingness to have paid them over an eighteen month period, raises grave doubts and questions as to his security eligibility and suitability. Applicant has not mitigated these concerns. Clearance is denied.

STATEMENT OF THE CASE

On October 23, 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 F (Financial Considerations) 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, undated but after November 15, 2002 when Applicant signed a receipt for the SOR, Applicant responded to the SOR allegations. He requested his case be decided on the written record in lieu of a hearing.

On January 29, 2003, Department Counsel submitted the Government's written case. A complete copy of the file of relevant material (FORM) [\(1\)](#) was provided to the Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. He submitted a response to the FORM which was dated March 9, 2003, and received at DOHA on March 14, 2003. The case was assigned to me on April 15, 2003, as the Administrative Judge for this case.

FINDINGS OF FACT

Applicant admitted all but one of the SOR allegations (subparagraphs 1.a. to 1.k.), and denied subparagraph 1.l. because he stated it was the same debt as set forth in subparagraph 1.j. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 51 year old married man who is employed by a defense contractor. Applicant is also a retired military person. He moved from a state in the Pacific Northwest part of the United States to a southern state. He was unemployed for part of the time in both locations, as was his wife. His wife also had medical problems for a while which caused part of his debt problem. Applicant moved to three locations in his current state, which he states caused him financial harm. He also had to help his elderly mother for three months when her Social Security checks did not arrive, and he was not reimbursed by her for those amounts. He helped two of his grown children with their expenses when they lost their jobs, and this generosity reduced his available financial resources to pay his debts. (Item 7 at 2, 4-5; Item 7a at 1; Item 9 at 4)

Applicant has unpaid debts going back to 1995. He currently owes about \$7,000. His financial statement of July 23, 2002 shows he had \$1,040.00 remaining each month with which to pay these debts. His net remainder from his paycheck was \$1,168 listed on his financial statement in May 2001. His net paycheck remainder was \$1,048 from his financial statement in June 2001. (Item 7b at 1; Item 10 at 5; Item 11 at 3)

Applicant's outstanding debts which are at issue here are all under \$1,000 each, except for the Internal Revenue Service debt. The SOR subparagraph 1.a. alleges a debt of \$317 to an electric company in Applicant's former state of residence. Subparagraph 1.b. alleges a debt of \$62.00 owed to a garbage company in Applicant's former residence state. Likewise, subparagraph 1.c. alleges a debt of \$58 to a water company in the same locale. Subparagraph 1.d. alleges a debt of \$918 owed to an apartment owner. Subparagraph 1.e. alleges a debt of \$640 to another apartment owner. Subparagraph 1.f. alleges a debt of \$495 to a former employer. Subparagraph 1.g. asserts Applicant owes \$354 to a cable company. A power company in Applicant's new state of residence is owed \$182. A medical center is owed \$405 for treatments. A bank is owed \$325 as asserted in subparagraph 1.j. Subparagraph 1.k. alleges a debt of \$2554.80 owed to the Internal Revenue Service. All of these debts are small by themselves but they have extended back to 1995 in most cases. (Item 1 at 1-2; Item 9 at 1-6; Item 10 at 1-6)

Applicant submitted 12 undated letters to show he was attempting to resolve and pay his debts. Furthermore, the credit reports for Applicant do not show the debts at issue were paid. I find no evidence that Applicant has done anything to pay these particular debts, particularly since he submitted his SF 86 in June 2000 to the present. (Items 7c to 7n; Item 8 at 1-5)

Applicant owes tax money to the Internal Revenue Service for one tax year. His statement in response to the FORM states he has worked out a payment plan with the IRS, but there is no evidence as to what amount is being paid and how often. Therefore, I do not find his statement credible absent any supporting documentation or payment record with the Internal Revenue Service. (Response to FORM)

Applicant completed his SF86 in June 2000 and has had almost three years to arrange payment on these debts. Yet no evidence was submitted by Applicant showing they were paid. Applicant stated in his Response of March 9, 2003 to the FORM that he gave money to his youngest son (24 years of age now) to pay his debts when he departed his state of prior residence to move to his present location in a southern state. (Response to FORM at 1; Item 5 at 1 and 4).

Applicant contends subparagraphs 1.j. and 1.l. pertain to the same debt. I take administrative judicial notice of the merger of these two southern based banks on September 4, 2001. The bank named in subparagraph 1.j. is the survivor bank and I find that debt to be extant, due and owing. I do not find subparagraph 1.l. debt to be due and owing because it is the same as the subparagraph 1.j. debt. (Item 9 at 4-6)

Applicant stated in his statement of May 2001 that he wanted to be debt free in 18 months, which would mean January 2003 would be his date of debt freedom. Applicant has not submitted any documentation showing he achieved his goal. (Item 6 at 4-6)

During the pendency of the debts at issue in this case, Applicant has opened two other credit card accounts. He also took out loans from lenders. (Item 9 at 5-7)

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 guideline most pertinent to an evaluation of the facts of this case:

Guideline F: Financial Considerations

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.

Conditions that could raise a security concern and may be disqualifying include:

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

Conditions that could mitigate security concerns include:

- (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 (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation).
- (6) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

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 the allegation set forth in the SOR:

With respect to the allegation involving Guideline F, the Government established its case. Applicant is delinquent on eleven accounts. In the absence of confirmed payment arrangements, or actual payments diminishing the outstanding financial obligations, Applicant's overall conduct pertaining to his financial obligations clearly falls within Financial Considerations Disqualifying Condition (DC) E2.A6.1.2.1., and DC E2.A6.1.2.3.

Applicant's contention is that his financial difficulties arose from periods of unemployment, his spouse's illnesses, several moves between states, his mother's and children's financial difficulties, and his poor judgment. These contentions could be grounds for mitigation. But he had the net income in the past several years to pay these debts prior to now. Some of the debts were incurred prior to these difficulties occurring. The amounts are small and could have been paid before now. Some of the debts are for basic services of modern living, such as water, electricity, and garbage removal. Yet Applicant has not paid these debts for the past several years. His reasons are not persuasive when I examine the totality of the time period involved, the amount of the debts, and his financial resources over the intervening period which he had available to pay these debts. Some debts are so small there is no excuse for not paying them before now.

Applicant has other debts and pays them. He has also taken out other credit card accounts and loans during the time these debts remained unpaid. Those actions he may justify in some reasoning, but the responsible way would have been not to incur more debt while not paying other debts. But he has not acted responsibly on these eleven debts. His financial problems are constant and continuous over a number of years, which is the type of situation the Guideline F contemplates as a cause of concern. After reviewing and considering the totality of the facts and circumstances, I find the Financial Considerations Mitigating Conditions (MC) E2.A6.1.3.1 and MC E2.A6.1.3.2 are not applicable to this case.

Furthermore, Applicant did not submit any evidence that he initiated a good faith effort to repay these creditors or otherwise resolve these particular debts. Applicant submitted the 12 undated letters to creditors. Those letters are not persuasive because they are undated, there is no reply from the creditors to show any action to pay the debts resulted, and there is no other evidence corroborating that the bills were paid. MC E2.A6.1.3.4 and MC.E2.A6.1.3.6 are, therefore, not applicable.

Applicant would have me believe the giving of money to his youngest son with which to pay Applicant's bills in his former state of resident is an appropriate effort to pay his debts. However, I do not find this process to be appropriate, or his explanation credible. Applicant had the obligation to repay the debts and should have done so before he departed his prior residence, or kept paying on them during and after his transition to the new state of residence. Leaving money with a young man expecting him to pay Applicant's bills is expecting too much from a young man. Then, Applicant does not verify that the debts were paid until he states he discovered much later that they remained delinquent. As such things happen, the son spent the money on his own debts and Applicant did not discover this fact until much later. I do not find that procedure to be a good faith effort to resolve debts, in the terms of the MC 6.

Therefore, I must conclude Applicant has not rebutted, explained, extenuated sufficiently, or mitigated the evidence presented by the Government. I decide that Allegations 1.a through 1.k. of the SOR are concluded against Applicant. Subparagraph 1.l. is concluded for the Applicant.

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 F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: For Applicant

DECISION

In light of all the circumstances and facts 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.

Philip S. Howe

Administrative Judge

1. The Government submitted eleven items or exhibits in support of its contention.