

DATE: October 24, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-24741

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 26-year-old tool room attendant who has worked for a defense contractor since October 2002. By 2001, Applicant began accumulating debts which became increasingly past due following the birth of his daughter in February 2002. In November 2002, however, he certified on his security clearance application that he had no delinquent debts. Although Applicant's failure to understand the financial terms used on the security clearance application explain his denial of delinquencies, and although he mitigated two of the alleged debts and shown a third debt to be subject to dispute, he failed to mitigate the remaining debts or otherwise assuage security concerns. Clearance is denied.

STATEMENT OF THE CASE

On December 22, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to 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). That SOR detailed why, pursuant to Guideline F (Financial Considerations) and Guideline E (Personal Conduct), 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. By letter of January 24, 2005, Applicant responded to the SOR. He admitted to four allegations, denied two allegations, and provided one non-answer in response to the seven allegations noted under Guideline F (Financial Considerations), and he only offered explanatory comments with regard to the two allegations set forth under Guideline E (Personal Conduct).

I was assigned this case on April 22, 2005. A Notice of Hearing was issued on May 4, 2005, advising the parties that a hearing would be conducted on May 25, 2005. At the hearing, Applicant introduced one exhibit and the Government introduced seven exhibits. [\(U\)](#) I received the transcript on June 7, 2005.

FINDINGS OF FACT

Applicant has denied only two of the allegations set forth under Guidelines F and E. ⁽²⁾ After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is a 26-year-old single male. He is currently employed by a defense contractor as a tool room attendant. Applicant served in the military from 1998 until the summer of 2001, during which time he accumulated approximately \$446 in retail credit debt. ⁽³⁾

That June, however, he was administratively processed and eventually given a general discharge; this level of discharge apparently created an overpayment to Applicant for which he was held liable. ⁽⁴⁾ Upon review, the general discharge was upgraded to an honorable discharge. Approximately two months later, he started a job in retail management. One year later, in October 2002, he left retail to assume his present position. Applicant currently earns approximately \$40,000 per year.

Applicant's girlfriend gave birth to their daughter in February 2002. Their relationship soon became strained, however, both mother and child moved a few hours away to another state. Pursuant to court order, Applicant has provided varying degrees of child support over the years. This support is garnished from his regular paychecks. As the child's primary financial provider, Applicant has also volunteered to pay other expenses beyond that support, generally prioritizing his contributions toward his daughter over his commitment to his own past and current debts. ⁽⁵⁾ He also maintains rights which permit him to visit her every other weekend. These visits require that Applicant drive out of state to pick up his daughter, return to his own home for an overnight visit, return the child to her mother at the end of the weekend, and drive himself back home. This regimen leaves Applicant with little free time.

Then, in November 2002, Applicant's car was repossessed and sold. This left him indebted to his car dealer's financial division for approximately \$9,343. ⁽⁶⁾ Also around that time, he incurred a debt for \$191 to his cell phone provider, although that account was subsequently made current. ⁽⁷⁾

On November 19, 2002, Applicant filled out and certified his application for security clearance (SF-86). He answered "no" to the standard financial questions on that form; this included his answers related to whether he was currently more than 90 days delinquent, or ever had been over 180 days delinquent in the prior seven years, on any debts. At that time, however, he was clearly aware that his car was in the process of being repossessed. He was also aware of his debts existent as of June 2001 (the credit debt of \$446 and the disputed \$4,010) and of the fact that he had made no significant efforts toward their satisfaction. ⁽⁸⁾

In 2003, Applicant attempted to convince his former girlfriend and their daughter to move back to his state by renting a more expensive apartment for them to share. Although the new apartment failed as an inducement, the increased rent eventually forced Applicant to vacate prior to the end of the lease. This premature move cause Applicant to incur a debt equal to one month's rent plus penalties. ⁽⁹⁾ That October, he financed a car purchase through his uncle, thus giving him a reliable form of transport to visit his daughter and to go to work. Payments on this replacement car should be completed this year.

On January 24, 2004, Applicant was injured in a serious traffic accident. His condition and his appointment schedule foiled his attempt to find a second job. Indeed, Applicant's injuries were sufficiently extensive to necessitate extensive care, physical therapy, and numerous appointments through April 2005. Because he was not at fault in the accident, the other driver was found to be liable for Applicant's medical costs. Accident related bills are usually sent directly or forwarded to that other driver. ⁽¹⁰⁾

Applicant anticipates receiving a settlement in this matter for approximately \$13,000, and he has been told that he should receive those funds in the latter half of 2005.

In sum, the debts cited in the SOR are as follows:

1.a - A debt to a military exchange account in the approximate amount of \$446, for an account charged off as a bad debt in July 2001. Applicant admits this debt.

1.b - A debt to a military finance and accounting service in the approximate amount of \$4,010 for an account charged off to bad debt in about January 2002. Neither party can characterize this debt other than to acknowledge that it arose from the time he was given a general discharge and speculate that it is related to an incentive or bonus for which he would become liable if he received a less than honorable discharge. Applicant admits this debt arose, but believes it is no longer his obligation, given the upgrade of his discharge from general to honorable.

1.c - A debt to an automobile financial service in the approximate amount of \$9,343, the balance owed after the repossession and resale of Applicant's car in about November 2002. Applicant admits to this debt.

1.d - A debt to a cell phone carrier in the amount of \$191, for an account opened in December 2000 and placed for collection prior to December 2002. Applicant has demonstrated that this debt was paid.

1.e - A debt to an agency representing an apartment complex in the amount of \$1,484, since about 2003. Applicant admits this debt.

1.f - A debt to a collection agency in the approximate amount of \$206 for an account placed for collection in about February 2004. In his response to the SOR, Applicant claimed he could not identify this debt. At the hearing, the Government identified the debt as a 2004 medical bill, apparently arising from Applicant's 2004 traffic accident..

Applicant admits he has difficulty paying his bills. He nets approximately \$1,600 per month after his child support is deducted. Applicant is then left with less than \$400 per month for food, child visitation expenditures, bills, and extraneous expenses after paying \$600 for rent and utilities, \$300 in current car payments, and \$125 for his cell phone, plus babysitting, commuting, and insurance. [\(11\)](#) He now has an account with a state job center to search part-time job listings and has recently sought to modify his work schedule so that he might pursue a second job in the daytime.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, these adjudicative guidelines are subdivided into those that may be considered in deciding whether to deny or revoke one's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to determine one could still be eligible for access to classified information (Mitigating Conditions).

In application, an Administrative Judge is not strictly bound to the adjudicative guidelines. As guidelines, they are but part of an amalgam of elements for the Administrative Judge to consider in assessing an applicant in light of the circumstances giving rise to the SOR, as well as in assessing the applicant as a whole. The concept of the "whole person" means that all available, reliable information about the person - whether it is good or bad, present or past - should be considered in making a fair, impartial, and meaningful decision as to his or her suitability to hold a security clearance. To that end, Enclosure 2 also sets forth factors to be considered during this part of the adjudicative process, including: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

After a full and thorough examination, however, the final assessment must comport with the considerable gravity of the final decision. There is no right to a security clearance. [\(12\)](#)

and one seeking access to classified information must be prepared to enter into a fiduciary relationship with the United States Government that is inherently predicated on trust and confidence. Therefore, when the facts proven by the Government raise doubts as to an applicant's judgment, reliability, or trustworthiness, the applicant has the heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the

[\(13\)](#)

side of denials." Therefore, any doubts will be resolved in favor of the national security, not the Applicant.

Finally, it should be noted that Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Therefore, nothing in this Decision

should be construed to suggest I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Guideline F - Financial Considerations. *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.* ⁽¹⁴⁾

Guideline E - Personal Conduct. *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.* ⁽¹⁵⁾

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, are set forth below.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all legal precepts, factors, and conditions, including those described briefly above, I find the following with respect to the allegations set forth in the SOR:

With respect to Guideline F (Financial Considerations), the Government has established its case. Applicant admits that he has debts dating back to at least 2001 for which he either has yet to make payment or has been unable to keep current. This fact raises both security concerns and Financial Consideration Disqualifying Conditions (FC DC) E2.A6.1.2.1 (*[a] history of not meeting financial obligations*) and FC DC E2.A6.1.2.3 (*[i]nability or unwillingness to satisfy debts*). Moreover, his failure to truthfully disclose that he had delinquencies in excess of both 90 and 180 days on his security clearance application raises Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.1.2 (*[r]efusal to complete required security forms, releases, or provide full, frank, and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personnel security or trustworthiness determination*).

When the Government's initial burden has been met and disqualifying conditions raised, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation, or mitigation which is sufficient to overcome or outweigh the Government's case. This may include raising certain mitigating conditions set forth in the guidelines. Ultimately, however, it becomes Applicant's burden to show that it is clearly consistent with the national interest to grant him a security clearance.

Here, Applicant admits that the debts at issue have gone unpaid either because he was short of funds or because he chose to apply available funds elsewhere (*ie.* extras for his daughter and her upkeep, a larger apartment, a replacement car, etc.). Indeed, he has demonstrated both an inability and an unwillingness to meet his financial obligations and prioritize his debts which date back to at least June 2001 and has continued into the present. Therefore, neither Financial Consideration Mitigating Condition (FC MC) E2.A6.1.3.1 (*[t]he behavior was not recent*) nor FC MC E2.A6.1.3.2 (*[i]t was an isolated incident*) applies. Applicant also chose to decline financial counseling owing to the cost of such services, making FC MC E2.A6.1.3.4 (*[t]he person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*) inapplicable.

Applicant has, however, presented some explanatory or mitigating facts. He has shown that his net income, after

expenses, is far lower than that portrayed in the SOR, thus clarifying his true financial situation.⁽¹⁶⁾

Applicant has demonstrated a good faith effort to resolve the issue as to whether, given the upgrade of his discharge from general to honorable, he is still liable for the debt cited as debt 1.b in the SOR; he has successfully solicited one of his State's U.S. Senators to intercede on his behalf in order to clarify that issue on his behalf. Moreover, he has paid his past due balance on his cell phone bill and kept the account cited at debt 1.d of the SOR current. Furthermore, he has adequately demonstrated that the inclusion of the medical bill noted as debt 1.f on the SOR was in error, and that it should have been forwarded for payment by the party responsible for his accident or their insurer. Therefore, I find that FC MC E2.A6.1.3.6 (*[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies with regard to those allegations cited in the SOR at 1.b, 1.d, and 1.f. Consequentially, I also find subparagraphs 1.b, 1.d, 1.f, and 1.g in Applicant's favor.

Applicant attributes his accumulation of the debts at issue to his 2001 military discharge, the February 2002 birth of his child, and his January 2004 accident. This argument fails for three reasons. First, the beginning of his debt problem predates his military discharge and he was fully employed again by the time his next debts occurred. Second, childbirth is not an "unexpected medical emergency," as contemplated by the Directive.⁽¹⁷⁾ Third, as costly as his unfortunate 2004 accident may have been with regard to physical pain and time lost for appointments, he was not liable for the financial costs the accident precipitated. Consequentially, none of these three events can be said to have caused his debt, although it is undeniable they may have had some impact on their timely repayment. Because none of his debts have a nexus with a qualifying incident under FC MC E2.A6.1.3.4, (*[t]he 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)*), I find it does not apply. No other mitigating conditions apply.

Applicant understands, and understood at the time he completed his SF 86 application, that he possesses the obligations cited. Given his testimony and demeanor at the hearing, however, I do not find that his simultaneous denial of delinquencies on that application necessarily indicates that he committed a deliberate act of falsification. Rather, based on his highly credible testimony, I find that those denials were simply the result of an utter lack of financial sophistication and a limited understanding of the terms used.⁽¹⁸⁾ While this degree of naïveté may raise other concerns, it does not rise to the level of conscious deception. Therefore, I find paragraph 2 regarding Guideline E (Personal Conduct) in Applicant's favor.

I have also examined both the record and the Applicant in view of the "whole person" concept. Applicant is a well mannered young man with admirable intentions regarding his role as a young, single father. Moreover, while it is clear he possesses little financial savvy, his desire to satisfy his debts seems genuine. As the DOHA Appeal Board has determined, however, even good people can pose security risks.⁽¹⁹⁾

Because Applicant has failed in his burden to mitigate the security concerns that his finances raise, I find for the Government with regard to paragraph 1 and subparagraphs 1.a, 1.c, and 1.e. of the SOR.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.2.5 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: For the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: For the Applicant

Subparagraph 1.g: For the Applicant

Paragraph 1, Guideline E FOR THE APPLICANT

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: For 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 a security clearance for Applicant. Clearance is denied.

Arthur E. Marshall, Jr

Administrative Judge

1. These were admitted into evidence as Applicant Exhibit A and Government Exhibits 1-7, respectively.
2. Applicant denied the debt cited at subparagraph 1.d (cell phone bill), demonstrating that it was paid and that the account was current. Government Ex. 1 (Applicant's Response to the Statement of Reasons, dated January 24, 2005); *see also* Transcript of May 25, 2005 (Tr.) at 21. He also denied the debt cited at subparagraph 1.f, based on his inability to identify the debt. At the hearing, it was determined that the debt was for a medical bill arising from a 2004 automobile accident for which Applicant is not liable. *See* Tr., at 23-24.
3. Debt 1.a, for \$446 on a base exchange credit account for expenditures relating to his move to his final duty station, was accrued at some time prior to his discharge. *See* SOR 1.a.
4. Debt 1.b for \$4,010 apparently arose as a consequence of Applicant receiving a general discharge, rather than an honorable discharge. *See* SOR 1.b. Neither party is able to discern why this liability was triggered, but Applicant has been led to believe that the change of his discharge status from general to honorable obviated his liability. He is in correspondence with his U.S. Senator over the matter, and she is attempting to intercede on his behalf for clarification.
5. *E.g.*, baby-sitting, additional insurance, limited birth costs, and, in one instance, the cost of a baby shower for his daughter was given precedence over making a payment toward his debts. Tr., *supra* note 2, at 37 and 50, respectively.
6. Debt 1.c arose from this debt for the difference in the automobile valuation after resale. *See* SOR 1.c.
7. Debt 1.d for \$191 was placed into collection in 2002, but subsequently satisfied by Applicant. *See* SOR 1.d *See, also*, Tr., *supra* note 2, at 21.
8. Tr., at 41-42.
9. Debt 1.e for \$1,484. *See* SOR 1.e.
10. Debt 1.f arose from Applicant's medical treatment and, as discussed *infra*, should have been forwarded for

payment by another party, and not listed as an obligation of Applicant.

11. *Compare*, SOR 1.g. (SOR subparagraph 1.g further alleges that he is financially capable of his debts based on a monthly net remainder of \$1,290 after expenses; Applicant has shown this to be erroneous. At the hearing, Applicant showed that his actual earnings are closer to \$1,600 per month and that he is currently left with only about \$400 after expenses; this amount should rise to approximately \$700 per month of expendable income after he pays off his current car loan. Applicant entertained the idea of seeking financial counseling, but decided against the idea owing to the additional cost it would entail. *See* Tr. at 55-56.)

12. ⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

13. ⁰ *Id.* at 531.

14. Directive, Enclosure 2, Attachment 6, Guideline F, ¶ E2.A6.1.1.

15. Directive, Enclosure 2, Attachment 5, Guideline E, ¶ E2.A5.1.1.

16. *See* note 11, *supra*. Consequentially, I find subparagraph 1.g of the SOR in Applicant's favor.

17. In fact, he stated that the birth of his child was not the reason for his debts, but rather a cause to defer the payment of those debts. Tr. at 50.

18. When asked why he answered "no" on questions #38 and #39 regarding delinquencies of 90 or 180 days, he demonstrated an inability to discern between the issue of the duration of a delinquency and the age of a delinquent account's underlying debt. Indeed, with regard to the delinquency of debts 1.a and 1.b, he stated: "I didn't know how long the debt was for." *See* Tr. at 28. Applicant demonstrated a similar lack of understanding with regard to the meaning of "garnishment" when he answered "no" to question #34 of the SF-86, although he was fully aware that his child support was collected directly from his wages. There, too, it was apparent from Applicant's testimony, demeanor, and the context of the discussion that his answer to that question in the negative was similarly not a matter of deception, but the result of a failure to understand the terms used within the context of the facts. *Id.* at 49.

19. ISCR Case No. 01-26893 at 8 (App. Bd., Oct. 16, 2002).