

DATE: June 25, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-11117

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Juan Rivera, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Between 1995 and 2000, Applicant accumulated approximately \$10,500.00 in delinquent debts including credit cards, late car payments, and clothing store accounts. He intentionally omitted this information from a Security Clearance Application (SF-86) in February 2002. He asserts much of his financial difficulty resulted from his own inexperience with money when he moved out on his own for the first time at age 23. His actions to resolve some of his obligations are too recent for mitigation, and he has no proven track record of successful money management. Applicant has failed to mitigate security concerns under Guideline E (Personal Conduct) and Guideline F (Financial Considerations). Clearance is denied.

STATEMENT OF THE CASE

On November 21, 2002, the Defense Office of Hearings and Appeals (SOR) issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The SOR further informed Applicant that, based on information available to the Government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to continue Applicant's security clearance.⁽¹⁾

On December 17, 2002, Applicant answered the SOR (Answer) and requested a hearing. The case was assigned to me on March 3, 2003. On March 7, 2003, DOHA issued a Notice of Hearing setting this case to be heard on March 26, 2003. The parties appeared as scheduled and the Government presented five exhibits (GE 1 through 5), which were admitted as evidence without objection. Applicant presented seven exhibits (AE A through AE G), which were admitted without objection.⁽²⁾ Applicant also testified in his own behalf.⁽³⁾ I left the record open for 10 days after the hearing to afford Applicant an opportunity to submit via Department Counsel additional relevant information.⁽⁴⁾ However, I received no further submissions and the record closed on April 4, 2002. DOHA received the transcript (Tr) on April 3, 2003.

FINDINGS OF FACT

Applicant admitted the SOR allegation in subparagraph 1.a, and denied all of the remaining allegations. I have incorporated his admission in my

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

Applicant is a 29-year-old employee of a defense contractor. He is seeking a security clearance as part of his employment. He is a high school graduate with three years of college course work. In 1997, at the age of 23, he moved out on his own for the first time. He had been living with his parents while working and attending school. By 1998, he was experiencing significant financial difficulties and failed to stay current on several accounts, some of which he had opened while living at home.

He fell behind several times in his car payments, and he accumulated large balances on credit cards and clothing store accounts. These debts accrued on accounts he opened while still living at home when he did not have to pay basic living expenses such as rent, utilities and so on. His total indebtedness was at least \$10,500.00 before he took any corrective actions.

I make the following specific factual findings as to each debt listed in the SOR:

¶1.a: This is a credit card debt now totaling \$1,813.77, and has been referred for collection. On December 6, 2002 the collection agency offered to settle the debt for \$1,200.00. Applicant claims he paid this account in January 2003, yet, despite having 10 days after the hearing to do so, he has failed to produce evidence of his claim.

¶1.b: This is a department store account debt now totaling \$758.23. Applicant opened this account while he was an employee of this company and eligible for employee discounts. On December 4, 2002 the department store offered to settle this debt for \$360.00. Applicant has not paid this debt and estimates he still owes about \$500.00.

¶1.c: This is a car loan on which Applicant has been late several times. At one point, the lender threatened repossession. Applicant still has the car and now owes about \$1,900.00. His sporadic car payments continue as he missed his February 2003 payment.

¶1.d: Applicant owes income taxes in a jurisdiction where he once lived. He denied this SOR allegation because it cited the wrong tax year. The day before hearing, he made a partial payment using an on-line service designed for credit card payments of state and federal tax debts, yet, at hearing, he testified he made a cash payment. This was his first payment on this debt, which is at least five years old. [\(5\)](#)

¶1.e: Applicant has disputed this obligation, a state income tax debt. He submitted information that shows that, as of December 6, 2002, he does not owe back taxes.

¶1.f: This is a telephone bill that became delinquent in April 1997. Applicant paid this debt by credit card on December 3, 2002. [\(6\)](#)

¶1.g: This is a credit card account which Applicant asserts he paid through a settlement. However, he has provided no evidence to support his claim. The debt is still listed in the various credit reports in this record. Further, he does not contest that he owed the amount listed in this allegation as he used this card for car repairs and other expenses. [\(7\)](#)

¶1.h: This debt was a clothing store account Applicant opened in September 1996. It was charged off as a bad debt in December 1998. In November 2001, Applicant settled the debt for less than the full amount, an action which is reflected in the various credit reports in this record. [\(8\)](#)

In 1998, Applicant's parents suggested he enroll in a consumer credit counseling service. He did so, and began a five-year plan for resolving his debts and establishing a sound financial outlook. However, he left the plan after two years because he grew impatient with the rate at which his debts were being paid and he thought he could do better on his own. [\(9\)](#)

Applicant began receiving delinquency notices by mail and telephone while he was still living with his parents. He knew when he completed his SF-86 in February 2002 that he was at least 180 days past due on some of his accounts, yet

he intentionally omitted this information from Questions 38⁽¹⁰⁾ and 39⁽¹¹⁾ dealing with delinquent debts.

Applicant is married. Together, he and his wife earn about \$4,000.00 gross each month. His wife recently enrolled in a credit counseling program to help her resolve her own credit cards and car loan obligations, which have been exacerbated by recent hospital bills. Applicant does not manage their finances through any organized budget or accounting process and does not know how much money he has left over each month after expenses.

POLICIES

The Directive sets forth adjudicative guidelines⁽¹²⁾ to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, specifically, that Applicant has close ties of affection who are foreign citizens, I conclude the relevant adjudicative guidelines to be applied here are Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽¹³⁾ for an Applicant to either receive or continue to have access to classified information. The Government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.⁽¹⁴⁾ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the Government.⁽¹⁵⁾

CONCLUSIONS

Guideline F (Financial Considerations). A security concern arises when it is shown that a person is either unwilling or unable to manage his finances so that he avoids unreasonable delinquencies. A person who is overextended financially is at risk of engaging in illegal actions to obtain money.⁽¹⁶⁾ Here, Applicant has demonstrated at an early age that he is unable to manage his finances. Even before he moved out on his own, when, ostensibly, he did not have to pay rent or buy his own food, he ran up excess debts at two clothing stores, one of which employed him. During his first year on his own, he failed to pay his income tax bill. He has repeatedly failed to stay current on the only car loan he has ever had, missing a payment just one month before this hearing. Guideline F Disqualifying Condition (DC) 1⁽¹⁷⁾ and DC 3⁽¹⁸⁾ apply.

By contrast, there are no Guideline F Mitigating Conditions (MC) available to Applicant on these facts. The behavior is recent as evidenced by his still-sporadic car payments.⁽¹⁹⁾ Applicant has made some payments on his debts, however, he used a credit card to do so, despite having the apparent means to pay cash at least in part. This demonstrates his behavior regarding finances has not changed and that he continues to carry excess albeit now current debt. Nor can it be said his financial difficulties constitute an isolated event as they have been recurring since before 1997.⁽²⁰⁾ Further, there is no indication of any unforeseen event that was beyond Applicant's control that caused him to fall behind in his obligations.⁽²¹⁾ As for counseling,⁽²²⁾ Applicant was enrolled in a program five years ago. Had he stayed with it, he may well have avoided his current problems altogether. However, he decided to abandon the plan after two years and now finds himself still trying to resolve his delinquencies. Lastly, although he has taken some action to resolve his delinquencies, his efforts do not equate to a "good-faith effort to repay overdue creditors or otherwise resolve debts."⁽²³⁾ His actions have come in response to the SOR and pending hearing. Despite the offers of settlement by some of his creditors, there is no support (save for the debt in subparagraph 1.h) for Applicant's claim he has in fact paid those debts. This approach to debts that have been delinquent for several years, combined with a complete lack of a demonstrated ability to manage his finances, does not inspire confidence that his financial problems will not recur. I conclude Guideline F against the Applicant.

Guideline E (Personal Conduct). 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. (24) Here the concern centers on Applicant's intentional omission from his 2002 SF-86 of relevant information about his finances. He knew as early as 1996 that he was delinquent on some accounts within the meaning of Questions 38 and 39 yet he intentionally withheld that information by answering "no" to both questions. Guideline E DC 2 (25) applies to these facts. By contrast, the only possible mitigation available to Applicant is the fact that his falsification appears to be an isolated event. However, under the three-pronged language of MC 2, (26) which addresses this as a possible mitigator, Applicant has failed to establish the other two aspects - recency and providing the correct information. On this latter point, there is contradictory information in the record about Applicant's repayment efforts and the current status of some of his obligations. It is clear, therefore, the government does not have all of the correct information about Applicant's financial condition, which is needed to determine his suitability for clearance. Just as Applicant's first foray into independent life resulted in financial problems he has yet to fully understand and resolve, so, too, has his first opportunity to demonstrate he has the requisite judgment and trustworthiness failed. I conclude Guideline E against the Applicant.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Financial Considerations (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: For the Applicant

Subparagraph 1.g: Against the Applicant

Subparagraph 1.h: For the Applicant

Paragraph 2, Personal Conduct (Guideline E):

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.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Six of Applicant's exhibits were previously submitted with his Answer; however, I severed them from the Answer as they were documents normally submitted on the record subject to objection or comment as appropriate. *See* Tr., p. 15.

3. The transcript erroneously lists a witness for Applicant (p. 2), however, no live testimony was heard other than from Applicant himself.
4. Tr., p. 86.
5. AE G.
6. GE 3, AE D.
7. Tr., p. 75 - 76.
8. GE 3, AE B, AE D.
9. GE 2; Tr., p. 81.
10. "38. Your Financial Delinquencies - 180 Days. In the last 7 years, have you been over 180 days delinquent on any debt(s)?"
11. "39. Your Financial Delinquencies - 90 Days. Are you currently over 90 days delinquent on any debt(s)?"
12. Directive, Enclosure 2.
13. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
14. *See Egan*, 484 U.S. at 528, 531.
15. *See Egan*; Directive E2.2.2.
16. Directive, E2.A6.1.1.
17. E2.A6.1.2.1. A history of not meeting financial obligations;
18. E2.A6.1.2.3. Inability or unwillingness to satisfy debts;
19. E2.A6.1.3.1. The behavior was not recent;
20. E2.A6.1.3.2. It was an isolated incident;
21. 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);
22. E2.A6.1.3.4. 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;
23. E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.
24. Directive, E2.A5.1.1.
25. E2.A5.1.2.2. 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;
26. E2.A5.1.3.2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;