

DATE: April 9, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-14843

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 33 years old. He works for a contractor in a mail room overseas. He failed to pay 30 debts incurred over several years. He admits 26 of these debts. Applicant failed to file his 2000 federal income tax form. He has three shoplifting charges, but no convictions on those charges, in 1998 and 1999, all of which he admitted. Applicant did not mitigate the financial and criminal conduct allegations and grave security concerns remain. Clearance is denied.

STATEMENT OF THE CASE

On May 15, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under Guideline F (Financial Considerations) and Guideline J (Criminal Conduct) 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, and recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn statement, dated June 8, 2003, Applicant answered the SOR allegations. He requested his case be decided on the written record in lieu of a hearing.

On August 14, 2003, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) [\(1\)](#) was provided to the Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file a response to the FORM by the time allowed. The response was due October 1, 2003. The case was assigned to me on January 8, 2004.

FINDINGS OF FACT

Applicant admitted 24 allegations in Paragraph 1 of the SOR, and denied the other six allegations in that Paragraph 1 contained in subparagraphs 1.a., 1.b., 1.c., 1.v., 1.w., and 1.dd. Applicant admitted all the allegations under Paragraph 2 except subparagraph 2.e. Applicant does admit he received charges resulting from the same incident alleged in subparagraph 2.e. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 33-year-old mail clerk employed by a defense contractor in a foreign country. He has worked there for at least three years. He is divorced, and has one child. Applicant served four years in the U.S. Army. (Item 3 at 3)

Applicant did not file his 2000, 2001, and 2002 federal income tax returns until he filed all three on June 6, 2003. His income shown on those tax returns was \$32,991 in 2000, then \$51,934 in 2001, and \$77,596 in 2002. His income is tax-free because he works outside the continental United States, and Applicant included IRS Form 2555 "Foreign Earned Income" with his tax returns. Applicant has not paid state income tax for those same periods because he does not live in a state, and has not submitted any state tax returns for the same years. Applicant's total income for these three years was \$162, 521. That tax free income was more than sufficient to pay his debts in the same time period. (Item 2 at 5 to 15)

Applicant's debts total \$31,486 in 2003. He has not paid any of the debts, and stated to the investigator in his sworn statement that he would hire a CPA and try to restore his credit, or wait seven to ten years for the debt entries to expire from his credit report and then start anew. (Item 2 at 5; Item 8 at 1)

The following table summarizes Applicant's debts and their current status which is that none of them have been repaid:

SOR ¶	CREDITOR TYPE AND AMOUNT	FILE EVIDENCE	FINDING
1.a.	Collection agency \$327	Item 4 at 3, Item 5	Against Applicant
1.b.	Collection agency \$637	Item 4 at 3, Item 5	Against Applicant
1.c.	Collection agency	Item 4 at 3, Item 5	Against Applicant
1.d.	Bank, \$2,238	Items 2, 4 at 4, and 5	Against Applicant
1.e.	Bank, \$5,781	Items 2, 4 at 4, and 5	Against Applicant
1.f.	Business, \$698	Items 2, 4 at 5, and 5	Against Applicant
1.g.	Bank, \$5,452	Items 2, 4 at 5, and 5	Against Applicant
1.h.	Medical center \$377	Items 2, 4 at 5	Against Applicant
1.i.	Medical center \$1,672	Items 2, 4 at 5	Against Applicant
1.j.	Medical center, \$333	Items 2, 4 at 5	Against Applicant
1.k.	Company, \$257	Items 2, 4 at 6	Against Applicant
1.l.	Retailer, \$2,554	Items 2, 4 at 6	Against Applicant
1.m.	Credit card, \$2,316	Items 2, 4 at 6	Against Applicant
1.n.	Credit card, \$2,812	Items 2, 4 at 6	Against Applicant
1.o.	Retailer credit card \$2,812	Items 2, 4 at 7	Against Applicant
1.p.	Jeweler \$214	Items 2, 4 at 7	Against Applicant
1.q.	Retailer \$150	Items 2, 4 at 7	Against Applicant
1.r.	Retailer \$2,829	Items 2, 4 at 8	Against Applicant
1.s.	Public utility \$98	Items 2, 4 at 8	Against Applicant
1.t.	Retailer \$229	Items 2, 4 at 8	Against Applicant
1.u.	Hardware store \$438	Items 2, 4 at 8	Against Applicant
1.v.	Auto dealer \$242	Items 2, 4 at 9	Against Applicant
1.w.	Creditor	Items 2, 4 at 9	Against Applicant
1.x.	Telephone company \$60	Items 2, 4 at 9	Against Applicant

1.y.	Telephone company \$60	Items 2, 4 at 9	Against Applicant
1.z.	Retailer \$651	Items 2, 4 at 10	Against Applicant
1.aa.	Retailer \$607	Items 2, 4 at 10	Against Applicant
1.bb.	Applicant was not going to pay debts immediately.	Items 2 and 8	Against Applicant
1.cc.	Judgment \$1,076	Items 2 and 5	Against Applicant
1.dd.	Child support arrearage \$80	Item 10	Against Applicant

Applicant was arrested in March of 1998 and 1999 for misdemeanor larceny for stealing various items from stores. Applicant was never convicted of these charges, and the charges were eventually dismissed. (Items 7 and 9)

Applicant was arrested in January 1999 for shoplifting from a military base exchange store. His shopping privileges at that store were revoked, and no other action was taken. (Item 6)

Applicant was accused by his former wife of assault in 1997. Applicant pled guilty and had to pay \$60 in court costs. (Item 2)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The president has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* Section 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicted upon the applicant meeting the security guidelines contained in the Directive.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of:

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation;
- (3) how recent and frequent the behavior was;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the voluntariness of participation;
- (6) the presence or absence of rehabilitation and other pertinent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence (See Directive, § E2.2.1., Enclosure 2).

Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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, the applicant from being eligible for access to classified information. See *Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances that 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. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a prima facie case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. See Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. See Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline F - Financial Considerations:

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive, ¶ E2.A6.1.1.

Conditions that could raise a security concern and may be disqualifying include:

- (1) A history of not meeting financial obligations. Directive, ¶ E2.A6.1.2.1.
- (3) Inability or unwillingness to satisfy debts. Directive, ¶ E2.A6.1.2.3.

Conditions that could mitigate security concerns include:

None

Guideline J: Criminal Conduct

A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. E2.A10.1.1.

Conditions that could raise a security concern and may be disqualifying include:

- (1) Allegations or admissions of criminal conduct, regardless of whether the person was formally charged; E2.A10.1.2.1.
- (2) A single serious crime or multiple lesser offenses. E2.A10.1.2.2

Conditions that could mitigate security concerns include: E2.A10.1.3.

- (1) The criminal behavior was not recent. E2.A.10.1.3.1

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and

conditions above, I conclude the following with respect to each allegation set forth in the SOR:

Under the Financial Considerations Guideline, Disqualifying Conditions (DC) 1 (a history of not meeting financial obligations) and DC 2 (an unwillingness to satisfy debts) clearly apply in this case. Applicant has 30 outstanding debts. There is no evidence that he has undertaken any efforts to pay any of these debts. His child support obligation, which he says is overpaid, has a balance due, according to the document submitted by the Government. Yet at the same time, Applicant is making a very good income and not required to pay any income taxes on that income because he earns it when working outside the continental United States. His statement to the investigator discloses his attitude toward these debts, which is that with the passage of time they will fade away from his credit record. He has made no statement about paying them, and made no effort to pay them. There are no Mitigating Conditions (MC) which apply in this case. I conclude against Applicant on this guideline.

Under the Criminal Conduct guideline, the DC which apply are DC 1 (allegations or admissions of criminal conduct, regardless of whether the person was formally charged) and DC 2 (multiple lesser offenses). In 1997, 1998, and 1999 Applicant engaged in three larceny (shoplifting) incidents. He pled guilty to assaulting his wife in 1997. Then, in 2001, he failed to file his federal income tax form for 2000, in violation of the federal income tax code. The information he submitted with his answer to the SOR included the 2000 tax return, and the tax returns for the two subsequent years, all filed in June 2003, demonstrating he continued to fail to file his federal tax returns.

There are no MC applicable in this case under the Criminal Conduct guideline. Applicant has a pattern of failing to comply with the law. That pattern continues into the present with the failures to file timely income tax returns. Therefore, I conclude against Applicant on this guideline.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline F: Against Applicant

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

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Subparagraph 1.u.: Against Applicant

Subparagraph 1.v.: Against Applicant

Subparagraph 1.w.: Against Applicant

Subparagraph 1.x.: Against Applicant

Subparagraph 1.y.: Against Applicant

Subparagraph 1.z.: Against Applicant

Subparagraph 1.aa.: Against Applicant

Subparagraph 1.bb.: Against Applicant

Subparagraph 1.cc.: Against Applicant

Subparagraph 1.dd.: Against Applicant

Paragraph 2 Guideline J: Against Applicant

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e.: Against Applicant

DECISION

In light of all the circumstances and facts 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. Clearance is denied.

Philip S. Howe

Administrative Judge

1. The Government submitted ten items in support of the SOR.

