

DATE: March 14, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-24365

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esquire, Deputy Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's falsification of his November 2001 Security Clearance Application suggested he could not be relied upon to speak the truth if the truth raised questions adverse to his personal interests. His history of financial difficulties cast further doubt on his fitness for access to classified information. Clearance denied.

STATEMENT OF THE CASE

On 15 October 2002, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 11 November 2002, Applicant answered the SOR and requested an administrative decision on the record. Applicant did not respond to the government's File of Relevant Material (FORM)--issued 10 January 2003. The record in this case closed 22 February 2003--the day the response was due at DOHA. The case was assigned to me on 6 March 2003 and I received the case on the same day to determine whether clearance should be granted, continued, denied, or revoked.

FINDINGS OF FACT

Applicant admitted allegations of the SOR; accordingly, I incorporate those admissions as findings of fact.

Applicant--a 35-year old employee of a defense contractor--seeks access to classified information. He has not previously held a clearance.

On 29 November 2001, Applicant falsified a Security Clearance Application(SCA)(SF 86)(Item 5) when he answered "no" to five questions that required him to disclose any bankruptcy filings within the last seven years (question 33), any tax liens placed within the last seven years (question 36), any unpaid judgments entered within the last seven years (question 37) and any delinquent accounts currently more than 90-days past due (question 38) or 180-days past due

within the last seven years (question 39). In fact, Applicant had filed a Chapter 7 bankruptcy petition on 7 January 1999 and was discharged of nearly \$70,000.00 in debts on 19 April 1999 (Item 10). He had filed a Chapter 13 bankruptcy petition on 23 August 2001 to re-organize \$47,000.00 in debt (Item 9, 11).⁽²⁾ He had a local property tax lien for \$390.00 filed in August 1994, and an IRS tax lien for approximately \$6,900.00 filed in October 2000 (Item 12).⁽³⁾ He had judgment for approximately \$10,300.00 in unpaid salary owed to a former employee entered against him in June 1998. He had six delinquent accounts totaling approximately \$8,500.00 (Item 8), accounts he is not paying on. Applicant falsified his clearance application because he feared unscrupulous company employees would use this sensitive information against him (Answer).

On 4 March 2002, Applicant described the cause of his financial problems and the steps he has taken to address them (Item 7):

I know that my past credit history is bad but it was from the result of losing my business. I've made attempts to correct my credit such as the 1st bankruptcy but that didn't work, it was only a temporary fix. I've filed a second time to restructure my debt not to escape it. I believe that if I were granted my clearance, it would greatly improve my financial situation and I could meet my monthly bills. I've made bad decisions in the past and I'm trying to correct them now. I am an honest person trying to make an honest living. I can't be blackmailed or bribed, and I hope you'll give me the chance.

Applicant's Personal Financial Statement (PFS)(Item 7) reflects a \$414 per month positive cash flow, none of which is being used to pay any other past due debts except those included in the Chapter 13.

The record contains no evidence of Applicant's work performance or other character evidence.

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 F.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.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, . . . in connection with a personnel security or trustworthiness determination;

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

None.

CRIMINAL CONDUCT (GUIDELINE J)

E2.A10.1.1. A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

E2.A10.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A10.1.2.1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;

E2.A10.1.2.2. A single serious crime or multiple lesser offenses.

E2.A10.1.3. Conditions that could mitigate security concerns include:

None.

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 the 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.

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 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 evidence clearly establishes Applicant's financial difficulties, both in the past and more recently. Although Applicant ascribes his financial difficulties to a failed business, (4) he does not explain how he fell into financial difficulties so quickly after his Chapter 7 discharge in April 1999. Nor does he advance any plan for addressing the eight past due accounts listed in the SOR. It does not appear that Applicant has stopped digging a financial hole, much less begun to dig himself out of it. I resolve Guideline F. against Applicant.

The government has established its case under Guideline E. Applicant provided false answers to five questions designed to disclose his financial status. His explanations neither excuse nor mitigate those omissions which had the potential to influence the course of the background investigation. I resolve Guideline E. against Applicant.

The government has established its case under Guideline J. Applicant's deliberate falsification of his clearance application clearly violates 18 U.S.C. §1001. The falsifications had the potential to influence the course of the background investigation--in areas of legitimate concern to the government. I resolve Guideline J. against the 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

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Paragraph 3. Criterion J: AGAINST THE APPLICANT

Subparagraph a: Against 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, dated January 2, 1992--and amended by Change 3 dated 16 February 1996, and by Change 4 dated 20 April 1999 (Directive).

2. The plan was confirmed in December 2001. Applicant was to pay \$348.00 per month for 60 months (or approximately \$21,000.00, less than half of the debt covered by the filing). Per the SOR, as of 5 March 2002 Applicant was current in his required payments. The \$47,000.00 debt is for two secured creditors (\$37,000.00) and the IRS (\$10,000.00). None of the unsecured debts alleged in the SOR are included, and the plan contemplates no money will be available to satisfy unsecured creditors.

3. Which had apparently grown to approximately \$11,000.00 since (Item 9, 10).

4. However, both bankruptcy filings were individual, not business, filings.