

DATE: April 26, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-06136

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

Jonathan A. Beyer, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owes approximately 13 creditors approximately \$75,000.00. Applicant made material omissions on his security clearance application. Applicant admits his debt and material omissions. Applicant offered no evidence of a credible plan or commitment to repay these debts. His lack of truthfulness in providing required information on the security clearance application raises questions and doubts about his security eligibility and suitability. Clearance is denied.

STATEMENT OF THE CASE

On April 1, 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), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) 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 April 23, 2002, Applicant responded to the SOR allegations. He requested his case be decided on the written record in lieu of a hearing.

On July 19, 2002, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) [\(1\)](#) was provided to the Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Nothing in the record indicates that Applicant filed a response to the FORM. The case was assigned to me on February 18, 2004.

FINDINGS OF FACT

Applicant admitted all of the SOR allegations (subparagraphs 1.a through 1. o, 2.a., and 3.a). Those admissions are incorporated herein as findings of fact. 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 works as a senior fuels distribution operator for a defense contractor. He is a 48-year-old married man. (Item 4 at p. 3)

The SOR indicates as of June 20, 2002, Applicant was indebted to approximately 13 creditors for approximately \$75,000, and as of May 15, 2001, was at least 90 days delinquent on his second mortgage loan. His monthly expenses exceeded his monthly income by approximately \$422.90 as evidenced by a Personal Financial Statement executed by him on June 19, 2001.

Applicant attributes his financial difficulties due to he and his wife's "oversight" in their financial responsibilities by letting their credit cards reach maximum levels before realizing it. He further indicated he and his wife were trying to do the "right thing" as parents by helping their children. In 1998, Applicant paid \$3,000.00 for his daughter's wedding. In 1997, Applicant financially assisted his adult son, who was going through a divorce. This financial assistance consisted of paying \$1,400.00 for his son's airline tickets, by paying an undisclosed amount towards his son's "bills and legal separation," and by paying over \$25,000.00 in child care costs for his son's two children. (Item 5 at p. 1 & 2)

Appellant's response, dated April 23, 2002, indicated he was trying to take care of his debts and has taken care of them. He further indicated he is no longer behind in his mortgages and has filed for bankruptcy protection under chapter 13. The bankruptcy petition was to be final on May 22, 2002. Appellant provided no documentation in this regard. (Item 2)

Applicant answered "no" to Questions 38 and 39 on the security clearance application asking if he had been 180 days delinquent on any debt(s) in the last seven years and whether he was currently 90 days delinquent on any debt(s). Applicant signed his security clearance application on April 16, 2001. (Item 4 at 8) By Applicant's response to the SOR, he admitted to falsifying these answers. (Item 2 and 5)

Applicant further indicated in his statement dated June 20, 2001, the reason he did not answer questions 28A and 28B (sic) correctly on his security clearance application was he "planned to have the credit cards paid up to date or paid off by the time [his] background investigation started." (Item 5 at 3)

By Applicant's admission that he provided false information to Questions 38 and 39, a prima facie case has been established that he violated Federal law, Title 18, United States Code, Section 1001, a felony.

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:

Guideline F - Financial Considerations:

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.A6.1.3.1. The behavior was not recent.

E2.A6.1.3.2. It was an isolated incident.

E2.A6.1.3.3. 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).

Guideline E - Personal Conduct:

E2.A5.1.1. *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. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

E2.A5.1.2. Conditions that could raise a security concern and may be disqualifying also include:

E2.A5.1.2.2. The deliberate omission, concealment, falsification or misrepresentation of relevant and material facts from any personnel security questionnaire, personal history statement or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

E2.A5.1.3. Conditions that could mitigate security concerns include:

E2.A5.1.3.3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts.

Guideline J: Criminal Conduct

E2.A.10.1.1. *The Concern:* A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

E2.A.10.1.2 Conditions that could raise a security concern and may be disqualifying include:

E2.A10.1.2.1 *Allegations or admission of criminal conduct*, regardless of whether the person was formally charged.;

E2A10.1.2.2 A single serious crime or multiple lesser offenses.

E2.A10.1.3 Conditions that could mitigate security concerns include:

E2.A10.1.3.2 The crime was an isolated incident.

Under the Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, I can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence in the record. Likewise, I have attempted to avoid drawing any inferences that are based on mere speculation or conjecture.

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:

Concerning Guideline F, the Government established its case. Applicant is delinquent on approximately 13 accounts with total balances of approximately \$75,000.00. Even if one accepts Applicant's explanation that he provided assistance to his children totaling \$29,400.00, he still has \$45,600.00 of unexplained debt. Applicant admits these failures to pay. Applicant has not sought to resolve or compromise these debts. Applicant's response to the SOR indicated he is no longer behind on his mortgages and has filed bankruptcy under chapter 13. He has provided no documentation in this regard. 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.

Regarding Mitigating Conditions (MC)1, 2, and 3, I find them not applicable to this case. The behavior continued until Applicant answered the SOR, so it is recent and not isolated. Walking away from the debt is not a responsible way to proceed. Nor has he presented any evidence that he has resolved or attempted to resolve his debts. Therefore, the MC E2.A6.1.3.1, MC E2.A6.1.3.2, MC E2.A6.1.3.3 are not applicable.

Concerning Guideline E, I conclude the Government proved its case. Applicant deliberately did not include the information requested on his security clearance application concerning his finances in reply to Questions 38 and 39. It is easy to count back the seven year period for which he had the duty to disclose. Applicant admits he failed to answer these questions truthfully and provided the explanation that he planned to have the credit cards paid up to date or paid off by the time his background investigation started. This explanation fails because of the clear seven year period for delinquent debts the Applicant was under an affirmative duty to report. These matters are of such magnitude and importance in a person's life that it is not credible to believe they could be forgotten and not listed on an application which is directly related to whether Applicant can renew her security clearance and retain her employment which is dependent upon the security clearance. Therefore, DC E2.A5.1.2.2. is applicable.

Regarding the MC E2.A5.1.3.3. (a good faith effort to correct), I cannot find any evidence that Applicant took any action to correct the false information he provided until interviewed by a defense security agent. There is no information he came forward voluntarily in a good faith effort to provide the additional information. Therefore, I conclude MC E2.A5.1.3.3. is not met or applicable.

Concerning Guideline J, the Government established its case. By Applicant's deliberate misrepresentation regarding his financial situation, he has violated Federal law, Title 18, United States Code, Section 1001, a felony. Therefore DC E2.A10.1.2.1 and DC E2.A10.1.2.2 are applicable.

Regarding MC E2.A10.1.3.2 (crime was an isolated incident), I find inapplicable to this case. Applicant provided two false answers when there was clear evidence to the contrary. The amounts in question were significant enough to heighten Applicant's awareness to their existence and severity.

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.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: Against the Applicant

Subparagraph 1.k.: Against the Applicant

Subparagraph 1.l.: Against the Applicant

Subparagraph 1.m.: Against the Applicant

Subparagraph 1.n.: Against the Applicant

Subparagraph 1.o.: Against the Applicant

Paragraph 2 Guideline E: Against the Applicant

Subparagraph 2.a.: Against the Applicant

Paragraph 3 Guideline J: Against the Applicant

Subparagraph 3.a.: 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. Clearance is denied.

Robert J. Tuider

Administrative Judge

1. The Government submitted five items or exhibits in support of its contention.