

DATE: June 11, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-08663

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has had a long history of financial difficulties, including a Chapter 7 bankruptcy. While some of his lesser past overdue debts have now been resolved, he still owes approximately \$50,000 to the Internal Revenue Service (IRS) and over \$5,000 to a state department of taxation. Because of the absence of a repayment plan and his negative net remainder every month, it is unlikely that Applicant can resolve his financial difficulties. Clearance denied.

STATEMENT OF THE CASE

On August 22, 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) 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 October 13, 2002, Applicant responded to the SOR allegations, and he requested a clearance decision based on a hearing record. In his Answer, Applicant admits to the SOR allegations (subparagraphs 1.a - 1.c, and 1.f). He denies 1.d and 1.e, and he admits and denies, in part, subparagraph 1.g.

On January 7, 2003, this case was originally assigned to Administrative Judge Wilmeth, but on January 30, 2003, because of caseload consideration, the case was reassigned to me to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on January 22, 2003, and the hearing was held on February 25, 2003.

At the hearing, Department Counsel offered 11 documentary exhibits (Exhibits 1 - 11) and no witnesses were called. Applicant appeared without counsel, offered no documentary exhibits and offered his own testimony. After the hearing,

the record was left open, and Applicant offered five documentary exhibits (Exhibits A - E) none of which were objected to by Department Counsel. The transcript (TR) was received on March 4, 2003.

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is a 54 year old employee of a defense contractor. He is married with two children and has a Bachelor of Arts degree.

Applicant has a troubling, history of financial difficulties, the most significant being substantial indebtedness to the IRS. While Applicant filed his federal income tax returns for each year that it was required, and made what he believed were proper payments, he was continually informed by the IRS that he had underestimated the amount that he owed for each year. He was first notified in 1986 or 1987 that he had not paid the proper amount of federal income tax for tax year 1984. Thereafter, he was informed that he had not paid sufficient tax for tax years 1985, 1986, 1988, 1989, 1991, 1992, 1993, 1994, 1998 and 2000. Applicant began making payments to the IRS for the amount he owed, and continued making payment for approximately 15 years. However, after 15 years, he estimates that he currently owes approximately \$49,000. (TR at 30-34.)

Applicant testified that he was informed in 2001 by the IRS that, based on his financial situation, he no longer was required to continue to make payments on this debt. Since then he has

made no further payments. (TR at 34-35.) Approximately \$50,000. is still due and owing from the Applicant to the IRS, and there is no current plan in place to reduce that debt.

Applicant owes a state for tax year 1991, approximately \$5,207. Subsequent to the hearing, Applicant submitted a document, dated October 21, 2002, titled "Offer in Compromise" which established that he offered to settle with the state department of taxation for the sum of \$1,000. (Applicant's Exhibits A.) While this document establishes Applicant's offer, there has been no evidence of a response from the state department of taxation. Therefore, I must conclude that this debt is still due and owing.

Applicant introduced Applicant's Exhibits B, a copy of a cancelled check to a national bank in the amount of \$ 455.98. This check is, in part, for the debt cited in SOR allegation 1.c., and I conclude that this debt has been resolved.

Applicant introduced Applicant's Exhibits C, a copy of a cancelled check to the time share resort in the amount of \$ 1258.38. This check is, in part, for the debt cited in SOR allegation 1.d., and I conclude that this debt has been resolved.

Applicant testified that the debt for a cemetery headstone for his sister has been paid by his family. (TR at 52-53.) Applicant introduced Applicant's Exhibits D, which shows a balance of \$ 0, owed by Applicant to the creditor cited in SOR allegation 1.e. I conclude that this debt has been paid.

In 1994, Applicant and his wife had their debt of approximately \$59,040 discharged in Chapter 7 Bankruptcy. Applicant testified that the bankruptcy filing was necessitated by the debts of his wife prior to their marriage. However, the bankruptcy record indicates that a significant amount of those debts were incurred by Applicant, himself. (Government Exhibit 5.)

Applicant's expenses exceed his net income by approximately \$300 each month. (TR at 56-60, Government Exhibit 7.) With this negative net remainder at the end of each month, it is unlikely that Applicant can resolve his financial difficulties.

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 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.. 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.*

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:

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, a business downturn. . .).

Burden of Proof

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. 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 indebtedness and his current non-payment on the most significant delinquent accounts to the IRS and a state department of taxation. The record evidence shows Applicant has a history of financial difficulties attributed to financial irresponsibility.

Applicant's overall conduct pertaining to his financial obligations falls within Financial Considerations Disqualifying Condition (DC) E2.A6.1.2.1., and DC E2.A6.1.2.3. Regarding Mitigating Condition (MC) E2.A6.1.3.3, which regards debts that result from circumstances beyond the person's control, I find it not applicable to this case. While Applicant's indebtedness was partially due to circumstances beyond his control, specifically the debts of his wife, the majority of Applicant's debts occurred as a result of his own conduct.

Applicant appears to have made a good-faith effort to resolve some of his lesser debts, but his remaining indebtedness, particularly to the IRS, is too large, and the absence of a repayment plan and negative cash remainder every month is too great a continuing problem, to conclude that Applicant's financial problems are behind him. Until he can establish a record of financial responsibility and stability, security concerns will continue to exist under Guideline F. I resolve Guideline F. against Applicant, and I conclude Applicant has not established, at this time, that it is "clearly consistent with the national interest" that he should be granted the privilege of a security clearance.

FORMAL FINDINGS

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: 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.

Martin H. Mogul

Administrative Judge