

DATE: July 6, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-22657

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Pamela C. Benson, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's pattern of financial irresponsibility renders him an unsuitable candidate for a security clearance. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 22 September 2003 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of Applicant's clearance because of financial considerations and personal conduct. ⁽¹⁾ Applicant answered the SOR on 23 October 2003 and 6 January 2004 and requested a decision without a hearing. He did not respond to the Government's 12 March 2004 File of Relevant Material (FORM). The record closed 24 April 2004, the day the response was due at DOHA. The case was assigned to me on 12 May 2004 to decide if clearance should be granted, continued, denied, or revoked.

FINDINGS OF FACT

Applicant admitted the financial allegations of the SOR, except for subparagraphs 1.a., 1.c., 1.d., and e. Accordingly, I incorporate these admissions as findings of fact. He denied falsifying his clearance application.

Applicant--a 36-year-old employee of a defense contractor--seeks access to classified information. He previously had a clearance while on active duty in the Army from 1992 to 1998. He

has a history of financial irresponsibility.

In February 1997--about 18 months before his enlistment was to expire--Applicant leased a new sports car for four years. ⁽²⁾ He made the payments on the lease until August 1998 when he got out of the Army and went to school full time. While in school, he had no steady income. He got some veterans' benefits, but otherwise paid for college with

student loans underwritten by the U.S. Department of Education. Between September 1998 and August 2000, when he completed his degree requirements in aerospace engineering,⁽³⁾ Applicant received eight loan disbursements totaling nearly \$28,000.00. Before obtaining his current job, he was unemployed from August 2000 through January 2001, a period which would entitle him to a deferment on repaying the educational loans. However, once he became employed full-time in January 2001, he should have begun repayment on his educational loans. He did not. When interviewed by the Defense Security Service (DSS) in January 2002, he acknowledged and discussed a number of delinquent accounts. He did not discuss his student loan accounts, and his personal financial statement did not show any payments on the educational loans. Applicant's answer claims the accounts have been consolidated and he is now in the third month of a 12-month grace payment period. Applicant provides no corroboration of this claim, nor does he indicate whether he is now actually paying on the educational loans.

Because he had no income while in college, Applicant stopped paying his bills, including his lease payment on the car. He has made no payment on the car since at least September 1998. The manufacturer eventually repossessed the car. In June 2000, the manufacturer obtained a judgment against Applicant for nearly \$10,000.00 (including court costs and attorneys fees) plus 10% interest. The judgment remains unpaid.⁽⁴⁾ With interest, the debt is now nearly \$14,000.00.

In February 2001, Applicant disclosed the automobile repossession and judgment on his clearance application, but did not disclose three delinquent debts totaling about \$900.00. He claims this was an oversight on his part and could not have meant to mislead the government because he disclosed the automobile issues. Of the four debts Applicant denies, he claims two are paid and two have been uncorroborated by the creditor after he inquired about them. However, he provides no documentation of his claimed payments or his contacts with the other creditors. The record contains no evidence of Applicant's character or work performance.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section 6.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

FINANCIAL CONSIDERATIONS (GUIDELINE F)

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 criminal 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:

None.

PERSONAL CONDUCT (GUIDELINE E)

E2A5.1.1. **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 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, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

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

None.

Burden of Proof

Initially, the Government must prove controverted facts alleged in the SOR. If the Government meets that burden, the burden of persuasion then shifts to an applicant to establish security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

The Government has established its case under Guideline F. The record demonstrates Applicant's substantial indebtedness and his irresponsible handling of his financial obligations. Although he knew his enlistment was up in August 1998, Applicant entered into a four-year lease agreement on an expensive sports car. He then decided to enter college full time with no other means of support than educational loans and his minimal veteran's benefits. With no income, he simply stopped paying his bills. Applicant suggests he had no other choice because he was in school full time, but that argument ignores the voluntary choice he made to go to school full time and not undertake even part-time work. More tellingly, even though he became employed full time after receiving his degree in December 2000, he apparently took no action to address his educational loans until he received the SOR in September 2003. His other major debt, the lease judgment, remains unpaid. He has not corroborated any claimed payments or settlements or attempted contacts with the creditors alleged in the SOR.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and not isolated; indeed they are ongoing. They are not due to events beyond his control. While he may no longer be digging himself into a financial hole, he has not substantiated his claims that he has pulled himself out of it. I conclude Guideline F against Applicant.

The Government has established Applicant's omission under Guideline E, but I resolve this issue in Applicant's favor. Whether the omission was deliberate or not, the \$800.00 omission was de minimis compared to the disclosed \$10,000.00 judgment. I conclude Guideline E for 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

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

Subparagraph j: Against the Applicant

Subparagraph k: Against the Applicant

Subparagraph l: Against the Applicant

Subparagraph m: Against the Applicant

Subparagraph n: Against the Applicant

Paragraph 2. Guideline E: For the Applicant

Subparagraph a: For 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. Applicant states it was a purchase for \$435.00/for 48 months (\$20,800.00 total), but the judgment records from the manufacturer show it was a lease.
3. Awarded December 2000.
4. In his January 2002 sworn statement, Applicant claims to owe only about \$7,500.00 and to have been making payments since 1999. However, he provides no proof of payment or settlement and neither his 2003 or 2004 credit reports corroborate his claim.