

DATE: March 24, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-25408

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Juan Rivera, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owes nine creditors, some debts dating back to 1994. Applicant blames repeated

layoffs for his inability to pay his debts timely. Applicant's income and family expenses leave little money with which to pay his debts, despite his declared willingness to repay the debts over some future time. Applicant offers no credible plan or commitment to repay these debts, raising questions and doubts about his security eligibility and suitability. Clearance is denied.

STATEMENT OF THE CASE

On October 17, 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, dated November 25, 2002, Applicant responded to the SOR allegations. He requested his case be decided on the written record in lieu of a hearing.

On December 30, 2002, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) [\(U\)](#) was provided to the Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. He apparently chose not to do so. The case was assigned to me on March 6, 2003, as the Administrative Judge for this case.

FINDINGS OF FACT

Applicant admitted six of the eleven SOR allegations (subparagraphs 1.a, 1.d, 1.e, 1.f, 1.g, and 1.j). Those admissions are incorporated herein as findings of fact. He denied the remaining five SOR allegations (subparagraphs 1.b, 1.c, 1.h, and 1.i). 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 37 year old married man who is employed by a defense contractor. He seeks to renew his secret security clearance he has had since 1989. Applicant has two adopted children, ages 2 and 8. (Item 4 at 1 and 2; and Item 5 at 1, 4 and 5)

Applicant has seemingly been overextended financially since at least December 1997. He has a history of not paying his debts, and currently owes \$18,853. His financial statements show in October 2001 he had \$163.72 remaining each month with which to pay these debts, and his August 2002 financial statement shows he has \$227.18 remaining monthly to pay these debts. His August 2002 statement shows an additional debt on his spouse's credit card of \$1,000, which the only debt on which he is making payment of \$35.00 per month. All of his debts are more than 90 days past due. (Item 7 at 1 and 2; Items 8, 9, and 10 at all pages; and Item 11 at page 2).

Applicant blames layoffs from work as the reason for his debt problems. A review of the SF 86 shows Applicant was unemployed for five periods since he separated from the Navy on March 30, 1994 for a total of 24 months between 1994 and the present. Four of the five unemployment period were two to three months in duration. The unemployment from October 1, 1996, to December 7, 1997, lasted the longest, and is cited by Applicant as a primary reason he fell behind in his debt repayments. A review of the credit reports show Applicant opened credit accounts for an installment loan, a cable television service, Diners Club, and the Navy Exchange during or very near some of his periods of unemployment. Such actions are financially irresponsible. (Item 4 at 1 and 2; Item 7 at 1, Item 8 at 1 to 14, Item 9 at 1 and 2, Item 10 at 1 to 8)

Applicant did not submit any evidence explaining the purchases for which he incurred these debts, for example, where they necessities or frivolities, vacations or medical care. He did not submit any evidence of any attempts to contact his creditors and arrange payments, nor did he submit a payment schedule. He stated he pays off one debt at a time, such as his car debt (apparently \$17,000) and is now working on "a few other obligations tied to the loan and as soon as they are satisfied I will move onto the next creditor". (Item 4 at 1 and 2; Item 11 at 1 to 3)

The Diner's Club debt was settled for an unspecified amount and the balance written off by the Diner's Club. No current balance is shown as being owed by Applicant. This debt is listed as subparagraph 1.h. (Item 8 at 3)

Applicant contests the Navy Exchange debt alleged in subparagraph 1.c. He denies the debt and states it must be fraudulent. The credit reports show his social security number on the account. He submitted no evidence to support his position. I must conclude the debt is properly his obligation to repay. (Item 8 at 7; Item 9 at 1,3,4)

Applicant has incurred debts exceeding his financial ability to pay them based on his current income for the foreseeable future. Among the businesses to which he is indebted are banks issuing credit cards and making installment loans, a hospital, an appliance retailer, and a business factoring past due consumer installment debt. (Item 1 at 1 to 3; Item 4 at 1 and 2; Item 7 at 1 and 2; Items 8, 9, and 10 at all)

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

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 each allegation set forth in the SOR:

With respect to Guideline F, the Government established its case. Applicant is delinquent on nine accounts. He incurred these debts when his income seems never to have exceeded \$27,000 annually. He is selective in which debts he pays first, his car being an example. Yet he accumulated debts which his income did not allow him to satisfy. 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 several periods of unemployment. This contention could be a grounds for mitigation. But the last period of unemployment ended two years ago, and the thirteen and a half month period he alludes to in his statement of September 20, 2001 (Item 11) ended five years ago. In the ensuing years, he apparently has incurred other debts which he preferred to pay first, while leaving these other nine debts unpaid. He has had ample opportunity in these five years to obtain additional employment for himself or his spouse to produce more income to pay off these debts. Therefore, I cannot apply the Mitigating Factor (MC) E2.A6.1.3.3.

Applicant continues to incur debt and not pay them. His financial problems are recent and not isolated, but constant and continuous. Therefore, the MC E2.A6.1.3.1 and MC E2.A6.1.3.2 are not applicable.

Applicant did not submit any evidence as to any attempts to resolve or control the problem. Nor is there any evidence

that he initiated a good faith effort to repay his creditors or otherwise resolve the debts. MC E2.A6.1.3.4 and MC.E2.A6.1.3.6 are, therefore, not applicable. Allegations 1.a through 1.g. and 1.I and 1.j of the SOR are concluded against Applicant.

However, the debt listed in subparagraph 1.h of the SOR was settled or compromised, with the balance written off by the Diner's Club organization. Such a settlement resolves the debt for the compromised figure. Therefore, MC E2.A6.1.3.6 is applicable and I hold for Applicant on this debt because it was resolved.

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 the Applicant

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: For the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: Against the 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.