

DATE: July 6, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-16972

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esquire, Department Counsel

Braden M. Murphy, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's history of financial irresponsibility since 1992 renders him an unsuitable candidate for a security clearance. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 7 November 2003 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of Applicant's clearance because of Financial Considerations. ⁽¹⁾ Applicant answered the SOR on 12 January 2004, and requested a hearing. The case was assigned to me on 4 May 2004 and subsequently set for and heard on 15 June 2004. DOHA received the transcript (Tr.) on 29 June 2004.

PROCEDURAL ISSUES

At the hearing, I gave Applicant until the close of business 25 June 2004 to provide any additional documentation of his financial situation or repayment efforts. Applicant provided a timely response to which Department Counsel raised no objection. Accordingly, I receive Applicant's submission as Applicant's Exhibit B (A.E. B).

FINDINGS OF FACT

Applicant admitted the SOR allegations, except for the debts at subparagraph 1.d., 1.e., .f., 1.g., 1.j., 1.l., and 1.m. Accordingly, I incorporate his admissions as findings of fact.

Applicant--a 31-year-old employee of a defense contractor--seeks access to classified information. He has not previously had a clearance.

Applicant has a history of financial difficulties and irresponsibility dating back to 1992 when he was honorably discharged from the U.S. Navy after only 13 months active duty because he suffered from motion sickness. His financial irresponsibility has been marked by nine judgments, two automobile repossessions, a chapter 7 bankruptcy discharge of over \$71,000.00 in debt in 1998, and a chapter 13 bankruptcy petition for nearly \$45,000.00 filed in 2001, confirmed in 2002, and dismissed in 2004 for failure to make the required payments. He acknowledges being financially irresponsible for many years (Tr. 41).

When Applicant left the Navy, his income was drastically reduced, but he apparently did not make any changes in his lifestyle and began to experience financial hardship. In 1994, he compounded his financial difficulties by entering college full time, using his G.I. benefits to fund books and some living expenses, taking out educational loans for the rest. As he was not working, his other bills continued to mount. He started working part time, then increased his working hours while decreasing his college hours, then dropped college altogether in 1997. When he dropped below 3/4 attendance, his college loans became due and he defaulted. He currently owes the Department of Education nearly \$40,000.00 in non-dischargeable educational loans on which he has never made a payment. While in college, he bought a car that was repossessed when he could not make the payments.

Overwhelmed by his debts, Applicant consulted an attorney and filed for chapter 7 bankruptcy protection in August 1998. He was discharged of over \$71,000.00 in debt in November 1998, but before his discharge he affirmed one secured debt for \$1,800.00 (for furniture) payable at 24% interest. ⁽²⁾

Applicant's fresh start did not last very long. Shortly after his chapter 7 discharge, he bought a late model used car. Applicant fell behind in the payments and the creditor obtained a judgment against Applicant in September 2000. Applicant claims, without corroboration, that he was making payments on the car, but not as much as the creditor wanted him to make. The creditor garnished Applicant's wages, precipitating his chapter 13 bankruptcy petition in December 2001. The plan was confirmed in February 2002. Applicant was to have bi-weekly withholding of \$83.50 from his paycheck (\$167.00/month) for 60 months, or a total of \$10,000.00. Applicant made about a third of the required payments before changing jobs in approximately February 2003 (and even then he was one payment behind). His new employer was to continue the withholding, however, the withholding did not begin when Applicant expected it to and he was not very diligent in ensuring that the withholding resumed. By the time the employer straightened the matter out and withheld the first two paycheck installments properly, the employer had been served with the notice of dismissal and stopped the withholding. Applicant got his withholding back in March 2004. Since the dismissal of the chapter 13 bankruptcy, Applicant has taken no action to either reinstate the plan or otherwise address the debts that were covered by the plan.

Applicant has 13 delinquent credit accounts totaling nearly \$42,000.00. Although he denied six of these as being covered in his chapter 7 discharge, he has not corroborated that claim. Some of the denied debts he acknowledged having not been in his chapter 7 filing in a sworn statement in April 2002, and he acknowledged at the hearing that some of the denied debts could not have been in the chapter 7 petition because they did not appear on his credit report until after his chapter 7 discharge.

Applicant and his wife make \$130,000.00 annually, yet are not paying on any of the delinquent debt, including the student loans. He has not entered into any repayment schedules with any of the creditors. Applicant's post-hearing submission documents that he has some accounts (not alleged in the SOR) that he has a satisfactory payment history on, but also demonstrates that in April 2002, Applicant and his wife bought a new \$30,000.00 truck by taking over the remaining 70 payments (of 72) of nearly \$590.00 per month. Applicant began making payments in May 2002. From May 2002 to June 2004, Applicant was assessed a late payment fee 13 times, was assessed a non-sufficient funds fee once, and obtained a one-month extension of time to pay twice. However, he has made every payment on time since receiving 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. . .).

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 an applicant to establish 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 failed to mitigate the financial concerns. Acknowledging that Applicant's discharge from the Navy was not his fault, Applicant has an unbroken 12-year history of financial irresponsibility and poor financial choices: not reducing his expenses when he left the Navy, undertaking full-time college without adequate financial planning, buying a car while unemployed and in school, ignoring defaulted accounts. Even with a chapter 7 discharge, Applicant was quickly back in financial hot water that forced him into a chapter 13 bankruptcy. He was lackadaisical in ensuring that the chapter 13 payments continued when he changed jobs in February 2003 and has taken no effective action to address the dismissal of the chapter 13 plan in early 2004, despite having sufficient joint income to do so.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties due to his irresponsible financial management, not circumstances beyond his control. They are both recent and not isolated; indeed they are ongoing. Applicant has not stopped digging himself into a financial hole, much less started to pull himself out of it. I conclude Guideline F 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

Subparagraph o: 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, as amended (Directive).
2. Applicant acknowledges that he signed the reaffirmation, but asserts that he does not remember doing so, despite his attorney's certification that Applicant was fully advised of the ramifications of reaffirming a debt. I find Applicant's testimony not credible on this point because I am not prepared to impute malpractice to his attorney and I do not believe Applicant signed the reaffirmation without being advised of its meaning.