

DATE: January 30, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-23882

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of delinquent debts that he has failed to address or mitigate. Security concerns over his financial history are compounded by a series of alcohol-related incidents that reveal a dependence problem that Applicant has not been able to dispel by either discontinued drinking or documentation of the absence of an alcohol problem. Applicant's misuse of his AE Government card and deliberate concealment of his AF Article 15 drunk and disorderly arrest when completing his SF-86 are not mitigated either and raise still further security concerns about Applicant's judgment and reliability. Clearance is denied.

STATEMENT OF THE CASE

On July 2, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, 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, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on August 3, 2003, and requested a hearing. The case was assigned to me on September 5, 2003, and was scheduled for hearing on November 6, 2003. A hearing was convened on November 6, 2003, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. At hearing, the Government's case consisted of 12 exhibits; Applicant relied on two witnesses (including himself) and 7 exhibits. The transcript (R.T.) was received on November 24, 2003.

SUMMARY OF PLEADINGS

Under Guideline F, Applicant is alleged to have incurred numerous delinquent debts: Specifically, he is alleged to have incurred 13 delinquent debts, which exceed \$13,000.00 in total, repossession of a motor vehicle for failure to make

payments, and a notice of intention to withhold income for child support for \$404.00.

Under Guideline J, Applicant is alleged to have (a) received an Article 15 in the military in November 1996 for drunk and disorderly conduct and damage to NAF property, (b) been found driving while intoxicated on or about January 1997 while on active duty in the AF, and received a letter of reprimand in March 1997, (c) been arrested and charged in October 2000 for harassment domestic violence after being found to have been drinking the night of the incident to which he pleaded guilty (deferred for 24 months conditioned on his completing 36 weeks of domestic violence training, attending 90 days of alcohol treatment and paying court costs), and (d) enrolled in an alcohol education and domestic violence Level II therapy program at H Counseling from February 2001 to April 2001, with an alcohol dependence diagnosis noted on his admission.

Under Guideline E, Applicant is alleged to have (i) wrongfully used his AE Government card for personal use in the AF in the amount of \$6,123.00 between December 1996 and February 1997, for which he received NJP: a reduction in grade (suspended until October 1997), 30 days correctional custody (also suspended to October 1997) and 10 days extra security, (ii) failed to go to his appointed place of duty in August 1997, (iii) received an administrative discharge in October 1997 for misconduct from the AF and (iv) falsified his SF-86 of March 2001 by omitting his November 1996 drunk and disorderly violation, for which he received an article 15.

For his response to the SOR, Applicant admitted most of the allegations. He denied owing any debts to creditors covered by sub-paragraphs 1.g, 1.i, 1.l, and 1.m, and falsifying his March 2001 SF-86.

FINDINGS OF FACT

Applicant is a 29-year-old production control specialist 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 adopted as relevant and material findings. Additional findings follow.

Following his administrative discharge from the AF in 1997 for misconduct, Applicant worked a number of low-paying jobs. With work slow, Applicant was unable to pay his holdover debts from his AF enlistment and let them become delinquent. In April 2000, he married W, a former AF enlistee like himself who he had met in the service. W soon became pregnant with his daughter to be.

Altogether, Applicant accrued over \$13,000.00 in delinquent debts dating to his time in the AF. In April 2002 he contacted Consumer Credit Counseling (CCC) to explore payment strategies and entered into a repayment plan with CCC. He made payments to CCC for several months but stopped making payments after separating from his wife in September 2002 (ex. A; R.T., at 47). To date he has not returned to CCC to attempt to reinstate his workout arrangements. Nor has he made any additional documented payments towards satisfying any of his delinquent debts. His claims to paying off creditors 1.g account and satisfying creditors 1.l and 1.m were never documented and remain in his latest credit reports (exs. 4 and 5) as unpaid debts. The financial needs assessment he obtained in January 2003 (ex. B), while helpful to Applicant in developing a financial program to better manage his finances, does not contain any payment proposals for addressing his old debts. Without evidence from Applicant to corroborate his claims some of his debts have been resolved, they cannot be credited to him as satisfied debts.

While Applicant was out of the country on active AF duty, his insurance company failed to cover all of his repair costs associated with an accident he was involved in. Before deploying, he notified his car lender of his intention to turn his car back to the bank. At this time, Applicant owed approximately \$16,000.00 on the car. Acting on Applicant's request, the lender repossessed the vehicle and sold it at auction. Applicant doesn't know whether any deficiency remained after the lenders's sale of the vehicle (R.T., at 50-52).

Following his separation from his spouse, Applicant volunteered to have child support payments deducted from his monthly paycheck. In December 2002, a notice to withhold income of \$404.00 a month for child support was issued by the responsible state child support agency to Applicant's employer. Since early 2003, bi-weekly payments have been deducted from Applicant's paycheck in \$202.00 increments.

Applicant began regularly consuming alcohol when he joined the AF at the age of 18 (ex. 2). While in the AF,

Applicant was involved in three alcohol-related incidents: one a drunk and disorderly arrest in November 1996 (in which he registered .212 per cent blood alcohol level), for which he received non-judicial punishment (NJP) under Article 15, Uniform Code of Military Justice (10 U.S.C. Sec. 815), another incident in January 1997 that involved driving while intoxicated while on active-duty AF assignment, for which he received a letter of reprimand in March 1997, and a third incident in October 2000, in which he was arrested for harassment domestic violence that was alcohol-related and pleaded guilty. Addressing Applicant's guilty plea with respect to this 2000 incident, the court deferred judgment for a period of 24 months, conditioned on Applicant's completing 36 weeks of domestic violence training, attending 90 days of alcohol treatment, and paying court costs. By the evidence presented and considered, Applicant complied with the court's conditions and currently has a valid driver's license. With respect to the domestic violence incident, Applicant had been drinking and became involved in a domestic dispute with his wife that culminated in physical exchanges (ex. 12; R.T., at 66-67).

Upon his admission to H Counseling in February 2001, Applicant was diagnosed alcohol dependent, which was accompanied by a high degree of denial. Applicant does not dispute this diagnosis or offer any other evaluations from another credentialed medical professional or licensed substance abuse counselor to counter the H Counseling diagnosis. Applicant's negative answers to questions put to him in the intake questionnaire about prior alcohol-related incidents reveal considerable denial and an unwillingness to share information with his counselors that could indicate problems with alcohol (ex. 12; R.T., at 77-78). Applicant does believe he learned important lessons from his counseling sessions (which he completed in March 2001) about drinking under control. Still, he continues to drink while denying any alcohol problems and provides little evidentiary support to corroborate his assurances he drinks responsibly and is able to control his alcohol intake in the face of his prior dependence diagnosis.

While in the AF, Applicant misused his AE Government credit card for personal purposes. Between December 1996 and February 1997, he used his AE card to finance rental car expenses that had not been covered while he was on TDY, as well as to obtain cash withdrawals (estimated to be between \$3,000.00 and \$4,000.00) to pay for personal necessities (R.T., at 82, 89-91). Altogether, he accumulated \$6,123.00 in characterized personal debts on his AE card, for which he has not repaid. For his concluded misuse of his AE card, he received administrative punishment: reduction in grade (suspended until October 1997), 30 days correctional custody (also suspended until October 1997) and 10 extra days security.

Besides his misuse of his AE Government card, Applicant was cited in the AF for his failure to go to his appointed place of duty in August 1997. As the result of his accumulated misconduct, he was administratively discharged from the AF in October 1997.

Asked to complete a SF-86 in March 2001, Applicant omitted his 1996 NJP drunk and disorderly offense. He attributes his omission to his previous reliance on his misreading of question 25 and his failing to note that the question covered NJP. Applicant did not come forward to disclose the incident, however, until confronted with the same by the interviewing DSS agent in a second DSS interview in May 2002, a period of almost 14 months later.

Applicant has received excellent performance evaluations (ex. E) and is well regarded by his supervisor, coworkers and friends (ex. F). He documents numerous training programs he has satisfactorily completed (ex. G).

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 1. The behavior was not recent.

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).

Alcohol Consumption

The Concern: Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

Disqualifying Conditions:

DC 1. Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use.

DC 4. Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Mitigating Conditions:

MC 3. Positive changes in behavior supportive of sobriety.

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.

DC 5. A pattern of dishonesty or rule violations.

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.

CONCLUSION

Applicant accrued considerable debt, much of it credit card-related, while in the Air Force. Unable to stay up with his accrued debts with his limited work following his administrative separation from the AF in 1997, he let his debts become delinquent. While he was able to work out a repayment plan with CCC in April 2002, he opted out of the plan several months later after making just a few payments. With the exception of the few payments he is credited with making through CCC, he has never made any tangible efforts to pursue repayment arrangements, either collectively through debt consolidation organizations, or individually that he can document. Altogether, Applicant accrued over \$13,000.00 in delinquent debts which he has neither paid nor otherwise resolved.

Besides his delinquent consumer debts, Applicant also experienced a repossession of his vehicle following an accident in which his car was totaled out. This vehicle was repossessed at a time when he owed approximately \$16,000.00 and later sold by the lender at auction. Whether any deficiency is owed the lender is unknown to Applicant.

What is known is that Applicant owes his listed creditors in excess of \$13,000.00 and is obligated to his former spouse for child support payments of \$404.00 a month, which are being withheld from Applicant's pay in two bi-weekly deductions. 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, he may not fully 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 find insufficient mitigation of Applicant's accrued delinquent debts is not to minimize his work contributions. For his work contributions, Applicant is to be commended and encouraged. Unfavorable conclusions warrant, accordingly, with respect to sub-paragraphs 1.a and 1.c through 1.n of the Adjudicative Guidelines governing Guideline F. Applicant is credited with resolving his vehicle repossession in 1997 (covered by subparagraph 1.b) by turning the car over to the bank, who apparently sold it without a resulting deficiency. Favorable conclusions warrant as well with respect to Applicant's child support withholding (covered by subparagraph 1.o of Guideline F).

Between 1996 and October 2000, Applicant was involved in three-alcohol incidents. His three alcohol-related incidents (two while he was in the AF) over a four-year period reflect alcohol abuse by Applicant and documented proof of his having a recurring problem with alcohol through at least October 2000. Records of his noted alcohol dependence in the Level II alcohol education and domestic violence program in which Applicant enrolled in October 2000 include an alcohol dependence diagnosis of Applicant. Such a diagnosis weakens Applicant's claims he has no alcohol problem and precludes any convincing showing he has his alcohol intake under safe control.

Having continued on with his drinking following his last alcohol-related incident in October 2000, Applicant manifests not only denial of any potential alcohol problems associated with his drinking, but also his unwillingness to seek the documentary support necessary to corroborate his assurances. On the strength of the evidence presented, one disqualifying condition (DC) of the Adjudication Guidelines for alcohol consumption may be applied: DC 1 (alcohol-related incidents away from work).

By his actions to date, Applicant provides too little evidence of his learning from his judgment lapses associated with his alcohol-related incidents. Applicant's situation is one where he might have acquired a firmer understanding of past excessive consumption of alcohol preceding his use of a motor vehicle but chose to rely on his own self assessments. Continuing to drink, even at light to moderate levels, in the face of a fairly recent alcohol dependence evaluation reveals denial and poses recurrence risks to Applicant.

So, all in all, Applicant's mitigation efforts to date reflect too much uncertainty to absolve him of risks of recurrent alcohol abuse. His avoidance of any additional alcohol-related incidents over the past three years, while encouraging, is still not enough to facilitate safe predictive judgments about his ability to avert any alcohol abuse relapses or recurring problems with law enforcement authorities in the foreseeable future.

Applicant's still limited efforts to remedy his judgment lapses associated with the abuse of alcohol preclude him at this time from taking enough advantage of any of the mitigating conditions (MC) of the Adjudication Guidelines for alcohol consumption to mitigate security concerns associated with his prior alcohol-related incidents. While he is to be encouraged in his recent commitments to drink more responsibly, more time is needed to mitigate current security concerns raised by his history of abusive drinking and continued drinking in the face of his unchallenged dependence diagnosis.

Considering the record as a whole, Applicant fails to make the convincing showing that he is no longer at risk to judgment impairment associated with abuse of alcohol. Unfavorable conclusions warrant with respect to the alcohol-related allegations covered by subparagraphs 2.a through 2.e of Guideline G.

Posing security concerns, too, are Applicant's documented misuse of his AE Government card for his personal use over a three-month period spanning December 1997 and February 1997 (approximately \$6,123.00 in all), his failure to go to his appointed place while on Air Force duty in 1997, and his ensuing administrative discharge from the AF in October 1997 for misconduct. The incidences of misconduct that resulted in his administrative discharge reflect a pattern dishonesty and rule violations and warrant the application of DC 5 (pattern dishonesty and rule violations) of the Guidelines for personal conduct. Compounding these manifest judgment lapses are Applicant's falsification of his March 2001 SF-86 by omitting his 1996 Article 15 violation for drunk and disorderly conduct.

Applicant's explanations of his misuse of his AE card and his failing to go to his appointed place of duty by themselves might be mitigated by the passage of time. This evidenced misconduct is compounded, though, by his deliberate omission of his Article 15 offense from 2001 SF-86. This deliberate omission was never promptly and voluntarily corrected by Applicant, and he may not claim the benefit of any of the available mitigating conditions of Guideline E. As a result, security concerns raised in connection with Applicant's judgment and trust lapses associated with his AF misconduct and falsification of his SF-86 are not mitigated and preclude favorable conclusions with respect to subparagraphs 3.a through 3.d of 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: FOR 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

Sub-para. 1.h: AGAINST APPLICANT

Sub-para. 1.i: AGAINST APPLICANT

Sub-para. 1.j: AGAINST APPLICANT

Sub-para. 1.k: AGAINST APPLICANT

Sub-para. 1.l: AGAINST APPLICANT

Sub-para. 1.m: AGAINST APPLICANT

Sub-para. 1.n: AGAINST APPLICANT

Sub-para. 1.o: FOR APPLICANT

GUIDELINE G (ALCOHOL): AGAINST APPLICANT

Sub-para. 2.a: AGAINST APPLICANT

Sub-para. 2.b: AGAINST APPLICANT

Sub-para. 2.c: AGAINST APPLICANT

Sub-para. 2.d: AGAINST APPLICANT

Sub-para. 2.e: AGAINST APPLICANT

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Sub-para. 3.a: AGAINST APPLICANT

Sub-para. 3.b: AGAINST APPLICANT

Sub-para. 3.c: AGAINST APPLICANT

Sub-para. 3.d: 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