

DATE: August 29, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-29884

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Department Counsel

FOR APPLICANT

Jason C. Mills, Esquire

SYNOPSIS

Between December 1997 and January 2002, Applicant was arrested four times. All charges were dismissed. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from the criminal conduct. Applicant also owed approximately \$31,000 to eight creditors. Two of the creditors are being repaid through a consumers credit counseling service. However, he has made no payment on the other six debts, which total in excess of \$23,000. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On September 2, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant due to Criminal Conduct and Financial Considerations security concern.

On September 22, 2004, DOHA received Applicant's answer to the SOR and request for a hearing. On December 1, 2004, I was assigned the case. On December 1, 2004, a Notice of Hearing was issued scheduling the hearing which was held on December 15, 2004. The record of the hearing was kept open to allow Applicant to present additional documents. Several documents were received and admitted into the record. On December 27, 2004, DOHA received a copy of the transcript (Tr.).

FINDINGS OF FACT

After a thorough review of the entire record, I make the following findings of fact:

The Applicant is 29 years old and has worked for a defense contractor since February 1997. He is seeking to obtain a security clearance. The Applicant is regarded by those who know him as hard working, very diligent, dedicated, a

success and team-oriented engineer. (App Ex B) He is kind, honest, trustworthy, self motivating, hard working, professional, possessing great integrity, and is extremely dedicated to family and work. (App Ex C)

On December 29, 1997, Applicant--then age 21--was charged with simple battery and simple criminal damage to property. (Gov Ex 3) In college, Applicant had two jobs in order to pay child support. He got into an argument with his girlfriend about Applicant paying for an apartment for his girlfriend and his son. Applicant was already working two jobs and trying to maintain his GPA. Applicant's ex-girlfriend's mother told police she witnessed Applicant grab her daughter's coat and twice slammed her daughter to the ground and then push her into her car, doing damage to the car. Applicant states the mother of his then girlfriend had a "very creative imagination." (Tr. 26) In September 1999, the victim signed a drop request and the charges were dismissed.

In November 1998, Applicant was in line to attend a fraternity party. There was a disturbance at the party not involving Applicant. Everyone was told to leave. Applicant was attempting to leave the area when grabbed by police, maced with a chemical spray, and beaten with night sticks. He fought back and was charged with assault on three police officers. The charges were dropped after Applicant agreed not to sue the city.

On October 20, 1999, Applicant was arrested for illegal use of a weapon. Applicant discharged a firearm into the ground in the backyard of his residence following a confrontation with his ex-girlfriend. Applicant says he was target shooting in his back yard. In December 1999, he pleaded no contest to the charge. The gun was ordered destroyed. He received minimum probation, required to graduate from college, obtain a job, and stay out of trouble. In October 2000, after obtaining his current job, the charges were dismissed.

In February 2002, Applicant received a citation for assault. Applicant says he ended the relationship and was moving out of their apartment. His ex-girlfriend was upset and told the police he had assaulted her. Applicant denies he ever assaulted her. In July 2002, the charge was dismissed.

Applicant had financial problems and a number of debts remain unpaid, totaling about \$23,000. Starting in 1997, while attending college, he incurred a significant amount of debt. Five accounts (SOR 2.a \$4,514, SOR 2.d \$2,714, SOR 2.f \$8,022, SOR 2.g. \$2,403, and SOR 2.h \$5,291) were placed for collection. Three other debts totaling about \$7,800 were charged off. The eight debts total approximately \$31,000.

In August 2002, Applicant discussed his finances with a Defense Security Service (DSS) special agent. Applicant said he would contact a consumer credit counseling service (CCCS) in September 2002 to establish a repayment plan to address his past due debt. (Gov Ex 2). The CCCS plan was to pay \$340 per month to repay debts totaling \$15,403. (Gov Ex 4) In September 2002, Applicant made a \$25 payment to CCCS. However, action on a repayment plan stopped when the person handling his case left CCCS. In 2003, Applicant entered into a new agreement with CCCS whereby he would pay \$389 per month on debts totaling \$17,540. In September 2003, November 2004, and December 2004, Applicant made \$332 payments to CCCS. The CCCS repayment plan lists two accounts with one creditor (SOR 2.e) and one account with another creditor (SOR 2.b). None of the other debts are listed in the SOR are in the repayment plan.

At the hearing, Applicant disputed he owed the debt for \$4,514 listed in SOR 2.a. However, during his August 2002 DSS interview and in his response to the SOR, he admitted owing this creditor the full amount. In his response to the SOR, Applicant stated the debt was for a car purchased during college. He has made no payment on the debt. SOR 2.b (\$5,074) is included in the CCCS repayment plan. Applicant asserts he has disputed the debt listed in SOR 2.c (\$801) although he acknowledged owing the debt during his August 2002 DSS interview. He provided no documentation supporting his claim that he has disputed the debt. Applicant admits owing the debt for \$2,714 listed in SOR 2.d. and asserts it is in his CCCS repayment plan or that the debt has been resolved. The creditor listed in SOR 2.d does not appear on Applicant's CCCS repayment plan. Applicant denies owing the debt for \$2,173 listed in SOR 2.e and says it is the same debt as SOR 2.d.

Applicant also asserts he has disputed the debt for \$8,022 listed in SOR 2.f. Applicant provided no documentation supporting a dispute. He disputes owing the \$2,403 debt listed in SOR 2.g.; however, he admitted in his August 2002 DSS interview he owed \$2,416 on the original obligation. Following the hearing, Applicant submitted a letter to the credit bureau disputing SOR 2.g. debt because it was more than seven years old.

Applicant disputes he owes the \$5,291 debt placed for collection as alleged in SOR 2.h. The debt did not appear on any of the credit reports presented. This debt was disputed in the same letter, submitted by Applicant following the hearing, to the credit bureau following the hearing stating he did not know who the creditor was. At the hearing, Applicant did not dispute he owed this creditor some amount, but was disputing the amount listed on the SOR. (Tr. 42)

Applicant no longer uses credit cards and is trying to repair his credit in hopes of becoming a homeowner. He last used credit cards in 2000. His current annual income is approximately \$60,000.(Tr. 53) Applicant has been making regular payments on his student loan account. As of June 2003, he was eligible to participate in the loan rehabilitation program. (Gov Ex 4) There is no showing Applicant accepted this offer.

POLICIES

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guidelines to be applied here are Guideline J (Criminal Conduct) and Guideline F (Financial Considerations).

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. [\(2\)](#)

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information to be resolved in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline J (criminal conduct). The security eligibility of an applicant is placed into question when that applicant is shown to have a history or pattern of criminal activity creating doubt about his judgment, reliability, and trustworthiness. Between December 1997 and January 2002, Applicant was arrested four times, twice for assault, once for illegal use of a weapon, and once for battery. Because of these incidents, DC 1 (E2.A10.1.2.1. *Allegations or admission of criminal conduct, regardless of whether the person was formally charged.*) and DC 2 (E2.A10.1.2.2. *A single serious crime or multiple lesser offenses.*) apply.

The most recent arrest occurred in January 2002, which was approximately three years before the hearing. This behavior is not recent. MC 1 (E2.A10.1.3.1. *The criminal behavior was not recent.*) applies. Only one of the arrests occurred after Applicant left college. He is now gainfully employed. Friends, coworkers, and supervisors indicated he is hard working, diligent, kind, honest, trustworthy, and is extremely dedicated to family and work. Applicant's change of lifestyle show clear evidence of successful rehabilitation. MC 6 (E2.A10.1.3.6. *There is clear evidence of successful rehabilitation.*) I find for Applicant as to the criminal conduct concerns.

The Government has satisfied its initial burden of proof under Guideline F (financial considerations). A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant owed eight debts totaling approximately \$31,000. DC 1 (E2.A6.1.2.1. *A history of not meeting financial obligations*) and DC 3 (E2.A6.1.2.3. *Inability or unwillingness to satisfy debts*) apply.

Applicant has established a repayment plan through CCCS to address the debts listed in SOR 2.b. and 2.e. MC 6 (E2.A6.1.2.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*) applies to these debts. I find for Applicant as to SOR 2.b. and 2.e.

However, Applicant has made no payment on the remaining six debts. At and after the hearing, Applicant disputed he owed some of the alleged debt, the same debts he had previously acknowledged owing. He disputed owing the \$4,514 debt listed in SOR 2.a. During his August 2002 DSS interview he admitted owing this creditor the full amount. In his response to the SOR, Applicant stated the debt was a car loan for a car purchased during college. Applicant says he has disputed SOR 2.c. , SOR 2.f., and SOR 2.g. with the creditors, but provided no supporting documentation. He acknowledged owing the SOR 2.c. debt during his August 2002 DSS interview. Applicant now disputes owing the debt listed in SOR 2.g., however, he admitted in his August 2002 interview he owed the creditor \$2,416 on the debt. Following the hearing, Applicant submitted a letter to the credit bureau disputing SOR 2.g. debt because it was more than seven years old. Applicant asserts, but provides not documentation supporting his assertion, that the debts listed in SOR 2.d. and SOR 2.e. are the same debt. Without documentation to the contrary, I find these are two separate debts. Lacking supporting documentation, I find Applicant owes the six remaining debts which total more than \$23,000 listed in the SOR.

None of the mitigating conditions apply to these debts. MC 1 (E2.A6.1.2.1. *The behavior was not recent*) does not apply. Even though some of the debts were incurred years ago when Applicant was in college, because the debts remain unpaid they are recent. MC 2 (E2.A6.1.2.2. *It was an isolated incident*) does not apply because there are six debts. There was no showing the debts were caused by factors beyond Applicant's control. Applicant's current salary is approximately \$60,000. Some of the debts were incurred while Applicant was attending college, but for the last eight years he has been employed and should have been able to make some payment on his past due obligations. There has been no showing Applicant has received financial counseling nor is there any indication his financial difficulties are under control. Applicant went to CCCS, but there is no showing what, if any, knowledge he gained from CCCS.

For MC 6 (E2.A6.1.2.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*) to apply to the six debts there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good faith effort to repay. A systematic, concrete method of handling his debts is needed, which is not present here. Because the six debts remain unpaid, I find against Applicant as to SOR 2.a., 2.c., 2.d., 2.f., 2.g., 2.h., and against him as to financial considerations.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the

circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Criminal Conduct: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Paragraph 2 Financial Considerations: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: Against the Applicant

Subparagraph 2.d.: Against the Applicant

Subparagraph 2.e.: For the Applicant

Subparagraph 2.f.: Against the Applicant

Subparagraph 2.g.: Against the Applicant

Subparagraph 2.h.: 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. Clearance is denied.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.
2. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15