

DATE: February 3, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-23925

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has had a history of financial difficulties. He currently has more than \$52,000 in overdue debt. None of his past overdue debts have been resolved. Mitigation has not been established. Clearance is denied.

STATEMENT OF THE CASE

On June 9, 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 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 or denied.

In a signed and sworn statement, dated June 17, 2003, Applicant responded to the SOR allegations. He requested that his case be decided on the written record in lieu of a hearing. On September 9, 2003, Department Counsel prepared the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed no response to the FORM. The case was assigned to this Administrative Judge on October 27, 2003.

Department Counsel offered six documentary exhibits (Exhibits 1-6), which were admitted without objection. Applicant offered no documentary evidence into the record.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline F (Financial Considerations) of the Directive. The SOR contains 13 allegations, 1.a. through 1.m., under Guideline F.

In his response to the SOR, Applicant admits all of the allegations. These allegations are incorporated as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR and the admitted documents, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is a 40 year old employee of a defense contractor who seeks access to classified information. He is married and has three stepchildren. He received an Associates Degree from a technical college in 1994.

(Guideline F - Financial Considerations)

The SOR lists 13 debts that Applicant owed as of March 21, 2002, 1.a. through 1.m under Adjudicative Guideline F . In his June 17, 2003 response to the SOR, Applicant admitted owing these debts. The total owed by Applicant was approximately \$52,430. These debts were all long overdue, most for several years. The evidence establishes that Applicant (1) was indebted in the amounts alleged, and (2) all of the debts were delinquent as of June 2003. The table below presents details about each debt as they were listed in the SOR:

Debt	Amount Owed	Current Status	Record
1.a	\$1,260	unpaid	Exhibits 3, 5, 6
1.b.	\$1,960	unpaid	Exhibits 3, 5, 6
1.c.	\$1,631	unpaid	Exhibits 3, 5, 6
1.d.	\$3,382	unpaid	Exhibits 3, 5, 6
1.e.	\$ 240	unpaid	Exhibits 3, 5, 6
1.f.	\$3,306	unpaid	Exhibits 3, 5, 6
1.g.	\$2,435	unpaid	Exhibits 3, 5, 6
1.h.	\$1,207	unpaid	Exhibits 3, 5, 6
1.i.	\$1,581	unpaid	Exhibits 3, 5, 6
1.j.	\$64	unpaid	Exhibits 3, 5, 6
1.k.	\$829	unpaid	Exhibits 3, 5, 6
1.l.	\$962	unpaid	Exhibits 3, 5, 6
1.m.	\$33,573	unpaid	Exhibits 3, 5, 6

Applicant stated that he has begun making payments of \$60 a month on a debt of \$4,500, which I do not see listed on the SOR (Exhibit 3). There is no evidence how much he has paid on this overdue debt.

Applicant explained that his debts resulted from several factors. These included: 1) he and his wife were living above their means, primarily with credit cards; 2) he was laid off from his job, was unemployed for a period of time, and his subsequent employment did not pay him as well; 3) his three stepchildren came to live with him and his wife, which increased his debt significantly (Exhibit 6).

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. 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.*

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.

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).

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

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. Condition that could mitigate security concerns include:

E2.A6.1.3.3. 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).

BURDEN OF PROOF

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to Applicant to establish his 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. Assessment of Applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate that he 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

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following with respect to guideline F:

The Government has established its case under Guideline F. The record evidence clearly establishes Applicant's indebtedness and his current non-payment of all of the debts listed on the SOR.

Applicant's overall conduct pertaining to his financial obligations falls within Financial Considerations Disqualifying Condition (DC) E2.A6.1.2.1., and DC E2.A6.1.2.3., because of Applicant's history of not meeting financial obligations

and his inability to satisfy his debts. Regarding Mitigating Condition (MC) E2.A6.1.3.3, which regards debts that result from circumstances beyond the person's control, I find it applicable to this case, but not controlling. While Applicant's indebtedness was partially due to circumstances beyond his control, specifically Applicant's career problems and the fact that his three step children came to live with Applicant and his was wife, Applicant's debts also occurred as a result of his own conduct of financial irresponsibility.

Until Applicant can satisfy his overdue debts and establish a record of financial responsibility and stability, security concerns will continue to exist under Guideline F. I resolve Guideline F. against Applicant, and I conclude Applicant has not established, at this time, that it is "clearly consistent with the national interest" that he should be granted the privilege of a security clearance.

FORMAL FINDINGS

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

Paragraph 1, Financial Considerations: Against the Applicant

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: Against the Applicant

Subparagraph 1.k.: Against the Applicant

Subparagraph 1.l.: Against the Applicant

Subparagraph 1.m.: Against the 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.

Martin H. Mogul

Administrative Judge