

DATE: June 26, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-02116

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Jonathan A. Beyer, Esquire, Department Counsel

FOR APPLICANT

John P. Coble, Esquire

SYNOPSIS

Applicant's financial irresponsibility was not mitigated where his debts were caused largely by circumstances within his control and his own irresponsibility. He took no effective action to address his indebtedness, despite having the means to do so, until issuance of the SOR. Clearance denied.

STATEMENT OF THE CASE

On 2 January 2003, 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 13 February 2003, Applicant answered the SOR and requested a hearing. I received this case on 14 March 2003, and set it for hearing the same day. On 18 March 2003, I issued a notice of hearing for 2 April 2003.

At the hearing, the Government presented five exhibits--admitted without objection--and no witnesses; Applicant also presented five exhibits--admitted without objection--and the testimony of two witnesses, including himself. DOHA received the transcript on 10 April 2003.

FINDINGS OF FACT

Applicant admitted the allegations of subparagraphs 1. a. (1995 bankruptcy) and c. (unpaid IRS lien). I incorporate these admissions as findings of fact. He denied the allegations of 1.b., d., e., and f. because he had paid these debts in January and February 2003.

Applicant--a 46-year old employee of a defense contractor--seeks to retain the access to classified information he has held since approximately 1983. He is an electrical engineer.

On 3 May 2001, Applicant executed a Security Clearance Application (SCA)(SF 86)(G.E. 1) on which he truthfully

disclosed a variety of adverse financial circumstances, including a 1995 bankruptcy filing. In September 2001, he gave a sworn statement to the DSS (G.E. 2) in which he indicated that he disagreed with the entries on his credit bureau report (CBR), but would obtain a copy and resolve the discrepancies.

Applicant has five delinquent debts totaling approximately \$30,000.00. An IRS lien represents more than \$25,000.00 of that total. Except for the IRS lien, for which Applicant entered into a repayment agreement in March 2003, all the debts have been paid, albeit in January and February 2003, after Applicant received the SOR.

Applicant attributes his financial difficulties to the failure of his computer network business in 1995 and a sharp decline in the real estate market beginning in 1991 that virtually eliminated the equity in his home. However, the record reveals that Applicant's financial difficulties are more directly related to his financial irresponsibility and a lackadaisical attitude toward his finances.

In May 1994, Applicant left his job by mutual agreement after allegations of unsatisfactory performance. He was a "high stress supervisor" who yelled at his subordinates even after being warned by his management.

Attracted by the booming high tech economy where he lived, Applicant decided to start a computer networking business, despite the fact that he had no prior experience running a business, and had no business plan. He did not incorporate, but set up a sole proprietorship. He used \$100,000.00 from his 401K account as seed money, even though he knew the money would now be considered taxable income, and be subject to early-withdrawal penalties.

Some initial success in the business was followed by stiff competition as giant computer manufacturers moved into the networking business themselves. Applicant maxed out his credit cards and spent the \$100,000.00. His financial circumstances were complicated further by the sharp decline in real estate values where he lived, essentially wiping out his equity between 1991 and 1994.

In March 1995, on the advice of counsel, Applicant filed for bankruptcy protection. In September 1995, Applicant was discharged from more than \$25,000.00 in unsecured debt. At the time of his petition, he had a debt to IRS for \$2,900.00 for 1989, and a prospective debt to IRS for \$11,000.00 for 1994. His debts were all business related. He apparently did not include utility bills for his residence in the filing, and moved without resolving his final balances. He closed his business in February 1996, and went to work for another defense contractor in March 1996. He has been continuously employed since.

Between 1995 and 2003, Applicant lived in four different states and six different addresses. He was not good about advising his creditors about address changes. He focused almost exclusively on his work, not paying much attention to his finances. He apparently took no action to resolve his IRS issues or to deal with state tax authorities. In January 1997, the state where Applicant resided at the time of his bankruptcy filed a lien for unpaid taxes of nearly \$2,000.00. Applicant did not resolve this debt until January and February 2003, when he made two payments on an agreed settlement amount. In July 2001, the IRS filed a lien for over \$25,000.00 in back taxes. The IRS seized Applicant's income tax refunds for 2000 and 2001, but Applicant did not otherwise make arrangements to repay this debt until March 2003, when he agreed to begin paying \$600.00 per month. However, Applicant's Exhibit B (A.E. B), which memorializes Applicant's commitment to begin the payments, reflects that Applicant's debt to the IRS, including tax years 1989, 1994, 1997, and 1998, has grown to over \$36,000.00.

Applicant had medical treatment for which he had insurance. However, because of administrative errors, the insurance company refused to pay. In turn, Applicant refused to pay the medical facilities despite the fact that he knew he was directly liable to the providers for his treatment, notwithstanding any third party obligations. The two accounts (1.d. and e.) were sent to collection and not paid by Applicant until after he received the SOR.

Applicant has a positive monthly cash flow of approximately \$740.00. He has over \$26,000.00 in his company 401K account. The balance was higher before he withdrew \$18,000.00 to zero out his credit card balances in the wake of the SOR and to pay his attorney. His current CBR is essentially clean. He has no trouble living within his means. Applicant's coworker testified that Applicant does not live an extravagant lifestyle. Applicant testified that he never really paid attention to his finances because he was so focused on his work. He did not realize the security significance of his credit, but now does.

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 6.3. 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. loss of employment. . . divorce or separation).

Burden of Proof

Initially, the government must prove controverted facts alleged in the SOR. 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 history of indebtedness and his blasé attitude toward it until confronted with the prospect of losing his clearance. With the exception of the period when Applicant was self-employed, and his business failure led to his filing bankruptcy, Applicant has never lacked the means to pay his debts. However, he has lacked the willingness to do so.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and not isolated. While four of the five debts alleged have been paid, they were only paid in the wake of the SOR, notwithstanding that Applicant knew of the government's financial concerns as early as September 2001. Similarly, although Applicant knew as of his bankruptcy filing in 1995 that he had remaining tax liability to the IRS, and had a lien filed against him in 2001, he took no action to address this debt until receiving the SOR. I am unable to conclude that

Applicant is unlikely to fall back into a pattern of neglecting his finances. Consequently, 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

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).