

DATE: April 28, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-14931

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has six tax liens totaling over \$60,000 that he owes to his State. The Applicant states he has no intention of paying them because he disputes the fact that he is responsible for them. He also has a smaller lien to his borough that he is paying on an annual basis. The Applicant intentionally failed to inform the Government of the existence of the tax liens and of two alcohol related arrests on his Security Clearance Application. Insufficient mitigation is shown. Adverse inference is not overcome. Clearance is denied.

STATEMENT OF THE CASE

On August 8, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on September 4, 2003, and requested that the case be decided without a hearing. The Government submitted its File of Relevant Material (FORM) to the Applicant on or about February 4, 2004. The Applicant was given 30 days from receipt of the FORM to submit any documents in rebuttal, extenuation or mitigation. The Applicant received the FORM on February 16, 2004, and did not submit any additional information. The case was received by the undersigned on April 2, 2004.

FINDINGS OF FACT

The Applicant is 66 and married. He is employed by a defense contractor as an Environmental Test Engineer, and he seeks to obtain or retain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline F - Financial concerns). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal activities to obtain funds.

The record indicates that the Applicant has had over \$64,728.00 worth of tax liens filed against him by his State government between 1991 and 1996. (SOR 1.a. through 1.f.) The Applicant admits that these liens exist but denies any responsibility for them. According to the Applicant's sworn statement, these liens are connected to a corporation of which the Applicant was an officer. However, the Applicant states that he had no authority as an officer. (Government Exhibit 5 at 5.) There is no indication that the Applicant has attempted to contact the State tax authorities to resolve this situation.

The Applicant admits that a municipal lien was filed against his house by his borough. The Applicant states that this lien in connection with sidewalk improvements. The Applicant states that the debt is a loan that is being paid according to its terms. Rather than pay the entire assessment of \$3,728.80 in one payment, the Applicant elected to pay it over ten years. The borough filed a lien on the property to assure payment if the property was sold. (Government Exhibit 5 at 4-5.) There is no other information, such as a copy of the loan agreement, to support the Applicant's version of events.

Paragraph 2 (Guideline E - Personal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

On September 13, 1999, the Applicant completed an official DoD questionnaire in which he stated that he had never been charged with or convicted of any offense related to alcohol or drugs. (Government Exhibit 4, question 24.) In reality the Applicant had been charged and convicted in 1984 and 1986 for Driving Under the Influence of Alcohol (DUI). His statement was a false answer to a material question pertaining to the Applicant's criminal history involving alcohol. His explanation for his failure to list these arrests on his security clearance application is confusing. He states in his sworn statement:

Finally, regarding my omission of my two, (2), DUI arrests from SF86, I did not intentionally omit them because I had truly forgotten about them. However, it was after I submitted my SF86 that I realized I should have listed them but I did not do anything to correct my application. The reason I failed to do so was because I was truly embarrassed about both incidents and I really wanted to forget that I was ever arrested and charged with DUI. I was also afraid that if I listed both of these arrests, that I would lose my security clearance. I don't have anything to hide about these arrests as they both occurred over fifteen years ago and I have not been involved in any criminal conduct or activity since that time; however, I really felt embarrassed and ashamed that I was arrested for DUI and that is the real reason that I failed to list both arrests on my SF86. (Government Exhibit 5 at 6-7.)

In the same questionnaire, the Applicant was asked if, in the past seven years, he had any liens placed against his property or had been over 180 days delinquent on any debts (Government Exhibit 4, questions 36 and 38). The questionnaire also asked if the Applicant was currently more than 90 days delinquent on any debts (Government Exhibit 4, question 39.) The Applicant answered "No" to all three of these questions. These were all false answers to relevant questions concerning the Applicant's financial situation. The Applicant's only explanation is found in his Answer (Government Exhibit 3) where he states, "I failed to disclose these . . . liens and resulting debts because I deny responsibility as explained in the enclosed 'STATEMENT OF SUBJECT' [Government Exhibit 5]."

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative

Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Guideline F (Financial considerations)

Conditions that could raise a security concern:

- (1) a history of not meeting financial obligations;
- (3) inability or unwillingness to satisfy debts;

Conditions that could mitigate security concerns:

(None of the stated conditions have application in this case.)

Guideline E (Personal conduct)

Condition that could raise a security concern:

(2) the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

Conditions that could mitigate security concerns:

(None of the stated conditions have application in this case.)

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted

upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of falsification or have debt problems that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting or continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has had liens filed against his property by state and local authorities that he refuses to satisfy (Guideline F); and that he intentionally made false material statements to DoD (Guideline E). The Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him.

Applicant admits that his State and borough have filed liens against him for taxes and improvements. He argues that he is not responsible for the State liens, even though he was a corporate officer, because he had no "real" authority. However, other than his statement, he submits no evidence to support this allegation. In addition, there is no evidence that he has attempted to contact the State and argue his position with them.

As for the borough lien, the Applicant argues that it is more in the nature of a loan. However, once again, he submits no evidence other than his sworn statement to support his argument. That is simply not enough evidence to support the Applicant's contentions.

The available evidence shows that these are valid debts that have not been paid for many years and that the Applicant does not intend to pay. Accordingly, Disqualifying Conditions 1 (*a history of not meeting financial obligations*) and 3 (*inability or unwillingness to satisfy debts*) apply. None of the Mitigating Conditions have application in this case. Paragraph 1 and its subparagraphs are found against the Applicant.

The Government relies heavily upon the integrity and honesty of clearance holders, and it is a negative factor for security clearance purposes where an Applicant has deliberately provided false information about material aspects of his or her personal background. I have carefully examined the Applicant's arguments concerning his false statements and find them wanting. I specifically find that he knew he had to inform the Government of all of the information concerning his debts and alcohol related criminal record and he intentionally falsified his questionnaire concerning that information. Disqualifying Condition 2 (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies to the Applicant's false statements. Guideline E is found against the Applicant.

On balance, it is concluded that the Applicant has failed to overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the

conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: Against the Applicant.

Subparagraphs 1.a. through 1.g.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subparagraphs 2.a. through 2.d.: 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.

Wilford H. Ross

Administrative Judge