

DATE: February 18, 2004

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 02-19916

**DECISION OF ADMINISTRATIVE JUDGE**

**WILFORD H. ROSS**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant did not falsify a Personnel Security Questionnaire. He has successfully resolved the four past due debts set forth in the SOR. His current financial situation is stable. Adverse inference is overcome. Clearance is granted.

**STATEMENT OF THE CASE**

On May 16, 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 June 16, 2003, and requested a hearing. The case was received by the undersigned on August 8, 2003, and a Notice of Hearing was issued on September 8, 2003.

A hearing was held on September 22, 2003, at which the Government presented six documentary exhibits, and called one witness. Testimony was taken from the Applicant, who called two additional witnesses, and also submitted 15 hearing exhibits (Applicant's Exhibits A through O). The Applicant subsequently forwarded two additional exhibits. Applicant's Exhibit P contains documents relating to subparagraphs 1.a. and 1.b. Applicant's Exhibit Q contains documents relating to subparagraph 1.a. The transcript was received on October 3, 2003.

**FINDINGS OF FACT**

The Applicant is 47 and married with five children. He is employed by a defense contractor as a Senior Systems Engineer, and he seeks to obtain a Secret-level 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 considerations). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he is financially overextended and at risk of having to engage in illegal acts to obtain funds.

Subparagraph 1.a. This allegation concerns a secured bank credit card that the Applicant's wife opened. The Applicant eventually became a signer on the account. The amount past due was \$4,618.00 in 1997. The Applicant made a payment arrangement with the bank to resolve the debt. He paid a total of \$850 to the creditor between June and September 2003. (Applicant's Exhibit K.) The creditor and Applicant agreed to a final payment of \$2,469.00. (Applicant's Exhibit P at 4.) This payment was made and the creditor declared the account paid by settlement on October 31, 2003. (Applicant's Exhibit Q.)

Subparagraph 1.b. This allegation also concerns a secured bank credit card that the Applicant opened. The amount past due was approximately \$1,716.36 in 1997. The Applicant made a payment arrangement with the bank to resolve the debt. (Applicant's Exhibit I.) He made four payments of \$286.06 between June and September 2003, totaling \$1144.24. (Applicant's Exhibit J.) He made a final payment of \$574.00 also in September 2003. (Applicant's Exhibit A.) This payment was accepted and the creditor declared the account paid in full on September 23, 2003. (Applicant's Exhibit P at 3.)

Subparagraph 1.c. This was a debt allegedly incurred to an electric company in 1997. The Applicant admitted this allegation but also said in his Answer, "My response to this is it should have been paid. I, in all honesty, thought it was taken care of before I left [that State]."

The Government obtained three credit reports in April 2003. This debt does not show up in Government Exhibit 3, shows up under two different account numbers in Government Exhibit 4 and shows up once in Government Exhibit 5. This debt does not appear in a 2001 credit report obtained by the Government. (Government Exhibit 6.)

The Applicant disputed this debt to the credit bureau shown in Government Exhibit 4. That bureau deleted the item in August 2003, based on that dispute. (Applicant's Exhibit O at 1, Transcript at 93-95.)

The Applicant testified that he also disputed this account to the other credit bureaus. (Transcript at 87-92.) The disputes were submitted on-line, so the Applicant had no documentary proof of their existence. However, he submits that his most current credit reports, retrieved in August 2003, do not show the continued existence of this debt. (Applicant's Exhibits D, E, F and G.)

Subparagraph 1.d. This is a debt to an apartment complex. The Applicant testified that he left this apartment in the middle of the month in 1997 and thought that he might still have owed half a month's rent, about \$266. Only one of the Government's four credit bureau reports showed this debt. (Government Exhibit 4.) After receipt of the SOR, the Applicant contacted the apartment complex to determine if he did owe any money. The management records showed that the Applicant lived there, but not that he still owed any money. The Applicant testified that he was frankly unsure whether he owed them any money or not. He disputed the debt with the credit bureau and it was deleted. (Transcript at 96-99.)

The Applicant testified that his problems in 1997 were caused by unemployment when he lived in another state. Since arriving at the state he lives in now he has attempted to straighten out his finances. His current financial situation is stable. His credit bureau reports show that, other than the debts in the SOR, he is paying his creditors in a timely fashion. (Applicant's Exhibit G, Transcript at 11-113.)

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 February 7, 2001, the Applicant completed an official DoD questionnaire in which he stated that he had one credit card debt which had been more than 180 days delinquent within the last seven years. (Government Exhibit 1 at question 38.) The Applicant answered "No," to question 39, which asks, "Are you currently over 90 days delinquent on any debt(s)?"

The Applicant testified that he did not list both credit card debts because one was originally his wife's account. He took the "you" in questions 38 and 39 to mean him individually. In addition, both of these credit card debts are owed to the same bank. (Transcript at 79-82.) As for the other two debts, as described above, the Applicant was confused about whether he still owed these creditors any money or not. The Applicant's answer to question 38 does not specify by account number, or other means, which account he was referring to.

The Applicant's supervisor testified that the questionnaire was filled out online, and the employees were not asked or requested to get a current credit report before filling out the questionnaire. He also testified that the Applicant came to him and told him about credit issues that might come up in relation to the Applicant's security worthiness. (Transcript at 39-41.)

### Mitigation.

The supervisor of the Applicant testified on his behalf. The witness testified that the Applicant is trustworthy and truthful. He specifically stated that the Applicant's business ethics have never been in issue. The supervisor stated, "[If] I had to rank all the employees that fall under [me], which right now there are about eight, [the Applicant] would be the first of those eight." (Transcript at 38.)

The Applicant's company works as a subcontractor on a contract. An executive of the prime contractor also testified for the Applicant. The executive testified that he chose the Applicant to work at the main sites, even though the Applicant works for a subcontractor, because of his abilities. (Transcript at 52-54.) The witness described the Applicant as hard-working, trustworthy and truthful. (Transcript at 59.)

The annual evaluations of the Applicant by his employer show that he consistently meets or exceeds expectations. He is an able and talented employee who is respected by his supervisors. (Applicant's Exhibits L, M and N.)

## **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;

#### Conditions that could mitigate security concerns:

(3) the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation);

(6) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Guideline E (Personal conduct)Conditions that could raise a security concern:

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

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 financial irresponsibility and falsification 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 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 large past due, unpaid debts for several years.

The Applicant, on the other hand, has successfully mitigated the Government's case. Turning first to the allegations under Guideline F. All four of the debts in the SOR occurred in 1997, when the Applicant went through a bout of unemployment. He resolved the two credit card debts in the SOR by making payment arrangements with the bank, and then fulfilling his responsibilities over the period of several months.

Concerning the other two debts in the SOR, the Applicant, even in his Answer, was vague about his responsibility for them. After receiving the SOR, he filed disputes with the credit reporting agencies, requiring them to confirm with the original creditors that the debts in fact existed. The debts were removed by the agencies subsequent to his filing the disputes.

The Applicant's financial past has been checkered before the current time. He filed for bankruptcy in 1982 and 1991. Since his problems in 1997, however, his financial situation is stable. The evidence shows that he has the tools and desire to maintain his credit worthiness. Disqualifying Condition 1 applies, as do mitigating Conditions 3 and 6. Paragraph 1 is found for the Applicant.

With regards to the Guideline E allegation, while I believe the Applicant's answers to questions 38 and 39 on his questionnaire were incomplete, I find that they were not false. I make this finding for several reasons. First, the Applicant was very open with his employer, the Defense Security Service, and in his testimony, about his financial problems. Second, the answer he gave in the questionnaire concerned the largest debt that he had, to the bank for the secured credit cards. This answer put the government on notice that the Applicant had financial issues. Third, the Applicant is genuinely confused about whether he still owed a debt to the electric company or the apartment building. Since these debts were removed from his credit reports based on his disputes, there appears to be some basis for this confusion. Finally, the Applicant's testimony on these issues was believable and credible. In this case, credible testimony is evidence that supports the rest of the Applicant's arguments. The Applicant's answers on the questionnaire are not models of perfection, but they are sufficient to show that he did not have the requisite intent to deceive. Paragraph 2 is also found for the Applicant.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and 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: For the Applicant.

Subparagraphs 1.a. through 1.d.: For the Applicant.

Paragraph 2: For the Applicant.

Subparagraph 2.a.: For the Applicant.

### **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Wilford H. Ross

Administrative Judge