

DATE: September 3, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31103

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN G. METZ, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

Marc E. Curry, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Although Applicant's financial difficulties were largely beyond his control, and he is willing to address his indebtedness, he appears to lack the financial means to do so at this time. While Applicant has been unemployed and under-employed for substantial periods, the record is silent on what steps Applicant took to reduce his expenses when his income was low. Clearance denied.

**STATEMENT OF THE CASE**

On 16 January 2003, 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<sup>(1)</sup> that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 7 February 2003, Applicant answered the SOR and requested an administrative decision on the record. Applicant did not respond to the File of Relevant Material (FORM), issued 9 May 2003. The record closed on 27 June 2003, the date the response was due at DOHA. The case was assigned to me on 17 July 2003.

**FINDINGS OF FACT**

Applicant denied the allegations of the SOR except for subparagraph 1.c. He had provided proof of payment of the debt at subparagraph 1.a. in his response to interrogatories in October 2002. He asserted that his mortgage had not been 30 days past due in May 2002 (1.b.), that he had paid the debt at 1.d., and that he was not running a negative cash flow in October 2002 (1.i.). He claimed that the debt at 1.e. was the same debt as 1.a., paid in September 2002.<sup>(2)</sup> He stated the debts at 1.f. and g. had been written off by the creditor hospitals.<sup>(3)</sup> He did not answer whether he had a bankruptcy filing in 1995 (1.h.), so I infer a denial of this allegation.<sup>(4)</sup>

Applicant--a 39-year old employee of a defense contractor--seeks access to classified information. He has previously held a clearance for this contractor. He has attended the same church for 18 years, been married to the same woman for

17 years, lived in the same house for 16 years, and been employed--on and off--by the same contractor since 1984. He has three children and is involved in their sports activities and their scouting activities as a scoutmaster for 10 years. He is a member of a local civic organization.

On 30 November 2001, Applicant executed a Security Clearance Application (SCA)(SF 86)(Item 4) on which he truthfully disclosed a variety of adverse financial circumstances. He was being rehired by his employer in January 2002 after having been laid off since 2000. Since 1984 he had been subject to company-wide layoffs three times. He was laid off in 1988, recalled for six months in 1994-95, and then laid off again. He filed for chapter 7 bankruptcy protection in November 1995 and was discharged of all debts in April 1996. He remained laid off until 1998, when he was recalled until 2000. He was laid off the third time in 2000. During his unemployment periods, he has worked at whatever jobs he could find, sometimes at minimum wage. During this same period of time, he and his family have had medical expenses that they have been unable to cover.

The SOR alleges Applicant's 6 delinquent debts, one of which (1.a.) had been paid before the SOR was issued. The remaining debts remain unpaid. In addition, Applicant's mortgage has been paid late many times since he obtained it in 1987, several times as late as 60 or 90 days. His October 2002 Personal Financial Statement (PFS)(Item 10) shows a monthly deficit if he makes the full amount of his mortgage and car payments, but the PFS reflects that he is only paying \$169.00 per month of his \$667.00 mortgage payment and \$60.00 per month of his \$332.00 car payment. He is not paying on any of the debts listed in the SOR.

Applicant expresses a willingness to get his finances in order but acknowledges that he is on a tight budget. He hopes that anticipated overtime pay will enable him to address his finances sooner than he is currently able.

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section 6.3. and in Enclosure (2) of the Directive. 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.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

### **FINANCIAL CONSIDERATIONS (GUIDELINE F)**

E2.A6.1.1. The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

E2.A6.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A6.1.2.1. A history of not meeting financial obligations;

E2.A6.1.2.3. Inability or unwillingness to satisfy debts;

E2.A6.1.3. Conditions that could mitigate security concerns include:

E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment. . . divorce or separation).

### **Burden of Proof**

Initially, the government must prove controverted facts alleged in the SOR. If the government meets that burden, the burden of persuasion then shifts to the 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.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. Where facts proven by the government raise doubts about an applicant's judgment, reliability or trustworthiness, the 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**

The government has established its case under Guideline F and Applicant has not mitigated the concerns. The record evidence clearly establishes his indebtedness and his current inability to address that indebtedness in a systematic fashion. While circumstances beyond his control have contributed greatly to the original indebtedness, Applicant's periods of unemployment and underemployment have been substantial, yet the record is silent--because he did not respond to the FORM--on what steps, if any, Applicant had taken to reduce expenses during those periods. He was discharged of all debts in 1996, yet continued to experience financial difficulties because of continued employment problems.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and not isolated; indeed they are ongoing. While I accept Applicant's willingness to try to resolve his debts, it does not appear that Applicant has stopped digging himself into a financial hole, much less started to pull himself out of it. I resolve Guideline F against Applicant.

### **FORMAL FINDINGS**

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph a: For 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

Subparagraph h: Against the Applicant

Subparagraph i: 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, as amended, and Department of Defense Directive 5220.6, dated 2 January 1992--amended by Change 3 dated 16 February 1996 and by Change 4 dated 20 April 1999 (Directive).
2. However, it is not. While the debt at 1.a. has a duplicate entry in Applicant's Credit Bureau Report (CBR)(Item 9) that corresponds to Applicant's assertions of double entry, the debt at 1.e. is to the same underlying creditor at a different billing address and with a different account number. Applicant's sworn statement (Item 5) acknowledged the debt at 1.e. as separate from the debt at 1.a.
3. Except for the debt at 1.a., Applicant provided no corroboration of his claims of payment or that debts had been written off by creditors,
4. Although Applicant disclosed this bankruptcy filing on his clearance application (Item 4).