

DATE: November 17, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-28582

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Lynette Andresen, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of delinquent debts which exceed \$19,000.00. Despite past promises and apparent resources, he continues to refuse responsibility for some of the listed debts, while failing to take any action to resolve even those he accepts responsibility for. Applicant fails to mitigate security concerns associated with his delinquent debts. He also fails to mitigate personal conduct concerns arising from falsifying his security clearance application. Only the criminal implications associated with his falsification of his clearance application is he able to successfully mitigate. Clearance is denied.

STATEMENT OF THE CASE

On September 30, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant. The SOR 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, and recommended referral to an administrative judge for determination whether clearance should be granted or continued.

Applicant responded to the SOR on October 22, 2003, and elected to have his case decided on the basis of the written record. Applicant received the file of relevant materials (FORM) on June 1, 2004, but failed to it within the 30 days provided him. The case was assigned to me July 7, 2004.

SUMMARY OF PLEADINGS

Under Guideline F, Applicant is alleged to have accumulated seven delinquent debts totaling in excess of \$19,000.00, notwithstanding a personal financial 2002 statement that reflects a net monthly remainder of \$1,430.00.

Under Guideline E, Applicant is alleged to have falsified his security clearance application (SF-86) by omitting (a) his repossessed vehicle, (b) his debts over 180 and 90 days delinquent, respectively, (c) his felony police charges and/or

convictions, and (d) his alcohol/drug arrests and/or convictions. Applicant's SF-86 omissions are incorporated under Guideline J.

For his answer to the SOR, Applicant admitted most of his delinquent debt allegations, denying only his credit line delinquency with creditor 1.g and his lack of effort in paying his debts. Applicant admits most of his alleged omissions, denying only his alleged deliberate omission of his repossessed vehicle, which he claims to have had no knowledge of prior to executing his SF-86. He claims a lack of understanding of the questions covering several of his omissions.

FINDINGS OF FACT

Applicant is a 37-year-old driver for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant experienced financial problems in the past and accumulated a number of delinquent debts he has not resolved, seven in all that exceed \$19,000.00. His debts entail mostly credit card and lines of credit obligations that were incurred either by himself or his former girlfriend. Each of his debts are carried on his credit report as his own and are attributed to him absent documented proof that the debts did not belong to him. One of the listed debts attributed to Applicant (creditor 1.c) involves a repossessed mobile home in the amount of \$7,159.00. Applicant denies any knowledge of a deficiency, but provides no documentary proof of inquiries to the creditor about the debt. This debt, too, is listed on his credit report as a bad debt on an account he opened in 1996. Absent any documented proof of no deficiency on this repossession, the listed debt must be accepted as a legitimate deficiency still owing to the creditor.

Applicant listed a positive remainder in the personal financial statement he supplied the interviewing Defense Security Service (DSS) agent who interviewed him in May 2002. Whether this positive number has changed since his interview is not known. Applicant did make promises in his interview to address some of his debt delinquencies (disputing others he claimed not to have personally accrued). However, he provides no proof of his paying or otherwise resolving any of his listed delinquent debts. Nor does he furnish any explanations of circumstances that might have prevented him from addressing his old debts with the resources he has available to him. Inferences warrant that he has failed to address his debt delinquencies despite promises to do so and the resources to make considerable headway with his debts.

Asked to complete an SF-86 in February 2002, Applicant answered **no** to a number of material background questions: question 35 (inquiring about prior repossessions), question 38 (inquiring about delinquencies over 180 days), question 39 (inquiring about delinquencies over 90 days), question 21 (inquiring about prior felony arrests and charges), and question 24 (inquiring about prior alcohol/drug related offenses). In answering **no** to these questions without any qualifications or explanations, Applicant omitted not only his mobile home repossession and debt delinquencies, but his prior felony arrest (later dismissed) on burglary charges in June 1985 and a host of alcohol-related arrests and charges. His alcohol-related charges encompass an arrest in August 1986 for DuI with a blood alcohol content (BAC) of .08 per cent or higher (released when sober with a notice to appear in court), an arrest in January 1987 for DuI with a BAC of .08 per cent or higher (sentenced to two days in jail) and an arrest in October 1989 on charges of being drunk in public.

Claiming he either failed to understand the state of his debts or the questions posed regarding his prior offenses, he denies any knowing and wilful falsification of his February 2002 SF-86. Applicant's debts, however, appear to be very dated without any indications of his addressing them prior to completing his SF-86. Without any more in the way of explanations from Applicant, he cannot avert inferences on this paper record of knowing and wilful falsification. Misreading the questions covering his prior felony burglary and alcohol-related arrests cannot be accepted either on the strength of his written claims. The questions themselves are straightforward attempts to elicit information about the applicant's arrests, charges and convictions, areas of legitimate background interest to the Government. Inferences of knowing and wilful falsification cannot be averted as to these omissions by Applicant. Not until interviewed in May 2002 and inferentially confronted with the adverse information by the interviewing DSS agent did Applicant disclose his delinquent debts and assorted arrests/charges.

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list Guidelines to be considered by judges in the decision

making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Financial Considerations

The Concern: An individual who is financially overextended is at risk at having to engage in illegal acts to generate funds. Unexplained influence is often linked to proceeds from financially profitable criminal acts.

Disqualifying Conditions

DC 1. A history of not meeting financial obligations.

DC 3. Inability or unwillingness to satisfy debts.

Mitigating Conditions: None

Personal Conduct

Basis: conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Disqualifying Conditions:

DC 2 The deliberate omission, concealment, falsification or misrepresentation 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.

Mitigating conditions:

MC 2 The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily.

MC 3 The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts.

Criminal Conduct

Disqualifying Conditions:

DC 1 Allegations or admission of criminal conduct.

DC 2 A single serious crime or multiple lesser offenses.

Mitigating Conditions:

MC 6 There is clear evidence of successful rehabilitation.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the SOR and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSION

Applicant accrued considerable delinquent debt prior to 2002, which he permitted to become delinquent. The seven debts of concern to the Government exceed \$19,000.00, and have not been addressed by Applicant in any way that can be documented. Besides accumulating considerable debt delinquencies, Applicant falsified his February 2002 SF-86 in several areas. These determined deliberate omissions serve to impair the confidence in his judgment, reliability and trustworthiness required to continue his eligibility to access classified information.

Financial history

Despite promises made to his DSS interviewer in 2002 to pay some of his listed debts (disputing others) and demonstrated available resources to address his delinquent debts, Applicant remains obligated to all of his listed creditors based on his record statements and last available credit report. On this record, two of the disqualifying conditions (DC) of the Adjudicative Guidelines for financial considerations apply: DC 1 (history of not meeting financial obligations) and DC 3 (inability or unwillingness to satisfy debts).

Applicant's debts are neither extenuated nor mitigated enough to enable him to take advantage of any of the mitigating conditions at this time. The Appeal Board has counseled against according much weight to belated promises or efforts to address delinquent debts well after the security clearance process has been initiated. *See* ISCR Case No. 02-33581 (July 20, 2004).

Taking into account all of the circumstances of Applicant's accumulated debts and the absence of sufficient attention he has shown with his debts in the past, unfavorable conclusions warrant with respect to subparagraphs 1.a through 1.h of the allegations governed by the Adjudicative Guidelines pertinent to Guideline F.

Falsification issues

Potentially serious and difficult to reconcile with the trust and reliability requirements for holding a security clearance are the timing and circumstances of Applicant's repossession and debt omissions and his arrest/charge omissions in his executed February 2002 SF-86. So much trust is imposed on persons cleared to see classified information that the margins for tolerance for lapses in candor must necessarily be small.

By omitting his mobile home repossession, old debts (over 180 and 90 days delinquent, respectively), and his felony burglary and alcohol-related arrests of the mid-1980s, Applicant concealed materially important background information needed for the government to properly process and evaluate his security updates. His claims of confusion over the state of his debts and misreading of the pertinent questions are not support by either the straight forward nature

of the questions or his stated misunderstandings and cannot be accepted. Applicant's omissions were knowing, deliberate, and material to a determination about his clearance suitability. They invite application of Disqualifying Conditions (DC) for personal conduct of the Adjudicative Guidelines: DC 2 (deliberate falsification of a security questionnaire).

Mitigation is difficult to credit Applicant with, since he failed to take advantage of his initial interview opportunity to voluntarily disclose the omitted information without manifest confrontation. Not only has our Appeal Board found the use of Mitigating Condition (MC) 2 of the Adjudicative Guidelines for personal conduct (isolated, corrected falsification) to be unavailable to applicants seeking mitigation by treating the omission as isolated, but it has denied applicants availability of MC 3 (prompt, good faith disclosure) as well in circumstances (as here) where the applicant has failed to take advantage of an DSS interview opportunity to timely disclose the omitted information voluntarily. *See* ISCR Case No. 97-0289 (January 1998). Failing to demonstrate his DSS interview disclosures were made free from confrontation, Applicant may not take advantage of either MC 2 (isolated omissions) or MC 3 (prompt, good faith correction of the falsification) of the Adjudicative Guidelines for personal conduct.

Considering all of the evidence produced in this record and the available guidelines in the Directive (inclusive of the E.2.2 factors), unfavorable conclusions warrant with respect to subparagraphs. 1.a through 1.d of Guideline E.

Criminal coverage of falsification issues

That not all of Applicant's SF-86 omissions resulted in formal charges and adjudication against Applicant does not mean that the falsification issues may not be raised and considered anew in a clearance proceeding such as the present. Our Appeal Board has repeatedly stated that the Government can prove applicant engagement in criminal conduct, even in the absence of a criminal conviction. *Cf.* ISCR Case No. 94-1213 (June 7, 1996). Accordingly, two of the disqualifying conditions of the Adjudication Guidelines for criminal conduct may be invoked: DC 1 (criminal conduct regardless of whether the person was formally charged) and DC 2 (a single serious crime or multiple lesser offenses).

Unlike Guideline E-covered omissions, Guideline J is designed to afford more recognition to an applicant's overall judgment and reliability history. Still, an applicant must meet the requirements of at least some of the mitigation conditions if he is to successfully mitigate its related falsification parameters under 18 U.S.C. Section 1001.

Applicant's belated coming forward with his full disclosure of his repossession, aged debts and alcohol-related arrests/charges in his initial DSS interview (while not free from confrontation) represented a positive shift in his attitude about withholding material background information about his finances and arrest history. His disclosures are enough to meet the mitigation requirement of evidenced clear rehabilitation to entitle him to take advantage of MC 6 (clear evidence of successful rehabilitation) of the Adjudication Guidelines at this time. Based on a full review of the evidence and drawn inferences from the developed record, favorable conclusions warrant with respect to subparagraph 3.a of Guideline J of the Guidelines.

In reaching my decision, I have considered the evidence as a whole, including each of the E 2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

GUIDELINE F (FINANCIAL): AGAINST APPLICANT

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

Sub-para. 1.d: AGAINST APPLICANT

Sub-para. 1.e: AGAINST APPLICANT

Sub-para. 1.f: AGAINST APPLICANT

Sub-para. 1.g: AGAINST APPLICANT

Sub-para. 1.h: AGAINST APPLICANT

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Sub-para. 2.a: AGAINST APPLICANT

Sub-para. 2.b: AGAINST APPLICANT

Sub-para. 2.c: AGAINST APPLICANT

Sub-para. 2.d: AGAINST APPLICANT

GUIDELINE J (CRIMINAL CONDUCT): FOR APPLICANT

Sub-para. 3.a: FOR 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 Applicant's security clearance. Clearance is denied.

Roger C. Wesley

Administrative Judge