

DATE: July 10, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-04620

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's unwillingness to address his long-standing past-due debts, and his intentional falsification of material facts on a security clearance application, preclude a finding that it is now clearly consistent with the national interest to grant him access to classified information. Clearance is denied.

STATEMENT OF THE CASE

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

Applicant responded to the SOR in writing on February 17, 2003. The case was assigned to the undersigned on March 14, 2003. A Notice of Hearing was issued on March 26, 2003, and the hearing was held on April 29, 2003. The transcript was received on May 6, 2003.

FINDINGS OF FACT

Applicant is a 30 year old employee of a defense contractor.

SOR Allegation 1.a. Applicant's debt to this creditor, in an amount that cannot be determined from the record, was charged off by the creditor.

SOR Allegation 1.b. Applicant is indebted to this financial company in the approximate amount of \$1,551.00.

SOR Allegation 1.c. Applicant is indebted to this creditor in the approximate amount of \$407.00.

SOR Allegation 1.d. Applicant is indebted to this creditor in the approximate amount of \$575.00.

SOR Allegation 1.e. Applicant is indebted to this creditor in the approximate amount of \$1,342.00.

SOR Allegation 1.f. Applicant is indebted to this creditor in the approximate amount of \$1,203.00.

SOR Allegation 1.g. Applicant is indebted to this finance company in the approximate amount of \$2,236.00.

SOR Allegation 1.h. Applicant is indebted to this creditor in the approximate amount of \$346.00.

SOR Allegation 1.i. Applicant is indebted to this creditor in the approximate amount of \$179.00.

SOR Allegation 1.j. Applicant was indebted to this creditor in the approximate amount of \$285.00. He satisfied the debt (Exhibit F; TR at 69-70).

SOR Allegation 1.k. Applicant is indebted to this creditor in the approximate amount of \$376.00 as a result of a judgment entered against him.

In a signed, sworn statement that he gave to the Defense Security Service (DSS) in March 2000 (Exhibit 2), applicant stated that he did not intend to pay his old debts because "they will shortly be removed from my credit report and because it has been several years since I've heard from these creditors." At the hearing applicant backtracked from that statement (TR at 20-21), and then offered vague testimony that he satisfied four or five of the debts listed in the SOR (TR at 24-27). This testimony was not credible.

The only documentary evidence applicant offered to prove he paid some of the debts listed in the SOR was a credit report (Exhibit C).⁽¹⁾ Although most of the debts listed in the SOR do not appear on this credit report, there are myriad reasons why this may be so, including the fact that they are, for the most part, old debts, and as applicant alluded to in Exhibit 2, they may have simply been removed from the credit report because of their age. Accordingly, this credit report does not constitute credible evidence that applicant satisfied any of the debts at issue. The credit report does establish, however, that applicant has been very diligent in keeping current with his more recent debts.

Applicant consumed alcohol, at times to excess and to the point of intoxication, from approximately 1992 to at least 1997. In 1993, following an incident of domestic violence, he received alcohol counseling from the Army. He was subsequently discharged from the Army after he made "no progress" in the Army alcohol program, and "further rehabilitation efforts" were deemed to be "not practical" (Exhibit 3). Applicant admits that he had a severe alcohol problem in the past, but maintains he has not consumed alcohol to excess in years.

Applicant executed a security clearance application (SCA) on September 10, 1999. (Exhibit 1). Applicant provided false material information to the Government in response to three questions on the SCA. In response to Question 26, which asked, "In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed (in response to earlier questions on the SCA)?" applicant stated "no." This response was false because applicant had been arrested and charged with 3rd Degree Assault in July 1993 following a physical altercation with his pregnant wife.

In response to Question 30, which asked, "In the last 7 years, has your use of alcoholic beverages (such as liquor, beer, wine) resulted in any alcohol-related treatment or counseling (such as for alcohol abuse or alcoholism)?" applicant stated "no." Applicant's response was false because, as noted above, he had received alcohol counseling while in the Army in 1993.

In response to Question 37, which asked, "In the last 7 years, have you had any judgments against you that have not been paid?" applicant stated "no." This response was false because, as noted above, applicant had a \$376.00 judgment entered against him that has not been paid.

Applicant offered considerable testimony regarding his false responses to the three questions (TR at 34-39). Considering the evidence as a whole, including applicant's demeanor and conduct while testifying, I find that applicant intentionally

falsified his responses to all three questions. [\(2\)](#)

A coworker who has known applicant for three and one-half years appeared at the hearing and testified that applicant is "real trustworthy, very honest" and that he is an excellent worker (TR at 62-68). Letters from three of applicant's supervisors were admitted into evidence (Exhibit D). These supervisors are also of the opinion that applicant is an honest person who performs well at his job.

Applicant's life has changed dramatically since he left the Army. He remarried, had two children, obtained an Associate Of Applied Science Degree in 1999, began working for his current employer shortly thereafter in 1999, stopped consuming alcohol to excess, and as noted above, has handled his more recent debt obligations responsibly.

POLICIES

Enclosure 2 of the Directive sets forth Guidelines (divided into conditions that could raise security concerns and conditions that could mitigate security concerns) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Guidelines are applicable:

Financial Conditions

Disqualifying Conditions

1. A history of not meeting financial obligations.
2. Inability or unwillingness to satisfy debts.

Mitigating Conditions

None.

Alcohol Consumption

Disqualifying Conditions:

1. Alcohol-related incidents away from work.
2. Habitual or binge consumption of alcohol to the point of Impaired judgment.

Mitigating Conditions:

1. The problem occurred a number of years ago and there is no indication of a recent problem.
2. Positive changes in behavior supportive of sobriety.

Personal Conduct

Disqualifying Conditions

1. The deliberate omission of relevant and material facts from any personnel security questionnaire.

Mitigating Conditions

None.

CONCLUSIONS

With respect to Guideline F, the evidence establishes that applicant has been indebted to at least ten different creditors in the approximate amount of \$8,200.00 since at least 2000. The evidence further establishes that although applicant apparently has the financial resources to begin satisfying these long-standing debts, he has chosen not to do so. This conduct reflects adversely on applicant's judgment, reliability and trustworthiness, and strongly suggests that he cannot be relied upon to safeguard classified information.

Applicant has, for the most part, become a more responsible individual, as evidenced by, among other things, his fine job performance and his responsible handling of his current debts. Unfortunately, his unwillingness to honor all but one of his long-standing past-due financial obligations raises continuing doubts about his judgment, reliability and trustworthiness, and precludes a finding that he has reformed. Accordingly, Guideline F is found against applicant.

With respect to Guideline G, the evidence establishes that applicant had quite an alcohol problem in the past. By his own admission, when he was in the Army in 1993, he was "drunk all the time" (TR at 31). The evidence further establishes, however, that applicant has overcome his alcohol problem. The absence of any alcohol-related incidents, as well as the success he has enjoyed during the past several years, particularly at work, corroborate his testimony that his alcohol problem is a thing of the past. For this reason, Guideline G is found for applicant.

With respect to Guideline E, applicant's falsification of material facts on the SCA concerning his arrest record, receipt of alcohol counseling, and the judgment against him, is extremely troubling. The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. When such an individual intentionally falsifies material facts on a security clearance application, it is extremely difficult to conclude that he or she nevertheless possesses the good judgment, reliability and trustworthiness required of clearance holders.

In this case, I have considered the strong character references applicant offered into evidence, as well as the fact that applicant is clearly not the same person he was ten years ago while serving in the Army. However, given the recency and extent of his dishonesty, as well as his less than credible testimony that he was not trying to conceal anything from the Government with his "no" responses to the three questions on the SCA, I cannot conclude that applicant can be relied upon to be truthful with the Government at the present time. For this reason, Guideline E is found against applicant.

FORMAL FINDINGS

PARAGRAPH 1: AGAINST THE APPLICANT

PARAGRAPH 2: FOR THE APPLICANT

PARAGRAPH 3: 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.

Joseph Testan

Administrative Judge

1. The only exception is Exhibit F, which proved applicant satisfied the debt referenced in SOR Allegation 1j.
2. Applicant claims that he was not trying to hide anything when he completed the SCA, and as proof, he testified that he told the DSS agent everything when he was subsequently called in for an interview (TR at 39-40). Although the signed, sworn statement he gave to DSS (Exhibit 2) and the testimony of the DSS agent (TR at 42-55) establish that he came clean with the DSS agent about his debts and his alcohol problem, they further establish that he did not come

clean about his arrest for 3rd Degree Assault. Applicant was referred to alcohol counseling by the Army as a result of this arrest. (TR at 32, 72). Yet, when discussing his alcohol counseling in his signed, sworn statement to DSS, he never mentioned the arrest; rather, he stated that he was referred to alcohol counseling "after getting into some kind of trouble," but didn't "remember what the trouble involved." And, the DSS agent's testimony made it clear that applicant never revealed this arrest to him.