

DATE: June 18, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-26201

DECISION OF ADMINISTRATIVE JUDGE

BURT SMITH

APPEARANCES

FOR GOVERNMENT

Catherine M. Engstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's personal history reveals instances of intentional contract deception with a lender and serious dishonesty with his former employer. Clearance is denied.

STATEMENT OF THE CASE

On October 8, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to Applicant. The SOR details 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 Applicant. It recommended referral to an Administrative Judge to determine whether a clearance should be granted or denied. In a written answer dated October 28, 2002, Applicant responded to the SOR, and he elected to have his case decided on the written record in lieu of a hearing.

A complete copy of the Government's File of Relevant Material (FORM) was provided to Applicant on March 19, 2003, and he was given thirty days to file objections and/or submit further material in refutation, extenuation, or mitigation. Applicant received the FORM on April 9, 2003, but he submitted no reply. The case was assigned to me on May 23, 2003.

FINDINGS OF FACT

Paragraph 1 (Guideline F - Financial Considerations). Applicant is 37 years old and unmarried, and he holds a bachelor of science degree. He is employed by a defense contractor as a computer engineer.

In July 1998, Applicant was engaged to his former fiancée, and they lived together. Applicant's fiancée wanted to buy an automobile on an installment plan, but she was not sufficiently credit worthy to obtain a low interest rate. Applicant was employed, and he had a good credit rating, and he agreed to become the primary borrower on a car loan for his

fiancee's benefit.

Applicant's purpose in acting as primary borrower was "so that the interest rate would be low enough for [Applicant's fiancee] to be able to afford the payments." Applicant reached an agreement with his fiancee that she would possess and use the car, and she would pay all costs associated with the vehicle, to include loan payments, maintenance, and insurance. Applicant believed the car loan would be paid by his fiancee because "we were in a committed relationship." (FORM, App Answer.)

Shortly after the purchase, Applicant's fiancee lost her job, and she could not pay the car loan. Applicant helped keep up the loan payments for awhile, but the couple later called off their engagement and Applicant moved away. His former fiancee did not make timely payments on the loan, and the car was eventually repossessed. On March 15, 2000, Applicant was notified in writing the lender would sell the car at auction unless Applicant paid the contract balance. (FORM, Item 9.) The lender sold the car at auction, and Applicant became contractually liable for a deficiency balance of approximately \$7,098.

Applicant does not intend to pay the deficiency balance owed to the lender. Applicant states that if he is ordered by a court to pay the debt he will do so. He makes no claim that he is financially unable to meet this obligation. In Applicant's words, "I am a well-paid engineer and this debt would not be a burden." (App. Answer.) The lender ultimately wrote off the loss as a bad debt. (Credit Report, FORM, Item 8, p.6.)

I find Applicant was the primary borrower on the car loan, and he was contractually obligated to repay the lender. From the beginning, Applicant has acted solely upon his view that he has no financial responsibility toward the lender despite the existence of a written contract that he voluntarily signed. Applicant's refusal to pay the deficiency balance was based upon a deception because he entered the contract with an unspoken intent to default on his obligations if his fiancee did not pay the loan.

Paragraph 2 (Guideline E - Personal Conduct). From July 1990 to April 1995, Applicant was employed by a technology company as an engineer. As part of his job, he was required to complete a time sheet to record the number of hours he worked on various projects. Applicant was supervised, but his time sheets were prepared by himself.

During the work week of March 27, 1995, through March 31, 1995, Applicant was assigned to tasks related to one of the employer's technology programs. At the end of the work week Applicant submitted a time sheet indicating he worked eight hours per day on the program for a total of forty hours. (FORM, Item 10, p.5.)

Unknown to Applicant, his supervisor had been tracking his performance and the actual number of hours he worked. The supervisor forwarded to management a written memorandum that detailed Applicant's actual work hours during the week in question. The supervisor reported Applicant did not work 40 hours on the program, as he claimed on his time sheet. Instead the Applicant had worked only 27 hours, according to the supervisor's observations. (FORM, Item 10, p. 4.)

Because of Applicant's time sheet falsification, his employer terminated him for cause on April 4, 1995. Applicant did not contest his removal. He now claims he did not falsify his time sheet, and he was the victim of his supervisor's personal animosity toward him. The record contains no evidence in support of Applicant's claims.

I find Applicant was discharged from his employment in April 1995 due to a five-day pattern of time sheet falsifications. This dishonest misconduct, if revealed, might have had the effect of placing Applicant in a position to be exploited. Applicant's denial of any misconduct is not based upon credible evidence.

POLICIES

Enclosure 2 of the Directive, as amended by DepSecDef Memo of June 7, 2002, sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. The guidelines are divided into those that may be considered in deciding whether to deny a security clearance (Disqualifying Conditions, hereafter DC) and those that may be considered in deciding whether to grant a security clearance (Mitigating Conditions, hereafter MC).

Based upon a consideration of the entire record, I find the following adjudicative guidelines have application in this case:

Guideline F (Financial Considerations). *The concern:* An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Disqualifying Conditions applicable:

2. Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust.
3. Inability or unwillingness to satisfy debts.

Mitigating Conditions applicable:

(None have application.)

Guideline E (Personal Conduct). *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.

Disqualifying Conditions applicable:

1. Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances.
4. Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail.
5. A pattern of dishonesty or rule violations, including violations of any written or recorded agreement made between the individual and the agency.

Mitigating Conditions applicable:

(None have application.)

The whole person concept. In addition to the above guidelines, the Directive provides in Para. E.2.2.1. that under the "whole person concept" the Administrative Judge shall also consider (1) the nature, extent and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (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.

CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard this sensitive information 24 hours a day. The Government is therefore appropriately concerned where reliable information indicates an Applicant for clearance may be financially irresponsible and/or dishonest in official matters, thereby

demonstrating a lack of reliability and trustworthiness. These unfavorable personal characteristics have a nexus to security eligibility because they might easily lead to a compromise or loss of classified defense secrets.

Concerning burdens of proof, the Government must prove all controverted facts that tend to demonstrate Applicant is ineligible for clearance. Once this burden is met, the Applicant must overcome the Government's case by persuasive

evidence in refutation, mitigation, or changed circumstances. However, the Applicant always bears the ultimate and overall burden of proving it is clearly consistent with the national interest to grant him or her a security clearance. Furthermore, the Directive provides "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." (Directive, Para. E2.2.2.) Thus, the Applicant's burden is a heavy one.

Paragraph 1 (Guideline F - Financial Considerations). In this case, Applicant entered into a contractual relationship with a lender, and he was obligated to repay funds that were used to purchase a car for the use and benefit of his fiancée. Applicant's sole reason for becoming the primary borrower was to secure a favorable interest rate for his fiancée. When he entered into the loan agreement, Applicant had no intention of paying the loan in the event of a default by his fiancée, but he did not inform the lender of his true intentions. The car was ultimately repossessed, and Applicant asserts he will not pay the deficiency balance of \$7,098 unless ordered by a court.

Applicant's willful failure to meet his financial responsibilities has a direct bearing on his eligibility for access to classified information. If Applicant is granted a clearance he must be counted upon to abide by established regulations and procedures designed to protect against the compromise or loss of defense secrets. However, Applicant clearly demonstrates he will view any obligations of trust through his own judgment of what is necessary and appropriate. Although Applicant's interpretation may be erroneous, he will cling to his personal beliefs and take action solely on the basis of his own judgment or convictions without regard for agency regulations and procedures. Paragraph 1 is concluded against the Applicant.

Paragraph 2 (Guideline E - Personal Conduct). In 1995 Applicant was given a position of trust by his employer when he was authorized to enter his work hours onto a time sheet. The time sheet was used to calculate salaries, expenses, and work progress, and it was expected that Applicant would honestly record his working hours. Applicant did not faithfully carry out this position of trust. Instead, he entered false figures that indicated he worked far more hours than he actually did. Upon discovery of Applicant's dishonest behavior, Applicant's employer immediately terminated him.

Applicant's dishonesty with his employer has an adverse effect upon his request for access to classified information. In a security environment, clearance holders are trusted to carry out important tasks with honesty in all aspects of their duties. If a clearance holder falsifies information related to defense secrets, it will undermine the security program and can lead to a loss of sensitive information. Applicant's recorded dishonesty raises serious concerns about his trustworthiness, and Paragraph 2 is concluded against him.

The whole person concept has also been considered, and all or part of factors (1); (2); (4) and (8) are applied against Applicant. Some of the remaining factors slightly favor Applicant, but they do not support a conclusion that Applicant is worthy of a security clearance based upon the whole person concept.

On balance, it is concluded the Government has met its burden of proving factual matters alleged in the SOR. For his part, Applicant has not presented evidence in mitigation or rebuttal sufficient to overcome or outweigh the Government's case against him.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1. (Guideline F): Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Paragraph 2. (Guideline E): Against the Applicant.

Subpara. 2.a.: 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 Applicant's request for a security clearance.

Burt Smith

Administrative Judge