

DATE: December 31, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-13277

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 partly beyond his control, his own poor judgment and deliberate choices were the main source of his problem. He was slow to take effective action to resolve his indebtedness once he had the means to do so. His falsification of his clearance application suggest he cannot be relied upon to tell the truth if the truth conflicts with his personal interest. Clearance denied.

STATEMENT OF THE CASE

On 11 April 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⁽¹⁾ that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 13 May 2003, Applicant answered the SOR and requested an administrative decision on the record. On 11 August 2003, Applicant responded to the File of Relevant arial (FORM), issued 10 July 2003. The record closed on 20 August 2003, the date Department Counsel indicated he had no objection to the response. The case was assigned to me on 3 September 2003.

FINDINGS OF FACT

Applicant admitted the financial allegations of paragraph 1 of the SOR; he denied the falsification allegation of paragraph 2. Accordingly, I incorporate his admissions as findings of fact.

Applicant--a 49-year-old employee of a defense contractor--seeks access to classified information. He has previously held a clearance while employed by the U.S. Government.

On 27 October 2000, Applicant executed a Security Clearance Application (SCA)(SF 86)(Item 4) on which he truthfully disclosed a chapter 13 bankruptcy filing in 1995 and a wage garnishment in 1999. However, he failed to disclose five debts (subparagraphs 1.b.- f.) that were more than 90 days past due.⁽²⁾ Applicant's explanation for the omission--that he

considered these debts covered by his disclosure of the bankruptcy--is not credible, particularly where the record shows that the 1995 chapter 13 was dismissed in 1999 because of Applicant's failure to meet the required payments. (3)

The SOR alleges Applicant's 12 delinquent debts, totaling nearly \$12,000.00, none of which have been paid. Applicant's response to the FORM demonstrates that he has taken a second job, and filed a second chapter 13 in July 2003, under which he is to pay \$900.00 per month until further order of the court. However, Applicant's documents do not reflect what debts are included in the chapter 13 filing.

Applicant traces his financial difficulties to approximately August 1994, when--after having a disagreement with his civilian supervisor--he left federal service after 21 years, thinking that he could do better in the private sector. This turned out not to be the case. A series of commission sales jobs began promisingly, but petered out. Applicant's wife was injured on the job, and she remains on approximately 60% of her pay with little likelihood of returning to full time work. He got behind in his bills, and filed his chapter 13 in September 1995. Applicant made substantial payments on the chapter 13 plan, but failed to make all the required payments, and the plan was dismissed in June 1999.

However, Applicant's financial situation improved in September 2000 when he obtained his current position. Nevertheless, in January 2002, Applicant revealed that although his monthly positive cash flow was nearly \$1,300.00 he had not started repayment on any of his (then) \$7,000.00 in debt because he had spent the money on car repairs, maintenance on his house, and his "constantly" helping his two sons who live beyond their means. Still, he stated an intent to contact a consumer credit counseling agency to arrange repayment plans to address these debts.

Applicant apparently did not follow-up on this plan, and by the time the SOR was issued in April, his debts had increased to nearly \$12,000.00. Although Applicant filed a second chapter 13 plan in July 2003, that filing was in response to the SOR.

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 some to the original indebtedness, Applicant's departure from federal employment was nevertheless a voluntary act and his decision to continue to assist his free-spending sons rather than address his own debts suggests an unwillingness to satisfy those debts, particularly where his first chapter 13 plan was dismissed because of his failure to make payments as required by the plan.

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 to some extent Applicant's willingness to try to resolve his debts, his second chapter 13 filing comes too late to be considered a truly good-faith effort to satisfy those debts. Further, given Applicant's past failure to complete the first chapter 13 plan, I cannot conclude that he is likely to be successful here. I resolve Guideline F against Applicant.

The government has established its case under Guideline E and Applicant has not mitigated the concerns. The disclosure of a 1995 chapter 13 plan (by definition a plan designed to satisfy all creditors) would have no bearing on whether an Applicant was currently 90 or more days past due on credit accounts, even where the plan had been completed. Here, the plan was dismissed because Applicant did not meet the payment schedule. I conclude that Applicant knew he had delinquent accounts, and decided to not advise the Government of those accounts. I resolve Guideline E against Applicant.

FORMAL FINDINGS

Paragraph 1. 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

Subparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

Subparagraph j: Against the Applicant

Subparagraph k: Against the Applicant

Subparagraph l: Against the Applicant

Subparagraph m: Against the Applicant

Subparagraph n: Against the Applicant

Paragraph 2. Guideline E: 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, 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. He also apparently failed to disclose a 1999 judgement (subparagraph 1.n) that was unpaid (subparagraph 1.f.). However, this omission was not alleged in the SOR. Consequently, I do not consider it on the merits of the case, but do consider it on the general issue of Applicant's credibility.
3. Although Applicant made enough payments to satisfy most of his secured creditors, that amount was less than half the amount owed on the chapter 13. Applicant paid approximately \$10,000.00 out of \$25,000.00 owed to his creditors.