

DATE: July 12, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-29380

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR.

APPEARANCES

FOR GOVERNMENT

Nichole L. Noel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's falsification of his clearance application and financial irresponsibility renders him an unsuitable candidate for a security clearance. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 14 November 2003 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of personal conduct, financial considerations, and criminal conduct. ⁽¹⁾ Applicant answered the SOR in December 2003 and requested a decision without hearing. He responded to the Government's File of Relevant Material (FORM), issued 24 March 2004. The record closed 14 May 2004, the day Department Counsel indicated no objection to the response and the case was assigned to me 20 May 2004 to decide if clearance should be granted, continued, denied, or revoked.

FINDINGS OF FACT

Applicant admitted falsifying his clearance application ⁽²⁾ and having had financial difficulties. ⁽³⁾ He denied that his falsification was criminal (3.a.). Accordingly, I incorporate his admissions as findings of fact.

Applicant--a 41-year-old aviation mechanic for a defense contractor--seeks access to classified information. He previously had a clearance while employed by a different defense contractor from 1991 to 1996.

When Applicant applied for his security clearance in February 2002, he failed to disclose a May 1997 arrest and conviction for DUI. When asked by investigators about this omission in June 2002, he denied any intent to mislead the Government, but acknowledged he omitted the arrest because he thought it had dropped off his record--implying he thought it would not be discovered by government investigators. His answer admits that he omitted the arrest because he thought it would disqualify him from getting a clearance. Applicant also omitted a February 1983 DUI arrest from his

application. He was not asked about the arrest in June 2002 but his answer asserts that he simply forgot about it and so did not intend to mislead the Government. Department Counsel concedes that Applicant disclosed this arrest on his 1991 clearance application, thus obviating a falsification charge.⁽⁴⁾

On his February 2002 clearance application, Applicant disclosed a September 1997 chapter 7 bankruptcy discharge which relieved him and his wife from over \$83,000.00 in outstanding debt. Applicant had fallen behind on his payments after returning to the U.S. from a high-paying job overseas in December 1996.⁽⁵⁾ Between December 1996 and June 1997 (when he filed his chapter 7 petition), Applicant was unemployed for three months, relocated to take a job that disappeared after only one month, and relocated again for a job that lasted about 17 months before disappearing for economic reasons. Even after his chapter 7 bankruptcy discharge, Applicant experienced job instability, relocating four times for five different jobs of varying length, before relocating to his current position in November 2001. This job instability contributed to the five delinquent debts totaling about \$2,900.00 alleged in the SOR.

Applicant did not disclose these delinquent debts on his clearance application. When he was asked about these debts in June 2002, he explained he was unaware of the debts and thought he had stayed current with his expenses since his bankruptcy. The Government accepted this explanation as no falsification was alleged in the SOR for this omission. However, during the June 2002 interview, Applicant prepared a personal financial statement showing he was paying \$200.00 on the back rent balance (2.f.) that he now denies owing, and had the means to pay the other four delinquent accounts--which he promised to pay off by June 2003 (12 months hence). However, he did not pay them off, or even reach a repayment agreement with the creditors, until after he received the SOR. Applicant's answer provided proof that he paid all \$300.00 of past-due utility accounts (2.c., 2.d., 2.e.) in December 2003 and paid \$600.00 (about half) of an unpaid furniture judgment (2.b.) the same month. He paid these debts by taking a loan against his retirement account. He claimed to be disputing the back rent debt, while also claiming payments that he did not corroborate.

Applicant explained the delay in addressing these past-due debts as due to his mother's falling ill in fall 2002 and dying in January 2003, his wife's loss of work hours because of the declining economy, and their efforts to clean up other past due accounts so they could buy their home.

POLICIES

The Directive, Enclosure 2 sets forth adjudicative guidelines 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 fairly raised by the facts and circumstances presented. Each adjudicative 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 for or against Applicant. However, specific adjudicative 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. Considering the SOR allegations and the evidence as a whole, I conclude the relevant, applicable, adjudicative guidelines are Guideline E (Personal Conduct), Guideline F (Financial Considerations), and Guideline J (Criminal Conduct).

BURDENS

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove--by something less than a preponderance of the evidence--controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then 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.

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 those who must protect national interests as their 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.⁽⁶⁾

CONCLUSIONS

The Government established its case under Guideline E and J and Applicant did not mitigate the security concerns. Applicant believed he would not get his clearance if he disclosed his May 1997 DUI conviction, so deliberately omitted it from his February 2002 clearance application.⁽⁷⁾ He believed the conviction had dropped from his record and would not be discovered by government investigators. He intended to mislead the government by this omission and his omission had the potential to affect the course of his background investigation. This conduct violated 18 U.S.C. §1001.⁽⁸⁾ Although, he disclosed this conviction when questioned about arrests in June 2002, he had not volunteered the information before then and I infer he did so when asked because he deduced the agent may have uncovered the arrest. I conclude Guideline E and J against Applicant.

The Government established its case under Guideline F and Applicant did not mitigate the security concerns. Although the financial straits that led Applicant to file chapter 7 bankruptcy in 1997--and contributed to a tight budget until January 2001--might reasonably be seen as beyond his control,⁽⁹⁾ Applicant's response to his delinquent accounts after becoming aware of them in June 2002 bespeaks a financial irresponsibility inconsistent with access to classified information.⁽¹⁰⁾

While I do not fault Applicant for turning his attention to his dying mother in late 2002, his answer implies that the expenses of her last illness and his wife's loss of work hours caused him some financial difficulty, and it was this financial difficulty, not the delinquent accounts he knew about since June 2002, that he chose to address in order to take on more debt by buying his home. Not until he received the SOR was he spurred into action on his old debts, and even then he has substantiated only a portion of the steps he has taken to address the five debts. There is no evidence how Applicant intends to resolve the remaining half of the furniture judgment (2.b.) or the unpaid back rent (2.f.) whether paid or contested in court. I conclude Guideline F against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline E: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: For the Applicant

Paragraph 2. Guideline F: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Paragraph 3. Guideline J: AGAINST the Applicant

Subparagraph 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 Applicant.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. Although he denied intentionally omitting a 1983 DUI arrest (1.b.)
3. Although he denied owing back rent (2.f) and failing to deal with his past due debts (1.g.).
4. I agree, and so find for Applicant on the alleged omission of the February 1983 DUI (1.b.).
5. Applicant served in the U.S. Air Force for 9½ years, attaining the rank of Staff Sergeant (paygrade E-5). In 1991, he had just returned from deployment in the middle-east and was faced with the difficult choice of re-enlisting--which would result in his re-deployment to the middle-east after only three months in the U.S. with his new wife--or accepting an employment offer, at higher wages, with a defense contractor--which would also require him to return to the middle-east, but which would allow him to take his wife with him overseas. Applicant took the overseas job with the defense contractor, took his family to the middle-east, and remained there until December 1996, when increased terrorist activity led him to return to the U.S. with his family for safety reasons.
6. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
7. E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from [written form]. . . used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;
8. E2.A10.1.2.1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged; E2.A10.1.2.2. A single serious crime or multiple lesser offenses.
9. E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment. . .).
10. E2.A6.1.2.1. A history of not meeting financial obligations; E2.A6.1.2.3. Inability or unwillingness to satisfy debts;