

DATE: June 27, 2003

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 01-23059

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN G. METZ, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

Erin C. Hogan, Esquire, Deputy Chief Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's financial irresponsibility was not mitigated where Applicant's debts were caused both by circumstances beyond his control and his own irresponsibility and where he had taken no effective action to address his indebtedness, largely because he lacks the means to do so. Applicant's falsification of his financial history casts additional doubt on his fitness for access to classified information. Clearance denied.

**STATEMENT OF THE CASE**

On 16 September 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 28 October 2002 and 10 January 2003, Applicant answered the SOR and requested a hearing. The case was assigned to me on 21 January 2003. On 4 March 2003, I issued a notice of hearing for 19 March 2003.

At the hearing, the Government presented 11 exhibits--9 admitted without objection--and no witnesses; Applicant presented five exhibits--admitted without objection--and the testimony of two witnesses, including himself. DOHA received the transcript on 27 March 2003.

**PROCEDURAL ISSUES**

At the hearing, I gave Applicant until the close of business on 28 March 2003 to provide me with copies of any financial records relating to the allegations in the SOR. On 24 March 2003, I received a submission, which Department Counsel did not object to, and I have considered as A.E. F.

**FINDINGS OF FACT**

Applicant admitted the allegations of paragraph 1, except for subparagraphs 1. a., b., and c., each of which he denied as

having been subject to dispute. Accordingly, I incorporate these admissions as findings of fact. He denied the falsification allegations of paragraph 2, but admitted to writing bad checks. His Answer provided proof that he had paid the debts at l.g., h., i., and s. the day before he submitted his first Answer. He also provided proof that the debt in l.p. had been paid in April 1997 (after being taken to judgment) and he had paid the debts at l.q. and r. in April 1998 (again after being taken to judgment). He established to my satisfaction that the debts at l.d. and j. were the same debt, and that the debts at l.e., f., and n., were bills subject to workmen's compensation, which nevertheless have not been paid.

Applicant--a 37-year old employee of a defense contractor--seeks access to classified information. He has never held a clearance.

On 8 May 2001, Applicant executed a Security Clearance Application (SCA)(SF 86)(G.E. 1) on which he truthfully disclosed a variety of adverse financial circumstances. However, he falsified his SCA when he failed to disclose four unpaid judgments in the last seven years, a civil suit for his mobile home mortgage, and failed to disclose the numerous accounts 90- and 180 days delinquent. <sup>(2)</sup>

The SOR alleges--and the government's evidence establishes--Applicant's 19 delinquent credit accounts totaling approximately \$11,900.00. Five accounts were reduced to judgment and eventually paid. Thirteen have been sent to collection. Except for the debts mentioned above, none have been paid, and Applicant has the desire, but no current plan, to repay them. Applicant and his spouse--who largely runs the budget after Applicant's check writing misadventures in the mid-1990s--have a tight budget which allows them to remain current on their day-to-day expenses, but does allow for a systematic effort to repay the past due accounts.

Applicant attributed his past due accounts to a variety of factors: in the mid-1990s he was immature and would bounce small dollar checks that would evolve into larger dollar judgments when the creditors took him to court. In December 1996, he was charged with felony bad check writing, and placed in a diversion program, which he completed and made good on the checks. He suffered a work-related injury that eventually resulted in his disability retirement from the state civil service, albeit at much lower income. His son has a medical condition that has contributed to medical debts and legal fees required to register him as a beneficiary of Applicant's disability retirement.

Applicant's supervisor considers him an excellent employee, trustworthy in all respects. A character reference who has known him for over 20 years praises his honesty and integrity, and notes the personal hardships he has overcome to take care of his family.

Applicant acknowledges his debts and states a desire to satisfy them. However, his current financial situation does not permit him to undertake a systematic effort to pay the debts. He has considered--and rejected--the idea of filing bankruptcy. He states the obvious: he will feed and clothe and house his family before addressing the past due accounts.

## **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 6.3. 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:

### **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.A5.1.3. Conditions that could mitigate security concerns include:

None.

### **Burden of Proof**

Initially, the government must prove controverted facts alleged in the SOR. 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 F. The record evidence clearly establishes Applicant's indebtedness and his current inability to address that indebtedness. While circumstances beyond his control may have contributed to the original indebtedness in some instances, and some of the debts were paid long before the SOR was written, the fact remains that several of those debts were paid only after the creditor took Applicant to judgment. Four accounts were paid only in the wake of the SOR. He has taken no effective action to address the remaining debts, mostly because he lacks the financial assets to do so. While it appears that Applicant is sincere in his desire to address these debts, the lack of a clear plan or negotiated arrangements with any of creditors cannot be overlooked.

Except for the partial application of the mitigating factor concerning circumstances beyond his control, 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. I resolve Guideline F against Applicant.

The government has established its case under Guideline E. Applicant failed to disclose relevant and material

information about his financial situation that would have revealed it to be more dire than disclosed. I resolve Guideline E against Applicant.

**FORMAL FINDINGS**

Paragraph 1. 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: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against 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: Against the Applicant

Subparagraph n: Against the Applicant

Subparagraph o: Against the Applicant

Subparagraph p: Against the Applicant

Subparagraph q: Against the Applicant

Subparagraph r: Against the Applicant

Subparagraph s: Against the Applicant

Subparagraph t: Against the Applicant

Paragraph 2. Guideline E: 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: 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. I have considered Applicant's explanations for the omissions and find them not credible. Applicant acknowledged being summoned to court on several occasions and "settling on the court house steps." He also acknowledged that his finances were substantially in disarray. I conclude that, on the whole, Applicant's SCA disclosures do not accurately reflect the financial difficulties Applicant was experiencing at the time he completed the SCA.