

DATE: May 30, 2002

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 01-25103

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial difficulties were not mitigated where Applicant's belated efforts to address his indebtedness were spurred only by issuance of the SOR, where debts were paid only in the wake of issuance of the File of Relevant Material, and where Applicant had failed to provide corroboration of the payment arrangement on his delinquent student loans. Applicant's failure to cooperate cast doubt on his fitness for access to classified information. However, record did not support allegation he falsified his financial situation on his clearance application. Clearance denied.

On 15 January 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 25 February 2002 and 6 March 2002, Applicant answered the SOR and requested an administrative decision on the record. On 9 April 2002 and 30 April 2002, Applicant responded to the Government's File of Relevant Material (FORM)--issued 29 March 2002. The record in this case closed 6 May 2002--the day Department Counsel indicated no objection to the second response.⁽²⁾ The case was assigned to me on 6 May 2002; I received the case the same day to determine whether clearance should be granted, continued, denied, or revoked.

FINDINGS OF FACT

Applicant admitted the financial allegations of the SOR with explanation, except for the allegations of paragraph 1.f. (although he admitted that he failed to authorize DSS to investigate this account). Accordingly, I incorporate those admissions as findings of fact. Although he nominally admits the falsification and failure to cooperate allegations of paragraph 2., the tenor of his explanation is a denial of any intent to mislead or failure to cooperate.

Applicant--a 50-year old employee of a defense contractor--seeks access to classified information.

On 29 January 1999, Applicant executed a Security Clearance Application (SCA)(SF 86) on which he answered "no" to two questions designed to elicit whether Applicant had any accounts 90- or 180-days past due, currently or within the

past seven years respectively. Applicant is alleged to have falsified this answer because of the indebtedness alleged in paragraph 1. of the SOR. Although Applicant admits the omission, he denies any intent to mislead the Government by asserting that he was unaware of the delinquencies because his ex-wife was responsible for paying their bills during the marriage.

The Government's evidence fails to establish the alleged debts were delinquent at the time Applicant filled out his SCA on 25 January 1999. The debts alleged at subparagraphs 1.a-e. (which Applicant admits) are alleged to have fallen delinquent over dates ranging from February to April 1999. An April 2001 Credit Bureau Report (CBR)(Item 7), contains account opening dates, but no information which would suggest the dates the accounts fell past due. Two accounts--subparagraphs d. and e.--reflect account opening dates which are after the date of the SCA (25 January 1999) and after the date of Applicant's divorce (23 January 1999). The repossession alleged at subparagraph 1.f. contains no default date and the CBR offers no guidance as to the repossession date. Applicant's Answer provides the hint that the repossession occurred after he went to work for the defense contractor, but the SCA establishes that date as 16 November 1998, slightly more than two months before Applicant completed the SCA. There is nothing in the record to establish that the repossession occurred during this two-month period. Consequently, I conclude that Applicant did not falsify his SCA in January 1999 for the simple reason that it does not appear that the accounts were delinquent at the time Applicant filled out the SCA.

However, the Government alleges--and the Applicant admits--failing to sign the necessary release for the Government to investigate the circumstances of the repossession and deficiency assessment on the debt at subparagraph 1.f. Although Applicant's Answer to the SOR asserts that he was unaware of the requirement to cooperate--and offered to cooperate at that point--the record does not reflect that Applicant took any action to provide the required release or other independent corroboration of the debt at subparagraph 1.f.

The SOR alleges six debts--totaling over \$16,000.00--falling delinquent between approximately November 1998 and April 1999. Applicant was divorced from his spouse on 23 January 1999, two days before he completed his SCA. Applicant's Answer to the SOR asserts that the debts became past due because his wife, who always paid the bills during their marriage, undertook to continue to pay these accounts, but then failed to do so. However, Applicant fails to provide any persuasive evidence why his ex-spouse would be obligated to do so, particularly since all the debts (except the debt at subparagraph c.) are individual debts of the Applicant, including two (subparagraphs d. and e.) probably incurred by Applicant after his divorce.

Applicant's Response to the FORM provided proof that the debts at subparagraphs c., d., and e. have been paid in full. (3) He also provided proof that the creditor at subparagraph f. had offered to accept a compromise of the claimed \$7,691.00 to \$1,860.00, payable in two installments (25 March and 25 April) of \$930.00. Applicant asserted that he orally amended this agreement to provide for three payments (22 March, 12 April, 24 May) of \$620.00, and provided the first canceled check for that amount issued 22 March 2002. (4)

The debts at subparagraphs a. and b. reflect two student loan accounts for education Applicant undertook in the mid 1990s. When these accounts became delinquent in approximately March 1999, Applicant was informed by the Internal Revenue Service that his income tax refunds would be seized to satisfy the debt. Applicant previously stated an intent (Item 8) to let these be satisfied by IRS action in future tax years. However, in his Response to the FORM, Applicant asserts (but provides no corroboration) that he has entered into a repayment schedule with the creditor to pay \$50.00 per month beginning 29 March 2002; he attaches the first canceled check for \$50.00.

The record contains no evidence of Applicant's work performance or character.

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:

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. . . .divorce); .

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. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

E2A5.1.1.2. Refusal to complete required security forms, releases, or provide full, frank, and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personnel security or trustworthiness determination.

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 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 not established its case under Guideline E. The record evidence does not establish that the alleged accounts were delinquent at the time Applicant completed the SCA, much less that Applicant knew the accounts were delinquent. Accordingly, I find Guideline E. for Applicant.

The Government has established its case under Guideline F. The record evidence clearly establishes Applicant's indebtedness. Although Applicant's financial difficulties may be due to his ex-spouse's failure to pay the accounts as she had promised, I find that explanation unpersuasive in the absence of any evidence showing her to be legally obligated to pay what are--with one exception--individual debts of Applicant. Further, Applicant's evidence fails to establish his financial difficulties are behind him. Although Applicant became aware of the Government's concern about his finances during subject interviews in May 1999 (Item 9) and May 2001 (Item 8), Applicant apparently took no action to address his indebtedness until after receipt of the SOR in January 2002; effective action did not occur until later in Spring 2002. Although Applicant has paid some debts, and apparently settled one debt for an amount that should be paid soon, the major indebtedness of the educational loans remains to be resolved. Applicant began repayment in March 2002 (without providing details of his payment arrangements), but it is too early to say that he will be successful in keeping this repayment plan on schedule. I resolve Guideline F. 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

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph a: For 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. On 22 April 2002, Department Counsel filed an objection and response to Applicant's 9 April 2002 response.

3. Three debts totaling less than \$1,000.00.

4. Department Counsel's objection to Applicant's Response to the FORM correctly observes that Applicant has provided no corroboration of his claim that the creditor agreed to the amended payment schedule, and the offer of settlement specifically provided for two payments. However, my experience with creditors in ISCR cases suggests that the creditor is unlike to reject Applicant's payment schedule, assuming that he met the other two payments as scheduled.