

DATE: February 25, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-23781

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of debts he accumulated as a college student. Unable to find work following his graduation, he permitted his debts to become delinquent. Since their referral to collection agencies and judgment in two instances, he has failed to take any meaningful action to address his debts. Security concerns over his financial history are compounded by his deliberate omissions of his delinquent debts and unsatisfied judgments from his SF-86, which he failed to correct by prompt, voluntary disclosure before being confronted by an interviewing DSS agent. Clearance is denied.

STATEMENT OF THE CASE

On June 3, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant. The SOR 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, and recommended referral to an administrative judge for determination whether clearance should be granted or continued.

Applicant responded to the SOR on June 24, 2003, and elected to have his case decided on the basis of the written record. Applicant was furnished the File of Relevant Material (FORM) on November 4, 2003. The exhibit file contains no documentation that he provided any timely response to the FORM within the time permitted. The case was assigned to me January 15, 2004.

SUMMARY OF PLEADINGS

Under Guideline F, Applicant is alleged to have accumulated numerous delinquent debts: seven in all which exceed \$20,000.00 in the aggregate, which he has made little effort to resolve with a net monthly remainder of \$1,244.23, based on his personal financial statement of June 2002.

Under Guideline E, Applicant is alleged to have falsified his security clearance application (SF-86) of March 2001 by omitting his (a) delinquent debts over 180 and 90 days, respectively, and (b) unpaid judgments within the previous seven years.

For his response to the SOR, Applicant admitted each of his delinquent debts alleged. He denied having a monthly remainder of \$1,244.23. While admitting his SF-86 omissions, he denied any knowledge of his financial records and unpaid judgments.

STATEMENT OF FACTS

Applicant is a 28-year-old material handler for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow

Applicant incurred a number of debts while a college student. In addition to his student loan in the amount of \$13,146.00, he accumulated a number of credit card debts. All of these listed debts became delinquent after he graduated from college and couldn't find work. Ultimately, his debts were assigned to debt collection agencies. Two of his debts (creditors 1.d and 1.e) were taken to judgment (in 1999 and 2000, respectively) and remain unsatisfied along with his other listed debts.

Recently, Applicant pursued consumer debt counseling, with the goal of eventually consolidating his debts. While he claims to have recently consolidated his student loans, he provides no documentation. He has made a few payments to date on his credit card and student loan obligations: On his two student loans of \$7,841.00 and \$7,299.00, he had been making combined payments of \$292.00 a month for about a year at the time of his DSS interview in June 2002 (ex. 5). To what extent he has continued to pay down his student loans is unclear, for he has provided no documentation of any further payments on either his student loans, or his other debts.

In the personal financial statement, Applicant attached to his June 2002 DSS statement he reported a net monthly remainder of \$1,244.62 (ex. 5). His subsequent denials of any monthly remainder in his answer are neither documented nor corroborated and cannot be accepted under the circumstances. While it is possible that Applicant's circumstances have worsened since June 2002, any changed circumstances would have to be explained and documented before they could be considered. This Applicant has failed to do, and his denials of a net monthly remainder as previously reported cannot be accepted.

Asked to complete an SF-86 in March 2001, Applicant omitted each of his listed delinquent debts when responding to questions 38 (delinquent debts over 180 days and 90 days, respectively) and question 37 (unpaid judgments). Applicant attributes his omissions to his lack of any records or otherwise accurate knowledge of his accounts, and specifically to his lack of any knowledge of judgments being taken against him. However, he provides no documentation or tangible reason how the parties or court entering the creditor suits that resulted in judgment in 1999 and 2000, respectively, could have failed to keep him abreast of the cases as they proceeded, or as to the judgments that resulted.

Considering Applicant's admitted knowledge of his debts being assigned to collection agencies (with one being taken to judgment) and his known history of his past payment history, his denials cannot be accepted as credible refutations of either his knowledge of his listed delinquent debts or his failed efforts to address them. Without more to document his claims of entered adverse judgment against him, he cannot avert adverse inferences either that he knew about the judgments before he was asked to complete his SF-86.

Not until confronted with his credit report at his June 2002 DSS interview did Applicant respond with any acknowledgments of his old delinquent debts to the interviewing DSS agent. His debt acknowledgments under such circumstances cannot be characterized as either prompt or voluntary.

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could

raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Financial Considerations

Concern: An individual who is financially overextended is at risk at having to engage in illegal acts to generate funds. Unexplained influence is often linked to proceeds from financially profitable criminal acts.

Disqualifying Conditions

DC 1. A history of not meeting financial obligations.

DC 3. Inability or unwillingness to satisfy debts.

Mitigating Conditions

MC 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).

Personal Conduct

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Disqualifying Conditions:

DC 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.

Mitigating conditions: None.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant accrued considerable debt, much of it credit card-related, while in college. Unable to find work after his graduation, he permitted his debts to become delinquent. Ultimately, they were assigned to credit collection agencies. Two of his debts (creditors 1.d and 1.e) were taken to judgment, where they remain unsatisfied. Altogether, Applicant has over \$20,000.00 in delinquent student loans and consumer debts, which he has failed to address in any meaningful way to date. On the strength of the evidence presented, Government may invoke two Disqualifying Conditions (DC) of the Adjudicative Guidelines for financial considerations: DC 1 (history of not meeting financial obligations) and DC 3 (inability or unwillingness to satisfy debts).

While Applicant may take advantage of MC 3 (conditions largely beyond the person's control) of the Adjudicative Guidelines to extenuate his debt delinquencies by virtue of his demonstrating difficulties finding work following his graduation, he may not invoke the mitigating provisions of MC 6 (initiated good-faith effort to repay overdue creditors), absent more concerted efforts to address his old creditors than he has shown to date. To fully absolve himself of security concerns raised by his financial history, he may not simply extenuate his delinquent debts: He must also demonstrate an earnest and consistent effort to address his debts when able.

Without any documentation or corroboration to support his claims of good intention to take care of his debts in the future he fails to mitigate the Government's security concerns about his financial difficulties associated with his accumulated delinquent debts and unpaid judgments. Unfavorable conclusions warrant, accordingly, with respect to the allegations covered by Guideline F of the Adjudicative guidelines.

Posing security concerns, too, are Applicant's falsification of his March 2001 SF-86 by omitting his debts that were delinquent more than 180 and 90 days, respectively, and his two unsatisfied judgments within the previous seven years. These omissions were found to have been made in a knowing and wilful manner.

Applicant's explanations of his omissions of his delinquent debts over 180 and 90 days, respectively, and his two unpaid judgments are covered by DC 2 (deliberate falsification of a personnel security questionnaire). These deliberate omissions were never promptly and voluntarily corrected by Applicant, and he may not claim the benefit of any of the available mitigating conditions of Guideline E. Judgment, reliability and trustworthiness are fundamental to clearance eligibility decisions. Where there are lingering doubts about an applicant's clearance eligibility, our Supreme Court counsels that doubts must be resolved in favor of the Government. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As a result, security concerns raised in connection with Applicant's judgment and trust lapses associated with his falsification of his SF-86 are not mitigated and preclude favorable conclusions with respect to the allegations covered by Guideline E.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the E 2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

GUIDELINE F (FINANCIAL): AGAINST APPLICANT

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

Sub-para. 1.d: AGAINST APPLICANT

Sub-para. 1.e: AGAINST APPLICANT

Sub-para. 1.f: AGAINST APPLICANT

Sub-para. 1.g: AGAINST APPLICANT

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Sub-para. 2.a: AGAINST APPLICANT

Sub-para. 2.b: AGAINST 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 Applicant's security clearance. Clearance is denied.

Roger C. Wesley

Administrative Judge