

DATE: September 29, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-25539

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has a long history of not paying his just debts. He currently owes approximately \$19,000 to nine creditors. He has payment arrangements with two of the creditors, but submitted no evidence that he has reached similar arrangements with the other seven, or that he has a plan to pay off these creditors. Adverse inference is not overcome. Clearance is denied.

STATEMENT OF THE CASE

On January 6, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on February 10, 2003, and requested that the case be decided without a hearing. The Government submitted its File of Relevant Material (FORM) to the Applicant on May 15, 2003. The Applicant was given 30 days from receipt of the FORM to submit any documents in rebuttal, extenuation or mitigation. The Applicant received the FORM on May 20, 2003. He submitted no additional documentation. The case was assigned to the undersigned on June 27, 2003.

FINDINGS OF FACT

The Applicant is 30 and married. He is employed by a defense contractor as a Member of the Technical Staff, and he seeks to obtain or retain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the

Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR and the exhibits.

Paragraph 1 (Guideline F - Financial Considerations). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has financial difficulties which may indicate poor judgment, untrustworthiness or unreliability on his part.

The Applicant has had financial problems for some time. He admits in his sworn statement of September 2001 that the problems began in 1995. He was involved in a traffic accident in 1997, which affected his ability to pay on his debts. The Applicant and his wife contemplated filing bankruptcy in 1998 and 2002. However, they have not done so. He was medically discharged from the US Navy in February 1999. He was unemployed or underemployed from February 1999 to July 2000, when he began working at his present employer. In his sworn statement of September 2001, he says, "We are currently paying our financial obligations timely, although, with a few exceptions, we are not making payments on our previous delinquent accounts. At the present time, I can not commit to any payments on our prior delinquent accounts as we don't have any additional funds available." (Government Exhibit 5 at 2.)

Subparagraph 1.a. The Applicant admits owing a past due debt to the Army and Air Force Exchange Service (AAFES). In October 2002 the Applicant entered into a payment arrangement with AAFES to pay his \$1,886 debt at the rate of \$78 a month for 24 months. (Government Exhibit 11.) The Applicant states in his Answer to the SOR, "I began repaying this debt October 2002." However, he submitted no evidence to show that he has been paying this debt in a consistent and timely manner.

Subparagraph 1.b. The Applicant denies in his Answer owing approximately \$1,619 to this creditor. However, in his sworn statement he states, "[Creditor 1.b.] was a credit purchase at 'Good Guys Department Store'." The creditor identified in Subparagraph 1.k. as "The Good Buys" appears to be a typographical error, substituting "B" for "G." Therefore, it is a duplicate of this debt. This creditor is also found in several credit reports provided by the Government (Government Exhibits 6, 7, 8 and 9). In addition, the creditor is found in a credit report evidently provided by the Applicant (Government Exhibit 10). I find that the Applicant does owe this debt. No evidence was submitted showing that the Applicant has paid, or otherwise resolved, this debt.

Subparagraph 1.c. The Applicant admits owing this credit card debt in the amount of \$2,763. No evidence was submitted showing that the Applicant has paid, or otherwise resolved, this debt.

Subparagraph 1.d. The Applicant admits owing this debt in the amount of \$2,092. No evidence was submitted showing that the Applicant has paid, or otherwise resolved, this debt.

Subparagraph 1.e. The Applicant denies in his Answer owing this cable television bill in the amount of \$33. In his sworn statement the Applicant states, "This is the cable television bill for my previous address. I will agree with the cable bill as this would represent the last month of cable service. I will pay this amount." (Government Exhibit 2 at 2-3.) I find that the Applicant does owe this debt. No evidence was submitted showing that the Applicant has paid, or otherwise resolved, this debt.

Subparagraph 1.f. The Applicant denies this credit card debt in the amount of \$2,092 and alleges it is the same debt as 1.d. The amounts in these accounts are the same, a fact brought out by the Applicant in his sworn statement. (Government Exhibit 2 at 3.) In addition, only one credit report shows two accounts, again with the same amounts. (Government Exhibit 9 at 6.) The other credit reports show only one account. The Applicant's argument is well-taken. This subparagraph is found for the Applicant.

Subparagraph 1.g. The Applicant denies owing this debt in the amount of \$2,141. In his sworn statement he says, "[Creditor 1.g.] was a credit purchase of household appliances. I agree with the balance due of approximately \$2,141." I find that the Applicant does owe this debt. No evidence was submitted showing that the Applicant has paid, or otherwise resolved, this debt.

Subparagraph 1.h. The Applicant admits owing a past due debt to the Naval Exchange Service. In October 2002 the Applicant entered into a payment arrangement with the Naval Exchange Service to pay his \$1,592 debt over 18 months.

(Government Exhibit 12.) The Applicant states in his Answer to the SOR, "I began repaying this debt October 2002." However, he submitted no evidence to show that he has been paying this debt in a consistent and timely manner, other than the first payment.

Subparagraph 1.i. The Applicant denies owing this utility bill in the amount of \$144. In his sworn statement he says, "I am not familiar with this account, however, I will agree with the balance due on this account." The record also shows that the Applicant has disputed this account with the creditor and the credit reporting agencies. (Government Exhibit 9 at 8.) Given the state of the record, I cannot find that the Applicant owes this debt. This subparagraph is found for the Applicant.

Subparagraph 1.j. The Applicant admits owing a past due debt to this automobile credit corporation. However, the record does not support the amount alleged of \$15,828. Rather, the amount owing is \$4,925. No evidence was submitted showing that the Applicant has paid, or otherwise resolved, this debt.

Subparagraph 1.k. The Applicant denies owing this debt. This appears to be a duplicate of subparagraph 1.b. Given the current state of the record, I cannot find that the Applicant owes this debt. This subparagraph is found for the Applicant.

Subparagraph 1.l. The Applicant denies owing this department store \$1,918. He asserts in his sworn statement that this account has been paid in full. (Government Exhibit 2 at 3.) He submitted no evidence to support his allegation. All the credit bureau reports, including that submitted by the Applicant, show that the account was past due and was transferred or sold. The available evidence does not support the Applicant's assertion that the debt has been paid.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Guideline F (Financial considerations)

Conditions that could raise a security concern:

- (1) a history of not meeting financial obligations;
- (3) inability or unwillingness to satisfy debts;

Conditions that could mitigate security concerns:

- (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).

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct

- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may have a history of indebtedness that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting or continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has a history of being unwilling or unable to pay his just debts.

The Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him, except in part. Under Paragraph 1 (Guideline F), as set forth above, subparagraphs 1.f, 1.i. and 1.k. are found for the Applicant as the Government failed to show that the Applicant owed those particular debts.

The evidence shows that the Applicant owes approximately \$19,000 in past due debt to nine creditors. He has submitted evidence showing that he made payment arrangements with two of the creditors, to whom he owed a joint balance of \$3,478. This leaves the Applicant owing seven creditors approximately \$15,500 with no current or future plan to pay them off.

I have considered the Applicant's argument that his accident while in the Navy, and his subsequent employment difficulties, should vitiate his responsibility to repay these creditors. However, he has been employed for over three years and did not even attempt to make any payments until October 2002. Under the particular circumstances of this

case, I do not find that his actions constitute a good faith effort to pay off or otherwise resolve his just debts. It is simply too soon to conclude that the Applicant has properly resolved his past due debts, or that he has learned how maintain his financial stability in the future.

On balance, it is concluded that the Applicant has failed to overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: 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.: For the Applicant.

Subparagraph 1.g.: Against the Applicant.

Subparagraph 1.h.: Against the Applicant.

Subparagraph 1.i.: For the Applicant.

Subparagraph 1.j.: Against the Applicant.

Subparagraph 1.k.: For the Applicant.

Subparagraph 1.l.: 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 the Applicant.

Wilford H. Ross

Administrative Judge