

DATE: October 26, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-27453

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Jr., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred delinquent debts over the past 10 years. Applicant is paying his current debts while attempting to pay the debts listed in the SOR, but has not repaid more than four of them, and only recently entered an installment agreement to repay \$28,000 he owes to the U.S. Government for the past 14 years. The remaining debts are small enough he could have repaid them by now, but has not done so. Applicant did not mitigate the financial consideration security concern. Clearance is denied.

STATEMENT OF THE CASE

On January 31, 2004, 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 the personnel security 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. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and notarized statement, dated February 24, 2004, Applicant responded to the SOR allegations. He requested a hearing. This case was assigned to me on May 20, 2004.

On June 1, 2004, a Notice of Hearing was issued setting the hearing date for June 15, 2004. On that date, I convened the hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government presented eight exhibits, all of which were admitted into evidence. Applicant submitted four exhibits, which were admitted into evidence. I received the transcript (Tr.) of the hearing on June 23, 2004.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR. 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 is 37 years old, married, and works for a defense contractor as a technical manual writer. Applicant has several delinquent debts outstanding that he has been paying. Applicant also owes the U.S. government over \$25,000 for benefits received while putatively married to a person from 1987 to 1990. Applicant married a woman who was not divorced from her husband, and he was not legally married to her. Applicant was 21 years old at the time. He applied for and received various housing and subsistence pay benefits from the U.S. Marine Corps that are ordinarily paid to married service members. Applicant was a member of the Marines at the time. Eventually, as he was about to separate at the end of his tour of duty, the Marine Corps discovered what Applicant had been doing and court-martialed him for fraud. He was fined \$1,000 a month for four months, four months confinement, reduced to the grade of E-1, and ordered to repay \$18,000, which he has not done so to date. He has a recently negotiated installment payment agreement with the U.S. Attorney as part of a consent judgment for this debt at the rate of \$150 monthly. The current balance of the debt is \$28,601.68. At this rate of repayment Applicant will need nearly 30 years to repay this debt. Applicant has not been in any criminal legal trouble since that one incident. (Tr. 11, 15, 34, 36 to 41; Exhibits 2, 3, 8, 9, 10, C and D)

Applicant does not remember any debt for \$340 to a collection agency (subparagraph 1.a). He is attempting to find the creditor and arrange payment if the debt is valid. (Tr. 16, 17; Exhibit 2, 6)

Applicant has paid in full the delinquent debt to a finance company as listed in subparagraph 1.b. of the SOR in the amount of \$2,765.00.. (Tr. 13, 14; Exhibits 2, 5, 6, A and B)

Applicant is attempting to contact the medical service provider listed as a creditor in subparagraph 1.c. of the SOR. The debt is \$171. He has not received a reply to the two letters he sent last year after his interview with the government investigator when he said he learned of this debt. This debt does appear on Applicant's 2002 credit report, and is listed on his financial statement attached to his July 2002 written statement given to the government investigator. (Tr. 18, 19; Exhibits 2, 6)

The department store debt listed in subparagraph 1.d. for \$511 is for items purchased by Applicant's wife. They send the creditor a payment when they can afford to do so. Applicant does not recall any recent payments being made. (Tr. 19, 20; Exhibits 2 and 5)

Applicant has tried to contact the bankrupt and closed furniture store chain about the \$637 owed on that account alleged in subparagraph 1.e. He has not received a reply at the time of the hearing. (Tr. 21, 22; Exhibits 2 and 5)

Subparagraph 1.f. lists a delinquent debt for \$61 owed to a video rental store. Applicant paid that debt in full. (Tr. 22; Exhibits 2 and 5)

Applicant paid the water company debt for \$61 listed in subparagraph 1.g., but has no documentation to show that payment. (Tr. 22, 23; Exhibits 2 and 5)

The \$739 owed to a credit union as alleged in subparagraph 1.i. of the SOR is not paid yet. He has not heard from that creditor in three years, and his income does not allow him to pay that bill now. He agrees he owes it and will pay it. (Tr. 23, 24; Exhibits 2 and 5)

The \$10 electric bill alleged in subparagraph 1.j. of the SOR is paid. (Tr. 24; Exhibits 2 and 5)

Applicant's wife is unemployed at the current time. Applicant married this wife legitimately in 1992. They have current bills that they are trying to pay at present, including \$1200 for dental work for their daughter. One daughter is autistic, and his wife's work schedule must allow her to take care of that daughter while the other daughter is in school. Applicant's income is the only one the family has at the present time. (Tr. 24 to 26)

Applicant has one credit card at the present time that has a balance of \$300 on which he pays regularly. His credit limit

on that card is \$500. His wife handles most of the money in his family. They have a plan to pay off his debts over a five year term and he is adhering to that plan. Applicant is attempting to sell his motorcycle for \$4200 which money will be applied to his bills. (Tr. 24, 29, 30, 34, 46)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 judgement, 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." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicted upon the applicant meeting the security guidelines contained in the Directive.

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., 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:

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive, ¶ E2.A6.1.1.

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

- (1) A history of not meeting financial obligations. Directive, ¶ E2.A6.1. 2.1.
- (2) Deceptive or illegal financial practices such as intentional financial breaches of trust.

E2.A6.1.2.2

- (3) Inability or unwillingness to satisfy debts. Directive, ¶ E2.A6.1.2.3.

Conditions that could mitigate security concerns include:

- (1) The behavior was not recent. E2.A6.1.3.1.

(6) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Directive, ¶ E2.A6.1.3.6.

CONCLUSIONS

Regarding the financial considerations guideline, the Government proved its case that Applicant has debts that should be paid. The largest debt is owed to the U.S. Government for repayment of money Applicant received fraudulently in 1987 to 1990 when he claimed married person benefits from the U.S. Marine Corps when he was not entitled to them because he was not legally married to a particular woman. Disqualifying Conditions (DC) 1, 2, and 3 apply. Applicant pays his current bills on time, but some of his older bills remain delinquent only because he does not make enough income to pay them all more in a timely manner. The U.S. Government debt makes DC 3 applicable here.

Applicant's case allows application of one Mitigating Condition (MC) to one aspect of his case. MC 1 applies to his fraudulent conduct in the Marine Corps. That activity occurred 14 to 17 years ago. Applicant has matured and has a wife and two daughters. That incident occurred when he was young and inexperienced, and foolishly became involved with a woman who obviously manipulated him for the income and comfort he could provide. He paid for his crime.

But the MC 1 does not apply to the \$28,601.68 debt owed to the Government. Applicant had ample opportunity in the past 14 years to arrange payment, and it was only recently that he did so after pressure from the U.S. Attorney assigned the case. Of the 10 debts listed in the SOR, Applicant paid off four of them over some period of time, has an installment payment agreement on another debt to the U.S. Government that will take him nearly 30 years to pay at the present rate of payment, and the remaining five debts he agrees he owes and is attempting to pay when he has the money. However, they are relatively small debts and could have been paid before now. He also planned to have these debts paid in five years, and is working on that plan, but I do not find it to be a good-faith plan in view of the relatively small amounts involved, and the time it has taken Applicant to pay off the four debts he has paid. Applicant says he has a plan to pay his debts, but failing to verify debts with creditors, ignoring credit union debts because they have not contacted him in three years, and purchasing furniture and products from mail order firms without paying for them, and failing to repay money over the past 14 years that he took illegally from the government is not evidence of a reasonable, prudent, honorable, and dutiful plan to repay delinquent debts. The pattern of delinquent accounts and the several years Applicant has had to pay the delinquent debts but has failed to repay makes me conclude this Guideline F against Applicant.

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.: For 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.: For the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: For 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.

Philip S. Howe

Administrative Judge