

DATE: February 27, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-18970

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Department Counsel

Kathryn Antigone Trowbridge, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Although Applicant may have satisfied three of the six delinquent debts addressed in the SOR, he has not resolved all of them. Moreover, he has not paid those until after two previous SORs were issued to him. Applicant has had more than ample time to resolve these debts. His failure to have done so by this time, coupled with his unwillingness to act until an SOR is issued, demonstrate that the Government's concern has not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On July 29, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline F (Financial Considerations). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant him access to classified information and recommends that his case be submitted to an Administrative Judge.

Applicant submitted a response to the SOR, dated August 26, 2003, in which he requested a hearing. The case was assigned to me on November 18, 2003. A notice of hearing was issued on November 24, 2003 and the hearing was held on December 18, 2003. During the hearing, 10 Government exhibits (Govt Ex), eight Applicant exhibits (Ap Ex) and the testimony of two Applicant witnesses, including Applicant, were received. The transcript (Tr) was received on January 2, 2004.

PROCEDURAL ISSUE

Department Counsel did not provide Govt Ex 7 and Govt Ex 8 to Applicant until December 16, 2003. They did not provide Govt Ex 10 to him until December 17, 2003. Therefore, I granted Applicant until January 9, 2004 to respond to

these exhibits. Applicant did not submit any additional information. As requested by Department Counsel, he only submitted an additional copy of Ap Ex E that did not include his comments.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is employed by a defense contractor. He is seeking a security clearance.

In November 1995, Applicant opened a credit card account with a bank. He incurred a balance on the account in the amount of \$62.00. By March 1997, the bank charged it off as a bad debt. Applicant has not paid the debt (SOR ¶ 1.a).

In December 1995, Applicant opened a credit card account with a second bank. He incurred a balance on the account in the amount of \$64.00. By February 1997, the bank charged it off as a bad debt. On August 1, 2001, Applicant paid off the debt (SOR ¶ 1.e).

In December 1995, Applicant opened an account with an electronics store. He incurred a balance on the account in the amount of \$3,629.00. By July 2002, the store charged it off as a bad debt and turned it over to a collection agent. By June 2003, Applicant paid the balance on the account to the collection agent (SOR ¶ 1.b).

In March 1997, Applicant opened an account with a wireless phone company. He incurred an unpaid balance on the account in the amount of \$124.00. By arch 2003, the company charged it off as a bad debt. Applicant has not paid the debt (SOR ¶ 1.d).

In July 1998, Applicant obtained an unsecured loan from a loan company. He incurred an unpaid balance on the loan in the amount of \$1,635.00. By August 2001, the company charged it off as a bad debt. Applicant has not paid the debt (SOR ¶ 1.f).

In April 1999, Applicant opened an account with an automobile finance company. He incurred an unpaid balance on the account in the amount of \$413.00. By February 2001, the company charged it off the as a bad debt. By March 2002, Applicant paid the debt (SOR ¶ 1.c).

On August 3, 2001, Applicant provided a sworn statement to an agent for the Defense Investigative Service (DIS). He stated that he had wired a \$64.00 payment for the debt referred to in SOR ¶ 1.e. He further stated he would obtain letters from the creditors referred to in SOR ¶ 1.a and d that would confirm they have no records of those debts. Applicant stated he would then forward the letters to credit reporting services in order to remove the debts from his credit record.

On December 16, 1999, the Department of the Army issued an SOR to Applicant that included three of the same delinquent debts addressed by DOHA in this case in the SOR ¶ 1.a, d, and e.

On March 15, 2002, the Department of the Army issued an SOR to Applicant that included three of the same delinquent debts addressed by DOHA in this case in the SOR ¶ 1.a, c, d, and f.

On March 15, 2002, the Army notified Applicant that it had made a preliminary decision to revoke his access to Sensitive Compartmented Information (SCI), in part, because of financial considerations. Those financial considerations included same the debts referred to in this case, with the exception of SOR ¶ 1.e.

Applicant's current annual income from a defense contractor is approximately \$93,000.00. He also receives approximately \$27,000.00 in annual military retirement pay.

POLICIES

Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted. Directive E3.1.14. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the

ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (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. Any doubt as to whether

access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

Guideline F: Financial Considerations

The concern is that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Conditions that could raise a security concern and may be disqualifying include E2.A6.1.2.1, a history of not meeting financial obligations (Disqualifying Condition 1). They also include E2.A6.1.2.3, inability or unwillingness to satisfy debts (Disqualifying Condition 3).

Conditions that could mitigate security concerns include E2.A6.1.3.6, the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (Mitigating Condition 6).

CONCLUSIONS

Guideline F

The evidence in the record of Applicant's delinquent indebtedness substantiates SOR ¶ 1.a through SOR ¶ 1.f. It demonstrates Applicant's history of not meeting financial obligations, as well as his inability or unwillingness to satisfy debts (Disqualifying Condition 1 and Disqualifying Condition 3).

Debts addressed by the SOR that Applicant has provided evidence of having satisfied are his debt to the electronics store (SOR ¶ 1.b) and his debt to the automobile finance company (SOR ¶ 1.c). Applicant's payment of a third debt (SOR ¶ 1.e) is also established by the record.⁽³⁾ Although this is evidence of mitigating Condition 6 with respect to these debts, Applicant did not satisfy any of these debts until after they became delinquent. He did not pay his obligation to the electronics store until after his debt had become delinquent and the creditor assigned it to a collection agent. Applicant did not pay off a small debt to a bank until more than four years after the bank charged it off as a bad debt. In the case of the debt to the automobile finance company, his title reflects a release of lien by the creditor but not until March 2, 2002. Based on the payments required by his purchase contract, he was arrear in payment for at least more than a year before he satisfied the obligation.

Applicant has submitted evidence of having written to all three credit reporting agencies to challenge their listing of the remaining debts addressed by SOR. However, he has not provided corroboration of his testimony of having satisfied them. In the case of the largest of the debts, \$1635.00 (SOR ¶ 1.f), Applicant submitted a letter from a different creditor that he is current on the account. Although it may have been an inadvertent mistake on his part, Applicant's own exhibit (E) establishes that this a different account from the one addressed by SOR ¶ 1.f.

Moreover, Applicant was confronted with some of the same debts addressed in the SOR in this case in previous SORs. The SOR issued to him on March 15, 2002 addressed four of the same delinquent debts listed in the current SOR. Three

of them were included in the SOR issued to him on December 16, 1999, more than three and a half years before DOHA issued the SOR in this case. The previous SORs demonstrate a pattern of the Applicant not addressing his delinquent debts until an SOR is issued to him. They also establish that he has had more than ample time in which to resolve the debts addressed in his current SOR.

In making my assessment in accordance with E2.2.1, I have also considered the fact that his credit reports and other evidence of record reflect Applicant has incurred other delinquent debts that he has never satisfied. The record reflects that Applicant has not resolved a default judgment that was entered against him in 1998 for unpaid rent in the amount of \$355.24. Although his federal tax refund check for 2003 indicates that it has been satisfied, the record also evidences a federal tax lien in the amount of \$4,552.00 was filed against Applicant in 2000.

As Applicant contends, his income may make him able to pay his debts. However, Applicant's failure to have resolved all of the delinquent debts addressed by the SOR by this time, coupled with his unwillingness to act until an SOR is issued, demonstrate that the Government's concern has not been mitigated. I find against Applicant.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: Against Applicant

DECISION

In light of the evidence of record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Signed

Roger E. Willmeth

Administrative Judge

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.
3. Tr 131.