

DATE: September 28, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31753

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esq., Department Counsel

FOR APPLICANT

Ronald C. Systus, Esquire

SYNOPSIS

Applicant's history of indebtedness is mitigated by (1) the isolated nature of the conduct, (2) the remedial measures taken to prevent future financial difficulties, and (3) his good-faith effort to settle both debts. Though the omission of both debts from his security clearance application (SCA) in May 2002 resulted from unusual as well as confounding circumstances, the credit bureau report (CBR) provided Applicant a good-faith though misplaced belief the one debt was paid. The omission of the other debt was based on oversight and his impression (later confirmed by the three credit agencies) the debt was not his responsibility. Clearance is granted.

STATEMENT OF CASE

On July 28, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6, dated January 2, 1992, as reissued through Change 4 thereto, dated April 20, 1999, issued an SOR to the 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. On August 25, 2003, Applicant responded to the SOR and requested a hearing before an Administrative Judge.

The case was assigned to me on December 15, 2004. On January 12, 2005, this case was set for hearing on January 26, 2005. The Government submitted six exhibits and Applicant submitted nine exhibits. Testimony was taken from Applicant and two witnesses. The transcript (Tr.) was received on February 2, 2005.

FINDINGS OF FACT

The SOR alleges financial considerations (Guideline F) and personal conduct (Guideline E). Applicant denied the two financial allegations of paragraph 1. The record reflects that after he received the SOR, Applicant settled the 1.a. debt in November 2003, and was scheduled to make the final payment on the 1.b. debt in February 2005. He also denied the

personal conduct allegation accusing him of deliberately omitting the two debts from question 38 of his security clearance application (SCA). Applicant is 56 years old and has been employed for 12 years as an engineer by a defense contractor. He seeks a secret clearance. He has possessed a secret clearance since 1990.

Based on a credit bureau report (GE 5) dated May 21, 2002, subparagraph 1.a. identifies a bank credit card opened in January 1994 listing Applicant as an authorized user. The delinquent account totaled \$17,164.00 when it was charged off in January 1998. Subparagraph 1.b. identifies a credit card Applicant opened as individual account holder in November 1995. (GE 5) This delinquent account totaled \$3,341.00 when it was charged off in January 1998.

In late 1997 and early 1998, Applicant and his wife experienced some unanticipated medical expenses caused by his mother's illness. They fell behind in payments to some of their creditors including the creditors identified in subparagraphs 1.a. and 1.b.

In 1999 or 2000, Applicant claims he paid \$750.00 to settle the 1.b. account. In June 2001, he obtained a copy of his credit report (GE F) [\(U\)](#) showing a zero balance to the 1.b. creditor. Oversight and claiming not to be responsible for the account were the reasons Applicant paid no attention to the 1.a. debt even though he had been called about the debt sometime in 2000. (Tr. 38.)

Applicant experienced financial problems in the past. In 1976, Applicant filed a Chapter 13 wage earners plan. He recalled making regular payments under the plan for about 18 months. In 1985, Applicant encountered some credit problems while in the military.

On May 9, 2002, Applicant completed an SCA. He answered "NO" to "**Question 38. Your Financial Delinquencies - 180 days** In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Although he answered the SCA questions from memory, Applicant's recollection of the zero balance for the 1.b creditor was the basis for his "NO" answer to question 38. Applicant asserts that he did not disclose the 1.a. debt (Tr. 33) when he completed the security form because, as noted above, he did not believe he was responsible for the debt.

On June 26, 2002, Applicant was interviewed by an agent from the Defense Security Service (DSS) regarding both debts. As far as the 1.a. debt is concerned, he stated (in unambiguous words) he was a co-signer and had tried to settle the debt for \$9,000.00. (GE 3) The settlement was scuttled when he could not raise the money immediately; the collection agency would not opt for a payment plan. Regarding the 1.b. debt, Applicant enlisted the assistance of a Defense Security Service (DSS) agent in establishing a repayment plan of \$100.00 a month that began in July 2002, and was scheduled to be paid in full on February 25, 2005. (AE A)

On May 22, 2003, Applicant provided a little different information about the 1.a. debt in his answers to interrogatories. While he knew about the debt, he did not know he was a co-signer and the debt was being reported on his CBR. Applicant concluded his statement about the 1.a. debt by reiterating the importance of paying these debts and that he was putting aside money to repay the 1.a. debt. He also noted it was not his intent to misrepresent himself on the SCA and he would accept full responsibility for those accounts that bore his name. Applicant's statements above again convey the meaning he was acknowledging responsibility for the 1.a. debt.

In June 2003, Applicant sent letters to the three major credit agencies disputing liability for the 1.a. debt, even as a co-signer. In July 2003, Applicant received notification from the three major credit agencies (AE B, AE C, AE D) that the 1.a. debt was not his and would be deleted from his CBR. In November 2003, Applicant settled with the 1.a. collection agency for \$5,000.00 that had been saved by Applicant and his wife over several months. (AE E)

Since his settlement of the 1.a. debt in November 2003 and during the completion of the payment plan for the 1.b. debt in February 2005, Applicant changed his financial habits. He consolidated his bills then enrolled in a financial management class. This class was three hours long and met once a week for eight weeks. He received a certificate of completion on November 19, 2004. (AE J) Applicant learned how to save his money, handle investments, insurance, and credit cards. Applicant also was instructed to always pay in cash whenever possible. Applicant currently has a joint checking account with his wife. He has established a thrift saving account. They own their home.

The vice president of systems support testified he has known Applicant since 1992. The vice president was recently

promoted to his current position and was happy Applicant was recently promoted to the division management position the vice president recommended Applicant for. The director of security has known Applicant for the last eight years and considers him very vigilant about security matters.

Applicant's documentation indicates he was honorably discharged from the United States Army in April 1990 after a commendable career in which he received six outstanding performance awards. Applicant's impressive performance evaluations with his current employer from 1994 to April 2004 are supported by the five certificates of recognition.

POLICIES

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

Burden of Proof

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531 "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 481U.S. at 531; *see* Directive E2.2.2.

Financial Considerations

The security concern of this guideline is that delinquent debts can induce or pressure a person to violate the law or security regulations.

Personal Conduct

At the core of this guideline is conduct involving questionable judgment or dishonesty demonstrated during the security investigation.

CONCLUSIONS

An individual with delinquent debts he cannot pay is at risk of engaging in illegal acts to generate funds. Subparagraphs 1.a. and 1.b. of the SOR reveal two past due debts totaling \$20,505.00. The May 2002 CBR (GE 5) reflects the 1.a. account was opened in January 1994 and the 1.b. account was opened in November 1995. GE 5 identifies Applicant as an authorized user of the 1.a. revolving, credit card account and the individual account holder of the 1.b. credit card account. In addition, Applicant ostensibly acknowledged at various times during the investigation he was an authorized user of the 1.a. account. However, record evidence indicates the 1.a. account was the responsibility of his wife. Therefore, subparagraph 1.a. is found in Applicant's favor.

The delinquent status of subparagraph 1.b. establishes a failure to pay an overdue debt as defined by financial consideration (FC) disqualifying condition (DC) E2.A6.1.2.1. (*a history of not meeting financial obligations*). Applicant's decision not to address the 1.b. debt sooner also triggers the activation of FC DC E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*).

Of the six potentially mitigating conditions (MC) that are available, five provide sufficient mitigation for me to find in Applicant's favor under the financial guideline. FC MC E2.A6.1.3.1. (*the behavior was not recent*) and FC MC

E2.A6.1.3.2. (*it was an isolated incident*) applies based on documentation showing the underlying conduct leading to the indebtedness was not recent.⁽²⁾ In addition, there is only one past due debt, even though Applicant believed at various times he also was liable for the 1.a. debt. The unanticipated health problems of Applicant's mother establish a limited basis for application of FC MC E2.A6.1.3.3. (*the conditions that resulted in the behavior were largely beyond the person's control*).

The documentation provides a strong reason to apply FC MC E2.A6.1.3.4. (*the person has received or is receiving counseling for the problem and there are clear indications the problem is being resolved or is under control*) in his favor. The record reflects Applicant has made some constructive changes in his financial affairs that show his financial problems are being resolved. Applicant's resolution of the two debts listed in the SOR, the consolidation of other financial matters and successful completion of the eight-week money management class convinces me Applicant has a firm handle on his day-to-day bills while making sufficient preparations for unforeseen financial problems that may arise.

Finally, Applicant should also receive maximum mitigation under FC MC E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) through his completion of the repayment plan to the 1.b. creditor. Applicant also receives credit for assisting his wife in working out a settlement in November 2003 with the 1.a. creditor. The financial considerations guideline is found for Applicant.

The personal conduct (PC) guideline focuses on poor judgment and supplying untruthful information to the government during the course of a security investigation. When Applicant furnished his "NO" answer to question 38 of the SCA on May 9, 2002, there was discrepant information showing he was secondarily liable for the 1.a. debt and primarily liable for the 1.b. debt. Concerning Applicant's omission of the 1.b. debt from question 38, I do not find he deliberately omitted the information as required by PC DC E2.A5.1.2.2. (*the deliberate omission of relevant and material facts form any personnel security questionnaire used to determine security clearance eligibility*). Applicant exercised good judgment by obtaining his CBR in June 2001 to determine the status of the 1.b. debt. It was reasonable for him to rely on that information when he filled out the SCA in May 2002. Therefore, I find for Applicant (the 1.b. debt) in that the element of deliberateness is lacking.

Regarding the 1.a. debt omitted from question 38, the large amount of the debt, the representation Applicant made in his sworn statement and interrogatory answers acknowledging his secondary liability, and the CBR (GE 5) purportedly showing Applicant was an authorized user, leads one to believe Applicant should have disclosed the 1.a. debt on his SCA in May 2002 even though the record from all three credit agencies indicated in July 2003 the 1.a. debt was not his responsibility. Considering the evidence as a whole, the government was mistaken about Applicant's responsibility for the debt and Applicant was initially mistaken as to his liability. I find for Appellant under paragraph 2.

In making favorable findings for Applicant under the financial and personal conduct guidelines, I have examined this case closely under the general factors of the whole person concept. The documented evidence of financial counseling and successful settlement of the 1.a. debt and anticipated payoff of the 1.b. debt is very persuasive in applying E2.2.1.6. (*the presence or absence of rehabilitation and other pertinent changes*) in Applicant's favor. Further, that same evidence and Applicant's character evidence enables me to conclude his past financial problems will not recur. Hence, my predictive decision under E2.2.1.9. (*the likelihood of continuation or recurrence*) is that Applicant has the tools to avoid financial problems in the future.

FORMAL FINDINGS

Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (Financial Considerations, Guideline F): FOR THE APPLICANT.

a. For the Applicant.

b. For the Applicant.

Paragraph 2 (Personal Conduct, Guideline E): FOR THE APPLICANT.

a. For the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Paul J. Mason

Administrative Judge

1. The information was compiled by one of the three nationally recognized credit bureaus.
2. I find ISCR Case No. 01-3695 at 7 (App. Bd. Oct. 16, 2002) is distinguishable from the circumstances at issue here because Applicant implemented a repayment plan regarding the 1.b. debt in July 2002, and had almost completed payments under the plan at the hearing. (GE 2; AE A)