

DATE: May 2, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-23275

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has four outstanding debts. He admits two of them and paid them in January 2003. He states he is unaware of the other two, totaling \$214.00, one of which goes back to 1990 and the other to 1995. He denies these debts. Applicant's prompt payment of the two largest debts, totaling \$8,854.91, shows his good faith efforts to resolve these debts. Applicant successfully mitigated these older isolated debts by payment and has incurred no recent debts which are not being repaid regularly. It is clearly consistent with national security to continue Applicant's security clearance. Clearance granted.

STATEMENT OF THE CASE

On October 7, 2002, 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) 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, dated October 16, 2002, Applicant responded to the SOR allegations. He requested his case be decided on the written record in lieu of a hearing.

On December 11, 2002, Department Counsel submitted the Government's written case. A complete copy of the file of relevant material (FORM) [\(U\)](#) was provided to the Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. He submitted a response to the FORM with attachment on January 13, 2003. On February 13, 2003, Applicant submitted additional documents from his two largest creditors to

prove the debts to them were paid by the electronic fund transfers from Europe. The Government had no objection to these submissions from Applicant. The case was initially ready for adjudication on January 28, 2003, but was recalled when Applicant's response to the FORM was received and added to the file. The case was assigned then to Administrative Judge Joan Anthony on February 24, 2003, but was reassigned to me on April 28, 2003 due to caseload considerations.

FINDINGS OF FACT

Applicant admitted two of the four SOR allegations (subparagraphs 1.a, and 1.b.). Those admissions are incorporated herein as findings of fact. He denied the remaining two SOR allegations (subparagraphs 1.c and 1.d). 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 34-year-old man who is employed by a defense contractor. He seeks to continue his current security clearance. He is currently employed in Europe by this defense contractor. (Item 5 at 1 and 2)

Applicant has four debts, three from credit cards and one from a line of credit at a bank, dating back to 1990 and 1995. The debts total about \$9,000. One debt was reduced to judgment in a state court. (Item 1 at 1; Item 6 at 1, 4 to 6; Item 7 at 1)

Applicant blames his former wife for some of the debts and that he was unaware of the existence of the debts. He also stated he moved several times around the United States and to Europe for his employment after separating from the military service. The most significant debts were the two largest debts, totaling \$8,854.91. Applicant paid off those debts by electronic fund transfers on January 14 and 15, 2003. The two smaller debts totaling \$214.00 remain unpaid. (FORM Response at 1 and 2, and copies of the electronic fund transfers attached to the Response and letters from the creditors stating the debts are paid; Response to SOR at 1 and 2; Item 7 at 1)

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

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.

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.

Conditions that could mitigate security concerns include:

(1) The behavior was not recent.

(2) It was an isolated incident.

(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.

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:

With respect to Guideline F, the Government established its case. Applicant was delinquent on four accounts. He was responsible for all of the debts, and they should have been paid in a timely manner. He acknowledged all of the credit accounts at issue, but thought the two he denied were closed and paid years ago. Those two were the two smallest, totaling \$214. He stated he would have to research those debts, and correct them or pay them. Applicant's overall conduct pertaining to his financial obligations clearly falls within Financial Considerations Disqualifying Condition (DC) E2.A6.1.2.1., and DC E2.A6.1.2.3.

However, these conditions are outweighed by the Mitigating Conditions (MC) applicable here. These debts were incurred in 1990 and 1995. His credit report shows his other debts are current in their payments, and he has closed other accounts, so his credit obligations are not numerous and overburdening. The latest date he opened a credit card account was 2000 and that debt is being paid on time (MC 4). Therefore, these debts at issue here were not incurred recently, but have been in existence for years. They are not part of his current pattern of using credit responsibly. Because of Applicant's moves around the country and to and from Europe with the military and his civilian employer, I find it credible that he had lost track of them and would have paid them if he knew about them. His credit history shows he handles his credit accounts responsibly.

The Directive allows mitigation of financial considerations if the behavior which created the debts at issue was not recent. Applicant's credit history and the age of these two largest debts, and even the other two debts he denied knowing about, were all incurred seven or more years ago. The failure to pay these debts arose only from his failure to know of their existence currently. His responsible behavior by paying his debts more recently incurred shows he is more likely than not to have paid these debts if he had known about them during the past 12 years.

While there were four debts at issue in this case, they were isolated in the sense that they were not part of a continuous and consistent pattern of a failure to pay debts by Applicant. They were incurred at widely spread time periods, and not within a few months of each other as part of a pattern of incurring debt on credit cards or loans, and deliberately not paying them. Applicant's credit record shows he has a record of current and responsible payments on debts (MC 1 and 2). His statement that he was unaware of these debts is credible in light of his responsible debt management practices, his divorce, frequent transfers for his employment, prior separation from his wife, and the alleged actions of his former wife by incurring these debts without telling him (MC 3).

Applicant did make payment of the two largest debts immediately, including the one reduced to a court judgment, after he was notified by the SOR of the debts and the problem with continuing his security clearance if the debts were not paid. He made those payments in January 2003, and those actions are certainly more than merely initiating a good-faith effort to pay the debts, he actually paid them totally (MC 4 and 6).

Applicant did not submit any evidence that the two smaller debts are resolved, but they can be very easily paid by Applicant as evidenced by Applicant's obvious ability to pay the two largest debts at one time. The \$214 apparently unresolved is *de minimus* in view of the entire circumstances. Therefore, Applicant has mitigated the allegations in the SOR by paying the largest debts and resolve them. He acted within his current pattern of responsibly paying his just personal debts.

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: For Applicant

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

DECISION

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

Philip S. Howe

Administrative Judge

1. The Government submitted seven items or exhibits in support of its contention.