

DATE: March 15, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-22556

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Rita O'Brien, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has five unpaid debts dating from 1998 to 1999. He failed to disclose them on his security clearance application, and did not disclose his debts delinquent over 90 and 180 days. Applicant has made no effort since 1998 to pay these debts. Applicant failed to mitigate the financial and personal conduct security concerns. Clearance is denied.

STATEMENT OF THE CASE

On July 21, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under Guideline F (Financial Considerations), and Guideline E (Personal Conduct) 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, and recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn statement, received August 21, 2003, Applicant responded to the SOR allegations. He requested a hearing. This case was assigned to me on November 12, 2003. A Notice of Hearing was issued on November 18, 2003, setting the hearing for December 10, 2003. On December 10, 2003, I convened the hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government presented five exhibits which were admitted into evidence. Applicant submitted one exhibit. I received the transcript of the hearing on December 19, 2003.

FINDINGS OF FACT

Applicant admitted the SOR allegations in subparagraph 1. Applicant admits he answered subparagraph 2.a. to the best of his ability, but he had not heard from some of the creditors in several years, so he did not know what was owed and to

whom. He denied subparagraph 2.b. because he was current only all the bills about which he knew. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 41-year-old employee of a defense contractor seeking a security clearance. Applicant is married and has two children. Applicant has an Associate's Degree in Aviation Maintenance Technology. He works on helicopters for his employer. (Tr. 22 and 23, 48, 49, 68; Exhibit 1 at 1 and 3; Answer)

Applicant has five unpaid debts incurred from 1998 and 1999, and which are currently unpaid. Those debts total over \$19,000. Applicant owes a bank \$847 (¶ 1.a.). He owes a gasoline retailer \$1,213 (¶ 1.b.). He owes \$7,798 on a credit card (¶ 1.c.). Applicant owes \$2,480 to a national retailer (¶ 1.d.). He owes a financial services company \$6,963 on a credit card (¶ 1.e.). (Tr. 32 to 37; Exhibits 2, 3, 4, and 5)

Applicant failed to disclose on his security clearance application (SCA), the Form 86, completed on April 18, 2001, that he had four debts over 180 days delinquent. He did make disclosure of one credit card debt over 180 days delinquent. . He answered "No" to Question 39 when he should have answered "Yes" and disclosed debts over 90 days delinquent. Applicant had not paid his debts for several years and the creditors had lost track of him. He did not contact them. He did not know how much money he owed to whom, so he could not list them on the SCA. He was current in payments on debts he knew about, and thought if he were over 180 days delinquent on payments, he must also be over 90 days delinquent, so disclosure on the greater delinquency included disclosure on the lesser delinquencies. (Tr. 25 to 30, 64 to 67; Exhibit 1 at 8, and Exhibits 2 to 5)

Applicant worked for an airline in California until he quit voluntarily in 1999. He cashed out his company stock and sold his house. He realized a profit of k\$30,000, on which he lived for two years in California. He stayed with friends during that time and did not work. In 2001 he moved to the Midwest, got married, and got a job with his current employer. He did not pay his earlier bills because he needed the money to live on when not working. His \$30,000 would have paid these bills. Applicant thought he had to quit his job and move because unnamed persons were harassing him at his home, and he did not think the police or his employer were helping him to keep those unnamed persons away from him. Those persons were apparently former girlfriends. (Tr. 38 to 43, 55; Exhibit 2 at 2 to 4; Exhibit 3 at 1 to 3)

Applicant has not contacted an attorney about bankruptcy, or his creditors about installment payment plans or compromise payments. His wife and mother contacted an attorney to try to resolve these debts. (Tr. 45, 46)

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline F: Financial Considerations

(A) 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.

(B) Conditions that could raise a security concern and may be disqualifying include:

(1) A history of not meeting financial obligations.

(3) Inability or unwillingness to satisfy debts.

(C) Conditions that could mitigate security concerns include:

None

Guideline E - Personal Conduct:

(A) 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. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

Refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personal security or trustworthiness determination.

(B) Conditions that could raise a security concern and may be disqualifying also include:

(2) The deliberate omission, concealment, falsification or misrepresentation 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;

(C) Conditions that could mitigate security concerns include:

None

Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, I draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to each allegation set forth in the SOR:

Considering Guideline F (Financial Considerations), I find Disqualifying Conditions (DC) 1 and 3 apply. Applicant had the money in 1999 and 2000 to pay these debts. He chose not to work in those years and spent his \$30,000 profit on his house on himself. He has made no efforts for four or five years to pay these debts.

I find none of the Mitigating Conditions (MC) apply to this Applicant's case. However, I do find that having any balance of income over expenses monthly by this or any Applicant is not a violation of the Directive, as alleged in subparagraph 1.f. With three dependents and a middle class income any surplus to be saved or spent is a benefit. If the Government alleges this fact to show Applicant could or could not service the debts listed in the SOR, it is not clear from the allegation what is meant and what the Applicant violated. I will find for Applicant on that allegation. On the remaining allegations, I find against Applicant under Guideline F.

With respect to Guideline E, I conclude the Government proved its case. Under Guideline E, 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. A security concern may exist when an applicant deliberately omits, conceal, or falsifies relevant and material facts from his personnel security questionnaire or deliberately provides false or misleading information concerning relevant and material matters to an investigator in connection with a personnel security determination. I find DC 2 applies to this issue. Applicant had enough knowledge of his debts to have listed that he had several other debts from the 1998 to 1999 period. That information would have put the government on notice that Applicant had a chronic debt problem. Instead, Applicant listed one debt, and failed to disclose that these debts were over 90 and 180 days delinquent. I do not find any MC which apply here. Consequently, I find against Applicant on Guideline E.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline F: Against Applicant

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: For Applicant

Paragraph 2 Guideline E: Against Applicant

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

DECISION

In light of all the circumstances and facts 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.

Philip S. Howe

Administrative Judge