

DATE: May 3, 2004

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-20889

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Nygina T. Mills, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of financial delinquency from 1995 to 2003, due in part to irresponsible expenditure when he was a young private in the military. While he has paid or settled two delinquent medical debts in collection, he has no intent to satisfy consumer credit debt that has been written off by his creditors. He falsified his security clearance application by denying any financial delinquencies and failing to report non-judicial punishment awarded when he was in the service. Financial and Personal Conduct concerns persist despite his timely payment of his current obligations and his candor during his subject interviews. Clearance is denied.

STATEMENT OF CASE

On July 30, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to 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 Applicant. ⁽¹⁾ DOHA recommended referral to an administrative judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on Financial Considerations (Guideline F) and Personal Conduct (Guideline E).

On August 19, 2003, Applicant filed his response to the SOR and requested a hearing before a DOHA administrative judge. The case was assigned to me on October 22, 2003, and pursuant to notice of October 30, 2003, a hearing was scheduled for November 20, 2003. At the hearing, held as scheduled, the Government's case consisted of eight exhibits. Applicant testified on his behalf and submitted five exhibits. A transcript of the hearing was received December 3, 2003.

FINDINGS OF FACT

The SOR allegations concern Financial Considerations (Guideline F), based on outstanding delinquent debts owed to six creditors and his intent as of May 2002 to not pay these debts, and Personal Conduct (Guideline E) because of

Applicant's failure to report on his February 2002 security clearance application any qualifying financial delinquency or any of the offenses committed by him when he was in the military. In his answer, Applicant admitted all but one of the debts, contending the debt alleged in SOR 1.d. is a duplicate of the debt in 1.c. He indicated his intent with respect to repayment had changed to where he now planned to pay off his debts. Applicant acknowledged the negative responses to the financial delinquency and police record inquiries, but denied intentional falsification of his SF 86. Applicant's admissions are incorporated as findings of fact. After a complete and thorough review of the evidence, I render the following additional findings:

Applicant is a 29-year-old married electronic assembler employed by a defense contractor. He seeks a secret security clearance for his duties.

As a young private in the United States military from March 1994 to October 1995, Applicant spent money unwisely. In July 1994, he financed the purchase of a 1986 model year vehicle, taking out a loan of \$7,445, \$5,000 of it the purchase price for the vehicle.⁽²⁾ He subsequently bought a camera and accessories at a local mall that with interest ended up costing him about \$3,500.

Misconduct for which he received non-judicial punishment in the military included failure to appear for three formations in May 1995. In early June 1995, he was arrested for public intoxication off post and fined \$120. A few days later, he reported for duty incapacitated due to overindulgence in alcohol. He was reduced in rank to E1 and ordered to forfeit \$427 per month for two months, and placed on 45 days restriction and 45 days extra duty. His command recommended he not be granted a collateral clearance in the future because of his public intoxication, and in October 1995, Applicant was given a general discharge under honorable conditions for misconduct.

After his discharge, Applicant surrendered his car in voluntary repossession as he had no way of making the payments. In May 1996, the \$3,752 balance remaining on his loan was charged off by the creditor. (SOR subparagraph 1.b.). Several other accounts were also charged off or placed for collection due to nonpayment over the 1995/96 time frame. A \$246 balance on a gasoline credit card account he had opened in February 1995 was charged off (SOR subparagraph 1.a.). An installment account opened in March 1995 fell delinquent in the amount of \$372 (SOR subparagraphs 1.c., 1.d. as duplicate).⁽³⁾ Lacking medical insurance, Applicant incurred medical costs that he could not pay, including a \$2,290 hospital debt placed for collection in about November 1996 (SOR subparagraph 1.f.) and a \$246 radiology debt sent for collection in May 1997 (SOR subparagraph 1.e.).

In May 1996, Applicant went to work third shift as a tester for an electronics company. That November he was arrested for driving under the influence after consuming six mugs of beer with coworkers after work. He blacked out while driving and hit a parked vehicle. Convicted of the offense, he lost his operator's license for one year and was required to complete an alcohol intervention program. Applicant stopped drinking after the incident.

Just managing to get by financially, Applicant made no effort to contact his old creditors. In April 1999, Applicant went to work as a machine operator for another company. In November 2000, he married a woman he met in 1998. Applicant and his spouse obtained a copy of his credit report and in December 2000 attempted to contact some of his old creditors in an effort to make arrangements to repay the delinquencies.⁽⁴⁾ They were unsuccessful in reaching the gas credit card company at the address listed. The collection agent for the hospital debt was unwilling to accept payment in an amount Applicant could afford, so they concentrated on improving his credit in other ways.

In November 1999, Applicant opened a credit card account on which he has remained current. The balance as of August 2003 was \$62. In January 2000, Applicant took out an auto loan of \$9,400 with repayment at \$228 per month to buy a 1999 model year vehicle. In June 2002, he took out a second auto loan to purchase a 2001 four door pickup for \$18,000, to be repaid at \$307 monthly. Applicant was current on his loans, eventually paying them off with a home equity loan taken out with his spouse in December 2001.

In conjunction with his current employment, Applicant executed a security clearance application on February 8, 2002. In answer to question 17 concerning his military record, Applicant disclosed he had been other than honorably discharged, having received a general discharge in October 1995. He listed his 1996 DUI in response to question 24 regarding any alcohol/drug offenses, but responded "No" to any court martial or other disciplinary proceedings,

including non-judicial punishment, in the last 7 years (question 25). He also did not report any financial delinquencies on his SF 86, responding negatively to questions 38 ["In the last 7 years, have you been over 180 days delinquent on any debt(s)?"] and 39 ["Are you currently over 90 days delinquent on any debts(s)?"]. Applicant denies he had any intent to falsify his SF 86, at the hearing attributing his failure to disclose the non-judicial punishment to him not understanding that he had to list his military offenses, and the debts to his belief all of the delinquencies were more than seven years old. Yet when he responded to the SOR, he indicated not that he had misunderstood his obligation to report his military record, but rather he had not remembered the incident (arrest) when he filled out the SF 86. His inconsistent explanations undermine his credibility on the issue. As for his knowledge of his delinquencies, Applicant told a DSS agent in May 2002 he had no intent to pay his old delinquencies "*since most are approaching 7 years old.*" His statement undercuts his testimony that he thought the debts were over 7 years old at the time he completed his SF 86 in February 2002. Although Applicant had not obtained a credit report before he completed his SF 86, he knew the \$2,290 hospital debt had been incurred in 1996 and that the debt had not been charged off, but rather was in collection (Tr. 52-53; Answer). It is noted the radiology debt was not placed for collection until 1997. His denials of intentional omission are not persuasive given the record evidence.

A check of Applicant's credit by the DSS on March 18, 2003, revealed Applicant was paying many of his accounts as agreed, but \$4,718 in bad debt had been charged off, ⁽⁵⁾ and two medical debts (\$2,290 hospital and \$246 radiology debts) were in collection.

In early May 2002, Applicant was interviewed by a DSS special agent about his 1996 DUI, his discharge from the military, and his credit record. Candid about these matters, Applicant admitted his delinquent debt of \$6,612 (including a past due \$6 balance owed to a military exchange). He stated he did not intend to pay the debts because most of the debts were profit losses. Citing his improvement in his credit since his marriage, Applicant volunteered they had purchased their home in May 2001 and owned their cars outright, having paid the vehicle loans off. Applicant provided the DSS agent with a Personal Financial Statement on which he indicated he was making monthly payments of \$324 on his home equity loan that had a balance of \$34,400 and \$64 on a home equity line of credit that had a balance of \$4,300. He estimated he had a monthly net remainder of \$1,592.

Two weeks later, Applicant was reinterviewed by the agent to discuss the Article 15s he had received in the military. Applicant described his drunk on duty for which he was awarded non-judicial punishment in July 1995, his failure to appear for three formations leading to an Article 15 in May 1995, and his unauthorized use of a phone card and the garnishment of his wages to collect the \$610 in phone service charges.

A credit check of July 3, 2003, confirmed Applicant had been paying on his current obligations. Those accounts charged off more than seven years before were not reflected in the report, but the two collection accounts were reported as still outstanding. On July 30, 2003, the SOR was issued because of the unsatisfied charged off and collection debts and his deliberate omission from his SF 86 of his military offenses and delinquent accounts. In response to the SOR, Applicant indicated he had access to funds through a home equity loan to pay off his debt and intended to pay off any of the debt he could.

On August 21, 2003, Applicant obtained copies of his creditor report from two different sources. His collection accounts were reported by one credit agency but the debts charged off were not reported. On September 26, 2003, Applicant settled with the collection agent for the hospital debt, paying \$2,000 by VISA card. ⁽⁶⁾ By check dated September 29, 2003, Applicant satisfied his delinquent radiology debt of \$246. As of his hearing, he had not made any effort to contact the creditor owed the \$3,752. Since the debt had been charged off, he figured he couldn't do anything about it. He does not intend to repay that debt. Applicant cannot remember whether he had contacted the credit company about its \$372 balance, and has no intent to repay that debt. Applicant and his spouse have made several purchases on credit in the past year, \$1,800 for a computer and \$2,000 for furniture. He plans to purchase a 2003 model year truck in the near future. He does not know the extent of any savings at this point as his spouse handles the finances.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security

and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Considering the evidence as a whole, the following adjudicative guidelines are the most pertinent to this case:

Guideline F

Financial Considerations

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 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, a business downturn, unexpected medical emergency, or a death, divorce or separation);

E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Guideline E

Personal Conduct

E2.A5.1.1. The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly

safeguard classified information.

E2.A5.1.2. Conditions that could raise a security concern and may be disqualifying also include:

E2.A5.1.2.2. 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.

E2.A5.1.3. Conditions that could mitigate security concerns include:

None applicable.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of the Applicant, I conclude the following with respect to Guidelines F and E:

Under Guideline F, the security eligibility of an applicant is placed into question when the applicant is shown to have a history of excessive indebtedness, recurring financial difficulties, or a history of not meeting his financial obligations. The Government must consider whether individuals granted access to classified information are because of financial irresponsibility in a position where they may be more susceptible to mishandling or compromising classified information. Due to admitted poor financial decisions when he was a young private, Applicant found himself in a financial bind after he was discharged from the military for misconduct. Delinquent consumer credit balances totaling \$4,070 were charged off due to nonpayment in 1995/96. Medical costs of \$2,536 incurred in 1996 were placed for collection. Disqualifying conditions E2.A6.1.2.1., *a history of not meeting financial obligations*, and E2.A6.1.2.3., *inability or unwillingness to satisfy debts*, must be considered in evaluating Applicant's current security suitability.

It can reasonably be inferred that the \$2,536 in medical costs was not elective, given Applicant had no medical insurance at that time. Mitigating condition E2.A6.1.3.3., the conditions were largely beyond the person's control, applies in his case, but only to explain the incurring of the debt. It cannot justify his failure to timely address his medical obligations or his delinquent consumer debt once he had the financial means to do so. While he is to be credited for calling some of his creditors in December 2000, he made no attempt to contact his largest creditor. As of May 2002 he had an estimated \$1,592 available each month. Yet he did not intend to satisfy his old debts as most were approaching seven years old and had been written off to profit and loss. Assuming Applicant assumed he could not do anything about the charged off accounts,⁽⁷⁾ he knew collection debts could be repaid. (Tr. 41). It was not until after he received the SOR that Applicant paid off his radiology debt and settled his hospital debt, although with respect to the latter it is noted that Applicant just shifted the debt to another creditor. While his satisfaction of these debts warrants favorable findings with respect to subparagraphs 1.e. and 1.f. of the SOR, the timing of the payments suggests he was prompted out of concern for his clearance rather than of a good faith intent to rectify matters with these creditors.

The delinquent consumer credit debts alleged in SOR subparagraphs 1.a., 1.b., and 1.c.,⁽⁸⁾ have been dropped from his credit report and he has a track record of timely payment of his expenses and credit obligations incurred since his marriage. Neglecting financial obligations until such time as they are removed from one's credit report is not a substitute for a good faith effort to repay debts. SOR subparagraphs 1.a., 1.b., 1.c., and 1.g. are resolved against him.

Security significant Personal Conduct, Guideline E, concerns are raised where an applicant has not been completely candid with the Government about matter relevant and material to his or her personnel security application and investigation. (See DC E2.A5.1.2.2. *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*). The SF 86 signed by Applicant on February 8, 2002,⁽⁹⁾ bears negative responses to the inquiries concerning any financial delinquencies currently over 90 days past due or in the last 7 years over 180 days late. Applicant knew two medical accounts incurred in 1996 were in collection status. The

collection agency rejected his offer of small payments as recently as December 2000. Even though he had no contact with the other creditors and the debts were incurred when he was in the military, he testified he had problems paying after his discharge, which was within 7 years of his SF 86. Concerning his military record, his listing of his general discharge does not relieve him of his obligation to report his Article 15s. Applicant did not explain what it was about question 25 that he failed to understand. While the bold print refers to proceedings in a military court, question 25 is unambiguous in requiring listing of any non-judicial punishment in the last 7 years. DC E2.A5.1.2. applies in this case.

In his favor, Applicant was candid about his financial delinquencies and military record when he was interviewed by a DSS agent in early May 2002. He admitted he had no intent to satisfy the bad debts listed on his credit report, and while he did not specifically detail his Article 15s until two weeks later, he revealed he had been discharged for misconduct such as drunk on duty and missing a rollout to the field. The Directive provides for mitigation where there is a prompt, good faith effort to correct the falsification before being confronted with the facts. With only three months between his SF 86 and his interview, his rectification was reasonably prompt. However, E2.A5.1.3.3. also requires the corrections be prior to confrontation. It is not clear Applicant volunteered the information up-front before he was asked, and he has the burden of proof on that issue. Furthermore, Applicant's ongoing denials of any intentional falsification of his SF 86 causes doubt as to whether he can be counted on to place the Government's interests ahead of his own. Subparagraphs 2.a. and 2.b. are resolved against him.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: 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. Clearance is denied.

Elizabeth M. Matchinski

Administrative Judge

1. The SOR was issued under the authority of Executive Order 10865 (as amended by Executive Orders 10909, 11328, and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4).

2. Applicant initially testified the \$3,752 debt alleged in SOR subparagraph 1.b. is the amount remaining on his car loan after the voluntary repossession of the vehicle. (Tr. 35-36). Yet, when asked later about that debt, Applicant indicated the debt was for a camera he purchased at a local mall. (Tr. 38). His March 2002 credit report (Ex. 6) indicates a high credit on the account of \$7,445, to be repaid at \$256 monthly. The figure is reasonable for a car loan rather than for a camera and accessories bought at a local mall.

3. DOHA alleged two separate delinquencies owed to the same creditor with balances owed of \$372 and \$348 (SOR subparagraphs 1.c. and 1.d., respectively). Applicant submits he had only one account with the creditor. While his March 2002 credit report contains separate listings, the account numbers, repayment terms and dates of opening provided for the two accounts lend credence to his claim of there being only one account. The \$372 is likely a more accurate figure as to the balance outstanding when the debt was written off in August 1995.

4. While Applicant's spouse indicates they attempted to contact the businesses to which he owed money (Ex. A), Applicant testified he had not contacted the creditor owed the \$3,752 (Tr. 38) and he could not recall whether or not he had contacted the creditor owed the \$372 (Tr. 39).

5. Assuming the \$348 balance is a duplicate entry on the credit report, the aggregate amount of the charged off balances is in actuality \$4,370.

6. Applicant testified his wife borrowed the \$2,000 from the home equity line of credit and they used their check card. (Tr. 56). The receipt (Ex. B) indicates the payment was by VISA card, although not on an account listed on any of Applicant's recent credit reports.

7. Having made no effort to contact the creditor owed the \$3,752, Applicant's claim that he could do nothing is not persuasive.

8. A favorable finding is returned as to 1.d., as it was not proven to be other than an earlier balance of the debt alleged in 1.c. of the SOR.

9. Applicant was alleged to have falsified a February 27, 2002 SF 86 while the only SF 86 of record was executed by him on February 8, 2002. The error in date, likely due to administrative error, is not material. Applicant was placed on notice of the form allegedly falsified and he did not dispute that he responded on the questionnaire as alleged.