

DATE: November 21, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-07014

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant owes approximately \$19,000 on 17 delinquent accounts, which were turned over for collection or charged off between 1997 and 2000. When he completed his Security Clearance Application, he failed to list his financial delinquencies of more than 180 days. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from the debts and the falsification. Clearance is denied.

STATEMENT OF THE CASE

On April 28, 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 [\(U\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On July 7, 2003, the Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

On September 26, 2003, the Applicant received a complete copy of the file of relevant material (FORM) dated September 12, 2003, and was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. The Applicant responded to the FORM by undated letter. Department Counsel (DC) did not object to the Applicant's response. In the FORM, DC presented eight exhibits (Items). I was assigned the case on November 6, 2003.

FINDINGS OF FACT

The SOR alleges financial considerations, Guideline F, and personal conduct, Guideline E. The Applicant admits the allegations. 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 same, I make the following additional findings of fact.

The Applicant is 37-years-old, has worked for a defense contractor since August 1999, and is seeking a security clearance.

In May 1992, the Applicant filed for bankruptcy protection under Chapter 13. The discharge was granted in July 1995. In December 1998, the Applicant again filed for bankruptcy protection under Chapter 13. His case was dismissed when he defaulted on the payment plan. The default occurred after he was laid off from his job. The case was closed in July 2000.

The Applicant owes approximately \$19,000 on 17 delinquent accounts. He owes \$2,275 on seven delinquent accounts to one creditor, which were turned over for collection between 1998 and 2001. He owes three different creditors \$366 for medical related services. These accounts are delinquent and were turned over for collection in 1999. The Applicant owes \$3,300 on five other delinquent accounts, which were turned over for collection between 1997 and 1999. The Applicant had two vehicles voluntarily repossessed. These two vehicle debts, totaling \$13,022, were turned over for collection or charged off in May 1999 and June 2000.

In March 2001, the Applicant completed a Security Clearance Application, Standard Form 86 (SF 86). He answered "no" to question 38, which asks if he had been more than 180 days delinquent on any debt, even though he had debts turned over for collection between 1997 and 2000.

When interviewed by the Defense Investigative Service (DIS) in January 2002, the Applicant income was \$2,358, his monthly expenses were \$1,135, his debt payment was \$110, and his net remainder was \$1,113. The Applicant states he is not a security risk because of his three children. During his marriage, the Applicant's now ex-wife handled their finances. He acknowledges he should have been more involved with his finances.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

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. 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.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Financial Considerations, Guideline F: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. E2.A6.1.1.

Conditions that could raise a security concern and may be disqualifying include:

1. A history of not meeting financial obligations. (E2.A6.1.2.1.)
3. Inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)

Conditions that could mitigate security concerns include:

None apply.

Personal Conduct, Guideline E. 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.

Conditions that could raise a security concern and may be disqualifying also include:

2. The deliberate omission, concealment, or falsification 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.A5.1.2.2.)

Conditions that could mitigate security concerns include:

None apply.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "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 ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline F, Financial Consideration. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an Applicant with a history of serious or recurring financial difficulties is in a situation of risk that is inconsistent with the holding of a security clearance. Under Guideline F, an Applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. The Applicant's overall history of financial difficulties, which started in the early 1990s, and continues to the present, provides concern. The Applicant owes approximately \$19,000 on 17 accounts. Disqualifying conditions (DC) 1-(2) and 3-(3) apply.

As of January 2002, the Applicant knew the government was concerned about his debts when he was questioned by a DIS Special Agent. In April 2003, the Applicant received the SOR. Even after being informed of the government's concern, the Applicant made no payments on his debts even though his monthly net remainder was more than \$1,000

per month.

The mitigating factors (MC) do not apply in the Applicant's favor to the 17 debts listed in the SOR. For MC 6⁽⁴⁾ to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good faith effort to repay. A systematic, concrete method of handling past due liabilities is needed, which is not present here. The Applicant has provided no cancelled checks, money order receipts, other receipts, letters from the creditors, or other evidence showing payments have been made. He has made no payments nor has he contacted his creditors.

The conduct is recent (MC 1)⁽⁵⁾ in that the debts are still owed. It is not an isolated incident (MC 2)⁽⁶⁾ because there are 17 debts. There is no indication the Applicant's financial problems are under control. (MC 4)⁽⁷⁾ Even though the Applicant's appears to have been divorced at some point, there is no evidence as to how his divorce affected his finances. The Applicant was laid off from his job which resulted in his bankruptcy being dismissed in July 2000 when he defaulted on the payment plan. The Applicant did not indicate how long he was laid off or show how his lay off affected his finances. I find MC 3⁽⁸⁾ does not apply because there is no indication how his financial problems were affected by the divorce or unemployment. Because the Applicant has failed to present sufficient mitigation to overcome his financial irresponsibility concerning his debts, I find against the Applicant as to SOR subparagraphs 1.c. through 1.s.

I have considered his 1992 and 1998 bankruptcies in evaluating the Applicant's finances. However, I do not find against him for his filing of bankruptcy protection. I find for the Applicant as to SOR subparagraphs 1.a. and 1.b. The Applicant's 1998 bankruptcy was dismissed when he could not make his payments because he became unemployed.

The Government has satisfied its initial burden of proof under Guideline E, (Personal Conduct). Under Guideline E, the security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal conduct which creates doubt about the person's judgment, reliability, and trustworthiness. Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate and meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. In March 2001, the Applicant completed an SF 86 in which he failed to indicate he had been more than 180 days delinquent on 16 debts. Because of this false answer, Disqualifying Condition (DC) 2⁽⁹⁾ applies.

The Applicant acknowledges he should have been more involved with his finances the responsibility for which he had left with his now ex-wife. The Applicant's explanation of innocent intent has been considered, but found to be unpersuasive. Following the bankruptcies of 1992 and 1998, the Applicant should have been very aware of his finances. He knew he voluntarily had two vehicles repossessed. There were 14 other debts which had been turned over for collection. He should have listed these debts in response to question 38 of the SF 86.

None of the Mitigating Conditions apply to this conduct. MC 2⁽¹⁰⁾ does not apply because, even though the falsification may have related to only one question on a single questionnaire, the falsification occurred in March 2001, and, as such, are considered recent. Because DC 2 applies, and no mitigating conditions apply, I find against the Applicant as to SOR subparagraph 2.a.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Financial, Guideline F.: AGAINST THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For 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

Subparagraph 1.p.: Against the Applicant

Subparagraph 1.q.: Against the Applicant

Subparagraph 1.r.: Against the Applicant

Subparagraph 1.s.: Against the Applicant

Paragraph 2 Personal Conduct, Guideline E.: AGAINST THE APPLICANT

Subparagraph 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 or continue a security clearance for the Applicant. Clearance is denied.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.

2. DC 1. A history of not meeting financial obligations. (E2.A6.1.2.1.)

3. DC 3. Inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)
4. MC 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.
5. MC 1. The behavior was not recent.
6. MC 2. It was an isolated incident.
7. MC 4. The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control.
8. MC 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). (E2.A6.1.3.3.)
9. DC 2. The deliberate omission, concealment, or falsification 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.A5.1.2.2.)
10. MC 2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily. (E2.A5.1.3.2.)