

DATE: January 27, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-25405

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's long-standing indebtedness, and his intentional omission of material facts concerning this indebtedness from a Security Clearance Application (SCA), preclude a finding that it is now clearly consistent with the national interest to grant him access to classified information. Clearance is denied.

STATEMENT OF THE CASE

On June 9, 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 denied or revoked.

Applicant responded to the SOR in writing on June 20, 2003, and elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's written case (FORM) on or about September 10, 2003. Applicant did not file a response to the FORM. The case was assigned to me on October 27, 2003.

FINDINGS OF FACT

Applicant is a 41 year old employee of a defense contractor.

SOR Allegation 1a: Applicant is indebted to this creditor in the amount of \$4,355.00. In a signed, sworn statement that he gave to the Defense Security Service (DSS) in June 2002 (Exhibit 5), applicant stated this debt was delinquent at one time as a result of "computer error," but has been paid in full. In his response to the SOR, he admitted that he is currently indebted to this creditor in the amount of \$4,355.00. He provided no explanation for his earlier statement that the debt had been satisfied.

SOR Allegation 1b: In his response to the SOR, applicant denied any knowledge of a debt to this creditor. In a signed, sworn statement that he gave to the DSS in March 2000 (Exhibit 9), he stated that the debt to this creditor "was already paid off." Although applicant's statements lack credibility, the Government's evidence, consisting of two credit reports, neither of which is credible, is insufficient to prove applicant is indebted as alleged. Accordingly, this allegation is found for applicant.

SOR Allegation 1c: Although in his SOR Response applicant stated "I admit to this debt," when his response is considered in its entirety, it is clear that he is speculating about the origin of the debt and questioning its validity. Accordingly, when his response is viewed as a whole, it cannot be considered an admission. The Government's remaining evidence, consisting of two credit reports, neither of which is credible, is insufficient to prove applicant is indebted as alleged. Accordingly, this allegation is found for applicant.

SOR Allegation 1d: Applicant admits this \$55.00 debt, and states he intends to settle it.

SOR Allegation 1e: Applicant admits this \$60.00 debt, which had been referred to a collection agency. In his response to the SOR, he states that he intends to settle it in a timely manner.

SOR Allegation 1f: Applicant admits this \$148.00 debt, and states in his response to the SOR that he intends to "clear this matter within a reasonable amount of time . . ."

SOR Allegation 1g: Applicant admits this \$623.00 utility debt, and states in his response to the SOR that it was incurred while he was deployed on active duty. He further states that he intends "to take care of this obligation in a timely manner . . ."

SOR Allegation 1h: Applicant admits this \$443.00 utility debt, and states in his response to the SOR that he intends to "arrange a payment schedule until this debt has been satisfied."

SOR Allegation 1i: Applicant denies this debt. The Government's evidence, consisting of two credit reports, neither of which is credible, is insufficient to prove applicant is indebted as alleged. Accordingly, this allegation is found for applicant.

SOR Allegation 1j: Applicant admits that he is indebted to a former landlord in the amount of \$1,067.50 as a result of a court judgment he stipulated to in 1999. In his response to the SOR, applicant states that in recent years he has experienced financial hardship and that he intends to make payments on this account until it is resolved.

SOR Allegation 1k: A Personal Financial Statement (PFS) prepared by applicant in March 2000 indicates he has a positive monthly cash flow of \$1,268.00.

In his response to the SOR, applicant stated that he was unaware of many of these debts until he received the SOR. He further stated that "after careful consideration [he has] attempted to contact most of the companies to which [he is] indebted, and intend[s] to resolve these debts."

SOR Allegations 2a and 2b: Applicant executed an SCA on September 6, 2000. In response to Question 37, which asked, "In the last 7 years, have you had any judgments against you that you have not paid?" applicant stated "no." In response to Question 38, which asked, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" applicant stated "no." In response to Question 39, which asked, "Are you currently over 90 days delinquent on any debt(s)?" applicant stated "no." Applicant's responses were false. Although it is unclear how many of his current delinquent debts were past-due in September 2000, it is clear that at the time he completed the SCA, he knew he had delinquent debts. At least two interviews with DSS earlier in 2000 put him on notice of past-due debts, and he knew he had not satisfied the \$1,067.50 judgment debt he stipulated to in 1999.

In his response to the SOR, applicant blames his incorrect answers on his "haste to complete the application," and denies an intent to deceive or manipulate. His denial is not credible.

POLICIES

Enclosure 2 of the Directive sets forth Guidelines (divided into Disqualifying Factors and Mitigating Factors) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Disqualifying Factors and Mitigating Factors are applicable:

Financial Considerations

Disqualifying Factors

E2.A6.1.2.1: A history of not meeting financial obligations.

E2.A6.1.2.3: Inability or unwillingness to satisfy debts.

Mitigating Factors

None.

Personal Conduct

Disqualifying Conditions

E2.A5.1.2.2: The deliberate omission of relevant and material facts from any personnel security questionnaire.

Mitigating Conditions

None.

Criminal Conduct

Disqualifying Conditions

E2.A10.1.2.2: A single serious crime.

Mitigating Conditions

None.

CONCLUSIONS

The evidence establishes that (1) applicant is indebted to at least seven different creditors in the total amount of approximately \$6,750.00, (2) these seven debts are all delinquent, and (3) applicant has not made any recent payments to any of these long-standing creditors. Applicant's failure to honor his financial obligations reflects adversely on his judgment, reliability and trustworthiness, and suggests he cannot be relied upon to safeguard classified information.

Once the Government met its burden of showing that applicant has a history of significant financial problems, the burden shifted to applicant to show that he has reformed, and that his financial problems have been resolved and are no longer a security concern. Applicant failed to meet his burden. Although he expressed an intent to satisfy the debts alleged in the SOR, he offered no concrete plan to address this long-standing indebtedness. More importantly, he failed to offer any credible evidence that would lead me to conclude he is financially able to address this indebtedness. Based on the foregoing, Guideline F is found against applicant.

With respect to Guidelines E and J, applicant's falsification of material facts on the SCA concerning his debts is extremely troubling.⁽¹⁾ The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. When such an individual intentionally falsifies material facts on a security clearance application, it is extremely difficult to conclude that he or she nevertheless possesses the good judgment, reliability and trustworthiness required of clearance holders. In this case, applicant's dishonesty, together with the lack of any evidence from

individuals who know him well (e.g., family, friends, co-workers, supervisors) indicating that applicant is a reliable and trustworthy individual, precludes a finding that it is now clearly consistent with the national interest to grant him access to classified information.

FORMAL FINDINGS

PARAGRAPH 1: AGAINST THE APPLICANT

Subparagraphs 1a, 1d, 1e, 1f, 1g, 1h, 1j and 1k found against applicant.

Subparagraphs 1b, 1c and 1i found for applicant.

PARAGRAPH 2: AGAINST THE APPLICANT

Both subparagraphs found against applicant.

PARAGRAPH 3: 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.

Joseph Testan

Administrative Judge

1. The falsification constitutes a violation of 18 U.S.C. 1001, a felony.