

DATE: June 15, 2005

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-19442

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATAN METZ, JR.

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esquire, Department Counsel

FOR APPLICANT

Carole Bess, Esquire

SYNOPSIS

Applicant's failure to mitigate his established financial irresponsibility since 1995 renders him an unsuitable candidate for a security clearance. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 12 February 2004 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 5 March 2004, and requested a hearing. The case was assigned to me on 23 November 2004 and I convened a hearing on 1 December 2004. DOHA received the transcript (Tr.) 13 December 2004.

FINDINGS OF FACT

Applicant admitted the Guideline F allegations. He is a 41-year-old data administrator for a defense contractor. He seeks to retain the access to classified information he has held since 1991.

Applicant has a history of financial difficulties dating back to 1989 when his bank foreclosed on his mortgage. In 1994, he faced felony bad check charges, but made restitution on the checks and the case was dropped (G.E. 11, 12).⁽²⁾ In August 1995, Applicant and his wife received a chapter 7 bankruptcy discharge of over \$91,000.00 in liabilities (G.E. 10). Applicant did not attribute this bankruptcy to circumstances beyond his control; rather, he acknowledged that he and his wife lived beyond their means, notwithstanding he was working two jobs. She ran the household finances but was not a good money manager, and he paid insufficient attention to her spending habits.

Applicant continued to have financial problems, which Applicant attributed to his separating from his wife in February 2000.⁽³⁾ In August 2001, Applicant and his wife filed for chapter 13 bankruptcy protection.⁽⁴⁾ The petition was converted to a chapter 7 petition in February 2002, and Applicant and his wife received a discharge of over \$180,000.00

in liabilities in June 2002 (G.E. 9).

Recent credit reports (G.E. 6, 7) reflect, and Applicant admits, filing another chapter 13 petition in August 2002. The record does not reflect the status of this petition.

Applicant makes approximately \$38,000.00 per year, but acknowledges being in debt "pretty good," although he is not able to say how much in debt he is (Tr. 31-32). He does not believe he will be able to address his debts until his divorce is final, and their joint debt apportioned (Tr. 28). He does not know when that will be. Once his divorce is final, he thinks he may have to file another chapter 13 petition.

Applicant's supervisor considers him an excellent employee, honest and trustworthy. He is generally aware of Applicant's financial difficulties (Tr. 50).

POLICIES

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline F (Financial Considerations).

BURDEN OF PROOF

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government. ⁽⁵⁾

CONCLUSIONS

The Government established a Guideline F case under disqualifying conditions 1 and 3, ⁽⁶⁾ and Applicant did not mitigate the security concerns. Applicant's finances have been in varying degrees of chaos since 1990 when his bank foreclosed on his mortgage. His 1995 chapter 7 bankruptcy was not due to circumstances beyond his control, ⁽⁷⁾ and while his 2002 chapter 7 bankruptcy might be attributed to his separation from his wife and pending divorce, that discharge did not end Applicant's financial woes. Applicant cannot begin to address those difficulties until his divorce is final, and even then, he is facing the possibility of an additional chapter 13 filing. He currently lacks the means to address his debts. ⁽⁸⁾ He does not have control over his finances and there is no foreseeable time line for regaining control of his finances. 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

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. Neither of these incidents were alleged in the SOR, but they provide useful background against which to evaluate Applicant's more recent financial misadventures.
3. Yet his April 2001 clearance application (G.E. 1) does not reflect his separation, nor does his March 2002 sworn statement (G.E. 2).
4. Applicant claims that he did not sign the bankruptcy petition or authorize his wife to sign for him. Having examined the numerous exhibits that bear his signature, his answer, and two mail receipts contained in the case file, I conclude that Applicant signed the August 2001 bankruptcy petition. Applicant acknowledged filing the chapter 13 petition in his March 2002 sworn statement to the DSS (G.E. 2). Furthermore, even if he did not sign the petition, he instituted no criminal or civil action for the forgery and permitted himself to benefit from the bankruptcy discharge.
5. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
6. E2.A6.1.2.1. A history of not meeting financial obligations; E2.A6.1.2.3. Inability or unwillingness to satisfy debts
7. E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment. . .).
8. E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.