

DATE: March 30, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-23374

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has had a history of financial difficulties. While most of his past overdue debts have now been resolved, he still owes approximately \$6,600 to one creditor. Despite the fact that Applicant acknowledges that this debt is due and owing, and that he would be able to pay it off, he has testified that he does not intend to satisfy this debt. Because of his unwillingness to resolve this debt, Applicant has failed to mitigate his financial difficulties. Clearance is denied.

STATEMENT OF THE CASE

On August 11, 2003, 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, dated October 14, 2003, Applicant responded to the SOR allegations, and he requested a clearance decision based on a hearing record. In his Answer, Applicant admits to the SOR allegations (subparagraphs 1.d). He denies 1.a. through 1.c.

On January 15, 2004, this case was assigned to this Administrative Judge to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on February 2, 2004, and the hearing was held on March 5, 2004.

At the hearing, Department Counsel offered six documentary exhibits (Exhibits 1 - 6) and no witnesses were called. Applicant appeared without counsel, offered two documentary exhibits (Exhibits A and B) and offered his own

testimony. After the hearing, the record was left open, and Applicant offered an additional documentary exhibit (Exhibit C), which was not objected to by Department Counsel. The transcript (TR) was received on March 23, 2004.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the testimony of Applicant at the hearing, and the pleadings, transcript, and exhibits, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is a 43 year old employee of a defense contractor that seeks a security clearance on his behalf. He is married and has two children. He has a Bachelors degree in information technology.

Applicant has a history of financial difficulties. He owes approximately \$6,600 to a credit card company for a debt which was charged off about five years ago. Applicant has made no payment on this debt. He testified that he attempted to work out an agreement with this creditor to pay a reduced sum to settle this debt, and to pay it out in a multiple payment plan, but the company indicated to him that it wanted Applicant to pay the full amount owed in one lump sum. Applicant does not intend to make any payments on this debt, but planned to wait until it falls off his credit report (Tr at 46-48, 50).

On his credit report, Applicant was alleged to owe one company \$44 for a past due account. Applicant testified that he was not familiar with this creditor or this debt, and when he disputed this bill with a credit reporting service, it was deleted from his credit report (TR at 31, 32, Exhibit 2). Therefore, I conclude that this debt is not due and owing.

Applicant owed \$4,896 to a mortgage company for a past due account. This was for a condominium, on which Applicant had a mortgage of \$94,130 (TR at 41-43). Ultimately this property was foreclosed and the mortgage company took possession of the property. Applicant testified that he has had no contact from the creditor once the home was foreclosed, and the credit reports do not show that Applicant owes anything to this creditor (Exhibit 1, Exhibit 2). Based on the creditor's failure to take any action against Applicant, and the lack of negative information about this debt in any credit report, I must conclude that this debt is not due and owing.

Applicant had several reasons for his financial difficulties. These include: 1) the loss of his wife's income because of a disability while she was pregnant; 2) the inability of Applicant to sell his condominium without taking a substantial loss, and the non-rental payment for several months by his condominium tenants; and, 3) Applicant's reduced income because he changed jobs within his company in order to try to have more security. All of these contributed to his financial problems.

Finally, Applicant testified that in 2003, he purchased an undeveloped parcel of land for his retirement. The total amount of the land was \$39,900, and he paid approximately \$10,000 down (TR at 48-50).

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 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.. 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.*

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of 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. Condition 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, a business downturn . . .).

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 F. The record evidence clearly establishes Applicant's indebtedness and his current unwillingness to make payment on the delinquent outstanding debt, despite his ability to resolve this debt.

Applicant's overall conduct pertaining to his financial obligations falls within Financial Considerations Disqualifying Condition (DC) E2.A6.1.2.1., and DC E2.A6.1.2.3.E2.A6.1.2.3. (A history of not meeting financial obligations, and an inability or unwillingness to satisfy debts), because of his failure to pay for the outstanding debt and his stated intention not to make any payments on this debt.

Regarding Mitigating Condition (MC) E2.A6.1.3.3, which involves debts that result from circumstances beyond the person's control, I find that it is applicable to this case. Applicant's indebtedness was partially due to circumstances beyond his control, specifically, the loss of his wife's income because of her disability while pregnant, the inability of Applicant to sell his condominium for a reasonable price and the non-rental payment by his tenants, and Applicant's reduced income because he changed jobs within his company in order to try to have more security, all contributed to his financial problems. However, based on his ability to pay approximately \$10,000 to purchase retirement property in

2003, I conclude Applicant has had the means to resolve this \$6,600 debt, and the circumstances that contributed to his past indebtedness cannot mitigate his current situation.

Applicant appears to have made a good-faith effort to resolve most of his debts. However, because of his remaining indebtedness, and his unwillingness to resolve this debt, Applicant has failed to mitigate his financial difficulties. Until he can establish a record of financial responsibility, security concerns will continue to exist under Guideline F. I resolve Guideline F against Applicant, and I conclude Applicant has not established, at this time, that it is "clearly consistent with the national interest" that he should be granted the privilege of a security clearance.

FORMAL FINDINGS

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For 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.

Martin H. Mogul

Administrative Judge