

DATE: September 9, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-27959

AMENDED DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has had a long history of financial difficulties. He has taken little action until recently to contact the creditors and pay off his debts. Based on his tenuous financial situation and his history of financial irresponsibility, Applicant has failed to demonstrate a stable and mature outlook about his finances. Itigation has not been shown. Clearance is denied.

STATEMENT OF THE CASE

On September 12, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant which detailed reasons 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 determine whether clearance should be denied or revoked.

In a signed and sworn statement, dated December 5, 2003, Applicant responded in writing to the SOR allegations. He requested a clearance decision based on a hearing record.

On February 13, 2004, this case was assigned to this Administrative Judge to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on March 3, 2004, and the hearing was held on April 28, 2004.

At the hearing, Department Counsel offered five documentary exhibits (Government Exhibits 1 through 5), and no witnesses were called. Applicant offered three documentary exhibits, (Applicant Exhibits A through C) and offered his own testimony. The record was left open for Applicant to offer additional documents to help clarify his position on some of the debts. He submitted one document, a one page letter from the Department of Treasury, dated April 23, 2004, which has been entered into evidence without objection as Exhibit D. The transcript (TR) was received on May 15, 2004.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline F (Financial Considerations) of the Directive. The SOR contains sixteen allegations, 1.a. through 1.p., under Guideline F. In his Response to the SOR (RSOR), Applicant admitted SOR allegations 1.a., 1.b., 1.d., 1.n., and 1.o. The admitted allegations are incorporated herein as Findings of Fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the documents and the live testimony, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant is a 49 year old employee of a defense contractor who seeks access to classified information. He is married to his second wife, and he has two daughters, ages 26 and 20. Applicant has received a GED, a high school equivalent degree. He served for 24 years in the United States Navy.

Paragraph 1 (Guideline F - Financial Considerations)

The SOR lists a bankruptcy that was eventually filed by Applicant, 1.a. and 1.b, under Adjudicative Guideline F, and fourteen debts that Applicant owed as of June 6, 2003, 1.c. through 1.p, under Adjudicative Guideline F. The bankruptcy and the debts will be discussed in the order that they were listed in the SOR.

1.a. Applicant first petitioned for Chapter 13 bankruptcy in 1994, but the bankruptcy was dismissed in February 21, 1995. His debts were not discharged at that time.

1.b. Applicant again petitioned for Chapter 13 bankruptcy on February 28, 1995. This bankruptcy concluded on September 6, 2000, at which time his debts were discharged.

1.c. This overdue debt to Creditor 1 is listed in the SOR in the amount of \$446, for a state tax lien. Applicant denied that there had ever been a tax lien against him, (TR at 31-33), but Exhibit B, a report from a credit reporting service, establishes that there had been a tax lien against Applicant, and that it had been paid. I conclude that, despite Applicant's testimony, there was a tax lien but the amount of the lien has been satisfied.

1.d. This overdue debt to Creditor 2 is in the amount of \$365.55. In his RSOR, Applicant admitted this debt is due and owing. However, at the hearing he testified that this debt had been resolved (TR at 33-36). I find no evidence that he paid anything on this debt, and I conclude that, based on his RSOR admission, this debt has not been resolved.

1.e. This overdue debt to Creditor 3 is in the amount of \$4,370.16. Applicant first testified that he did not believe he had a credit card from this company or incurred this debt (TR at 36-39). In later testimony, he contradicted himself and stated that he did have a credit card for this company, but he believed that this debt was paid, and he was not responsible for this debt since it was no longer on his credit report (TR at 75-77). Based on his conflicting testimony, his failure to offer any evidence to show that he paid this debt, and the fact that a debt can drop off a credit report and may still be owed, I conclude that this debt has not been resolved.

1.f. This overdue debt to Creditor 4 is listed in the SOR in the amount of \$716. In a signed, sworn statement Applicant made to the Defense Security Service (DSS) on September 18, 2001, Applicant stated regarding this debt, "I agree I owe the balance due and will begin to make monthly payments to the telephone company." (Exhibit2). At the hearing he testified that he has made no payment on this debt (TR at 39-41). I have determined that he owes the entire amount stated.

1.g. This overdue debt to Creditor 5 is listed in the SOR in the amount of \$390.68. Applicant testified that he does not recognize or owe this debt (TR at 41, 42). Yet in Exhibit 2, Applicant stated regarding this debt, "I contacted my daughter and discovered that veterinary services were rendered for my daughter's pet in 1995. I will contact this creditor to make arrangements to pay in full in monthly payments." Applicant has made no payment on this debt, and he currently owes the full amount stated.

1.h. This overdue debt to Creditor 6 is listed in the SOR in the amount of \$599. Applicant testified that he has made no

payment on this debt. His version of the facts leading up to this debt are also less than consistent. In Exhibit 2, Applicant stated regarding this debt for an instructional course, "When I wasn't able to receive additional assistance, I returned the books and cancelled the contract." At the hearing he first denied ever signing a contract or ever receiving any books. Later he testified that he did receive some books but they were just an overview of the course (TR at 42-45). I conclude that he did sign a contract and did receive course materials. There is no way for me to determine if the terms of the contract gave him the legal right to cancel the contract, but based on his inconsistent and multiple versions of the facts of this debt, and his failure to introduce evidence of his version of the facts, I consider him obligated for this debt.

1.i. This overdue debt to Creditor 7 is listed in the SOR in the amount of \$701. Applicant testified that he believed that this debt was discharged in bankruptcy (TR at 45, 46). Applicant's Petition in Bankruptcy does not include this creditor (Exhibit 4). I conclude that this debt is still due and owing.

1.j. This overdue debt to Creditor 8 is listed in the SOR in the amount of \$380. In Exhibit 2, Applicant stated regarding this debt, ". . . I have never used a check cashing service although it's possible the my former spouse had used this service." At the hearing, Applicant testified that he has not used this service and has made no payment on this debt. Since Applicant believed that the debt may have been incurred by his ex-wife when they were married, a debt for which he would be responsible, and he has not done anything to disprove that belief, I conclude that Applicant currently owes the full amount stated.

1.k. This overdue debt to Creditor 9 is listed in the SOR in the amount of \$4,009. The Government has presented evidence and argued that this debt is the same as that listed in 1.e. Applicant concurred that this is the same debt. I conclude that this is the same debt as in 1.e, and that Applicant does not owe this debt, only that listed in 1.e.

1.l. This overdue debt to Creditor 10 is listed in the SOR in the amount of \$423. Applicant testified that he does not recognize or owe this debt (TR at 48) The Government has presented as evidence a credit report listing this debt (Exhibit 3). Based on the credit report and Applicant's less than complete memory regarding his debts, I conclude that Applicant does owe this debt.

1.m. This overdue debt to Creditor 11 is listed in the SOR in the amount of \$530. The Government has presented evidence and argued that this debt is the same as that listed in 1.f. Applicant concurred that this is the same debt. Since both debts are for the same phone company, I conclude that this is the same debt as in 1.f, and that Applicant does not owe this debt, only that listed in 1.f.

1.n. This overdue debt to Creditor 12 is in the amount of \$71. In his RSOR, Applicant admitted this debt is due and owing. At the hearing, he testified that he would be now be resolving this debt because he recently received verification that he owed this debt (TR at 49, 50). In his statement to DSS on September 18, 2001, he stated, "I agree with the balance due and will pay this account in full." (Exhibit E). Based on the serious time lapse from when he first indicated he would pay this creditor, I cannot conclude that this debt will be resolved.

1.o. This overdue debt to Creditor 13 is in the amount of \$50. In his RSOR, Applicant admitted this debt is due and owing. At the hearing, he testified that he had satisfied this debt in 2003 (TR at 50, 51). While he did not introduce evidence showing that the debt had been paid, he did seem

certain in his testimony that this was a debt he had paid (TR at 50, 51). I therefore, conclude that this debt has been satisfied.

1.p. This debt to Creditor 14 is in the amount of \$783. At the hearing, the Government withdrew this allegation, stating that this debt was not correct (TR at 51,52). I do not consider this debt to be owed by Applicant.

Much of Applicant's early financial difficulties arose during the period that he was in the Navy in 1993, stationed for a tour of duty in Japan. During this period, Applicant's wife at the time did not keep current on their bills, and he testified that when he returned to the United States in 1994, he found that he was almost \$38,000 in debt (TR at 29, 30). Applicant resolved much of that debt in the bankruptcy discussed above. However, his finances did not resolve themselves after that time.

As recently as last year, 2003, Applicant traded in a 1998 truck that he owned, and on which he still owed \$10,000, to purchase a new truck. The dealer added the money that he still owed to the financing for the new truck, resulting in him owing \$38,000 for the new truck and having monthly payments of \$634. Applicant was not able to make the payments, and his truck was repossessed. Applicant could not testify as to how much he is liable for the truck after its sale at auction.

Applicant has consulted a credit counseling service, and he is attempting to resolve his credit problems. However, at this point, he has a long way to go before they are resolved.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. 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.*

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.

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).

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 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. Assessment of Applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about Applicant's judgment, reliability, or trustworthiness, 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

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following with respect to guideline F:

With respect to Guideline F, the Government has established that Applicant has had a long history of financial difficulties. The evidence has shown that after his bankruptcy discharged his debts, he incurred new overdue debts. Yet, Applicant has taken far too little action to contact the creditors and pay off these debts. Based on his tenuous financial situation and his history of financial irresponsibility, Applicant has failed to demonstrate a stable and mature outlook

about his finances. I, therefore, resolve Guideline F against Applicant.

Regarding the Disqualifying Conditions (DC) under Guideline F, I conclude DC E2.A6.1.2.1. applies because of Applicant's history of not meeting financial obligations. I find that Mitigating Conditions (MC) E2.A6.1.3.3 applies because some of Applicant's past financial difficulties occurred because of his ex-wife's failure to pay the bills during the time he was stationed overseas, which was largely beyond Applicant's control. However, this does not overcome Applicant's lack of financial maturity which has manifested itself as recently as 2003, when the new truck he purchased was repossessed because he could not make payments on it.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1, Financial Considerations, Guideline F: Against Applicant

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: For Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: For Applicant

Subparagraph 1.n.: Against Applicant

Subparagraph 1.o.: For Applicant

Subparagraph 1.p.: For Applicant

DECISION

In light of all the circumstances and facts presented by the record in this case, it is clearly not consistent with the national interest to grant or continue a security clearance for Applicant.

Martin H. Mogul

Administrative Judge