

DATE: November 30, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-25108

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owes approximately \$12,000 on 13 delinquent debts. He provided false answers on his security clearance application, SF 86, concerning his financial delinquencies and felony police record. He has failed to mitigate or extenuate the negative security implications stemming from a debt of such magnitude. Clearance is denied.

STATEMENT OF THE CASE

On April 20, 2004, 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⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On April 28, 2004, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

On August 10, 2004, the Applicant received a complete copy of the file of relevant material (FORM) dated July 28, 2004, and was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. The Applicant's response to the FORM was due on September 10, 2004. No response has been received. In the FORM, Department Counsel (DC) presented 13 exhibits (Items). The Applicant submitted no exhibits. I was assigned the case on September 17, 2004.

FINDINGS OF FACT

The SOR alleges Financial Considerations, Personal Conduct, and Criminal Conduct. The Applicant admits to the following: in 1991 or 1992, he had \$30,000.00 in debt discharged in bankruptcy. He admits the following debts were charged off: \$1,150.00 (SOR paragraph 1.d), \$1,259.00 (SOR paragraph 1.e), and \$965.00 (SOR paragraph 1.f). He admits owing: \$559.00 (SOR paragraph 1.g), \$602.00 (SOR paragraph 1.h), \$620.00 (SOR paragraph 1.i), \$2,058.00 (SOR paragraph 1.j), \$1,614 (SOR paragraph 1.k), \$1,152 (SOR paragraph 1.l), \$1,107.00 (SOR paragraph 1.m), and \$396.00 (SOR paragraph 1.n). He admits falsifying his SF 86 by failing to list his financial delinquencies in response to questions 38 and 39, by failing to list his 1992 felony arrest and conviction for burglary and grand theft. He admits

falsifying his SF 86 is a violation of federal law under 18 U.S.C. § 1001. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact.

The Applicant is 48-years-old, has worked for a defense contractor since September 2000, and is seeking to obtain a security clearance.

In 1992, Applicant purchased computers and printers, which he knew at the time to be stolen. He pleaded guilty to one count of burglary, second degree, a felony, and was sentenced to three years of formal probation, paid a fine and made restitution of \$4,000.00, was fired from his job, and spent 45 days in a half-way house. He did not list this on his December 2000 SF 86 because he was afraid he would lose his job if he listed it.

In 1991 or 1992, he filed for Chapter 7 bankruptcy protection when he was living beyond his means and his debt became unmanageable. The bankruptcy discharged approximately \$30,000.00 in liabilities. The SOR alleges Applicant owed \$455.00 in federal tax and \$461.00 in state tax for 2001. He asserts he paid these amounts in 2003 and 2004, but provided no supporting documents or other evidence establishing these debts have been paid.

He admits having three debts totaling \$3,374, which have been charged off as bad debts and admits he owed an additional eight debts totaling \$8,108. He admits he falsified his SF 86 by answering "no" to question 38, which asked him if, during the previous seven years, he had ever been more than 180 days delinquent on a debt, and by answering "no" to question 39, which asked if he was currently more than 90 days delinquent on any debt. He admitted his false answers on his SF 86 violated 18 U.S.C. § 1001.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

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. 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.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Financial Consideration, Guideline F, 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.

Conditions that could raise a security concern and may be disqualifying include:

1. A history of not meeting financial obligations. (E2.A6.1.2.1.)
3. Inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)

Conditions that could mitigate security concerns include:

None Apply

Personal Conduct, Guideline E, 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.

Conditions that could raise a security concern and may be disqualifying also include:

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. (E2.A5.1.2.2.)

Conditions that could mitigate security concerns include:

None Apply

Criminal Conduct, Guideline J, the concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Conditions that could raise a security concern and may be disqualifying include:

- a. Allegations or admission of criminal conduct, regardless of whether the person was formally charged.
- b. A single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns include:

None Apply

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484

U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Financial Considerations, Guideline F. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. Under Guideline F, an individual is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. The Applicant's financial history provides concern. Disqualifying conditions (DC) 1 (A history of not meeting financial obligations) and 3 (Inability or unwillingness to satisfy debts.) apply.

Applicant owes 13 debts totaling approximately \$12,000. Applicant alleges he paid his 2001 federal taxes (\$455.00) and his 2001 state taxes (\$461.00). However, he failed to provide evidence supporting his claim of payment. Merely asserting payment has been made, without documented proof that payment has been made, is not sufficient. I find against Applicant as to SOR paragraphs 1.b and 1.c. He admits owing three accounts totaling \$3,374.00, which have been charged off as bad debts. These debts have not been paid nor has he made arrangement with the creditors to pay these debts. I find against Applicant as to SOR paragraphs 1.d, 1.e, and 1.f. He admits being indebted on eight accounts totaling \$8,108.00, which are past due. These debts have not been paid nor arrangement made to pay these debts. I find against Applicant as to SOR paragraphs 1.g, 1.h, 1.I, 1.k, 1.l, 1.m and 1.n.

Applicant had filed for bankruptcy protection in 1991 or 2002 and approximately \$30,000 in liabilities were discharged. I do not find against Applicant merely because he had to file bankruptcy. I find for him as to SOR paragraph 1.a.

The Government has satisfied its initial burden of proof under Personal Conduct, Guideline E. Under Guideline E, the security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal conduct which creates doubt about the person's judgment, reliability, and trustworthiness. Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate and meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. The nature of Applicant's actions, in providing false information to multiple questions on his December 1998 SF 86 poses a serious potential risk to the nation's security.

In December 2000, when Applicant completed an SF 86 he answered "no" to question 21, which asked if he had ever been charged with or convicted of any felony offense. In 1992, he had been arrested and convicted of a felony, but did not list this on his SF 86 because he was afraid he would lose his job if he listed it. He also indicated he had not been 180 days delinquent on his debts and was not 90 days delinquent on any debt. Applicant has not explained why he failed to indicate his financial delinquencies when he completed his SF 86.

None of the mitigating conditions apply to his false answers. His felony arrest and financial delinquencies were pertinent to a determination of judgment, trustworthiness, or reliability. The falsifications were not an isolated incident because he gave false answers to three different questions. There is no showing the Applicant made a prompt, good-faith effort to correct the falsification before being confronted with the facts. There is no indication his omissions were caused by improper or inadequate advice from authorized personnel or based on advice from legal counsel. Because of the serious nature of his falsifications, I find against the Applicant as to Personal Conduct, SOR paragraphs 2. a and 2. b.

The Government has satisfied its initial burden of proof under Criminal Conduct, Guideline J. Under Guideline J, the security eligibility of an applicant is placed into question when that applicant is shown to have a history or pattern of criminal activity creating doubt about his judgment, reliability, and trustworthiness. Applicant gave knowingly false answers on his SF 86, which is felonious conduct. Therefore, DC a (Allegations or admission of criminal conduct, regardless of whether the person was formally charged) and b (A single serious crime or multiple lesser offenses) apply. None of the mitigating factors apply. I find against Applicant as to SOR paragraph 3.a.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's

age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Financial Considerations: AGAINST THE APPLICANT

Subparagraph 1.a.: For 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

Subparagraph 1.n.: Against the Applicant

Paragraph 2 Personal Conduct: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Paragraph 3 Criminal Conduct: AGAINST THE APPLICANT

Subparagraph 3.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 the Applicant. Clearance is denied.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.