

DATE: December 3, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-32611

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Jennifer Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has had a long history of financial difficulties, including debts to 30 creditors. These debts have not been resolved by the filing of a bankruptcy. Applicant's criminal activity includes being charged and found guilty of simple assault in 2000, and having a bench warrant issued for his arrest for failing to pay for a vehicle violation in 2001. Applicant knew or should have known that the information that he provided to the Government in a Security Clearance Application (SCA) in 2001 was materially incorrect and incomplete. Mitigation has not been shown. Clearance is denied.

STATEMENT OF THE CASE

On February 27, 2003, 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) to Applicant. The SOR detailed reasons under Guideline F (Financial Considerations), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct) 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, continued, denied, or revoked.

In a signed and sworn statement, dated March 22, 2003, Applicant responded to the SOR allegations, and he requested a clearance decision based on a hearing record.

This case was originally assigned to another Administrative Judge, but on June 28, 2003, because of medical consideration, the case was reassigned to this Administrative Judge to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on July 28, 2003, and the hearing was held on August 13, 2003.

At the hearing, Department Counsel offered eight documentary exhibits (Exhibits 1-8) and no witnesses were called. Applicant appeared without counsel, offered four documentary exhibits (Exhibits A-D) and offered his own testimony. After the hearing, the record was left open, and Applicant offered a documentary exhibit regarding his bankruptcy, consisting of 42 pages (Exhibit E), which was not objected to by Department Counsel and has been entered into evidence. The transcript (TR) was received on August 25, 2003.

FINDINGS OF FACT

In his Answer, Applicant admitted the SOR allegations (subparagraphs 1.a - 1.dd). Applicant neither admitted nor denied the SOR allegations for paragraphs 2 and 3. At the beginning of the hearing, Applicant was asked about the additional allegations in the SOR. Applicant admitted allegations (subparagraphs 2.a - 2.c and 3.a-3.c) (TR at 10-12). Therefore, through his response to the SOR and his testimony, Applicant admitted all thirty six allegations. These allegations are incorporated by reference as findings of fact.

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

Paragraph 1 (Guideline F - Financial Considerations)

Applicant is a 31 year old employee of a defense contractor, and he has a tenth grade education. He is married and has two sons.

The SOR lists 30 debts that Applicant admitted owing as of October 24, 2002, 1.a. through 1.dd under Adjudicative Guideline F . These debts were all long overdue, most for several years.

At the hearing, Applicant testified that he had filed bankruptcy on August 6, 2003, but his debts had not yet been discharged through the bankruptcy. Applicant cited all of his debts as being included in his bankruptcy, except the debts listed as SOR allegations 1.b, 1.d, and 1.l. Applicant testified that the outstanding debt 1.b of the SOR, in the amount of \$249.50, was not included on the bankruptcy and had not been paid (TR at 28, 29). Applicant testified that debt 1.d, in the amount of \$360, was paid in 1998 (TR at 30, 31). Applicant had no documentation to establish that this debt was paid, and his testimony conflicts with his response to the SOR that this debt was still owing as of October 24, 2002. Debt 1.l, in the amount of \$255.39 was for five checks written with insufficient funds. Applicant confirmed at the hearing that this debt had been paid (TR at 38, 39)

Paragraph 2 (Guideline J - Criminal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has engaged in criminal acts. Applicant's conduct that occurred in 1993, 2000, and 2001, and which has been alleged in the SOR as 2.a., 2.b., and 2.c. respectively, is included in this paragraph as criminal conduct. These charges include being arrested and charged with assault in 1993, being charged and found guilty of simple assault in 2000, and having a bench warrant issued for his arrest for failing to pay for a vehicle violation in 2001.

Paragraph 3 (Guideline E - Personal Conduct)

Applicant completed a signed, sworn Security Clearance Application (SCA) on November 9, 2001.

Question #26 asks, "In the last 7 years, have you been arrested for, charged with, or convicted of any offenses not listed in modules 21, 22, 23, 24, or 25? Applicant answered "no" to this question. The evidence shows that Applicant was arrested and convicted in January 2000 for simple assault. Applicant should have answered "yes" to this question and included this arrest in the response to question #26.

Question #38 asks, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Applicant answered yes to this question and listed one debt, which was the debt listed as 1.a of the SOR. At the time he completed the SCA, Applicant was delinquent on all of the debts discussed above, and he should have answered "yes" to this question and

included all of the debts listed in the SOR.

Question #39 asks, "Are you currently over 90 days delinquent on any debt (s)?" Applicant answered no to this question. At the time he completed the SCA, Applicant was delinquent on all of the debts discussed above, and he should have answered "yes" to this question and included all of the debts listed in the SOR.

POLICIES

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. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

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). Because each security case presents its own unique facts and circumstances, it should not be assumed that 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.. 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.*

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. Conditions that could mitigate security concerns include:

E2.A6.1.3.3. None

(Guideline J - Criminal Conduct)

E2.A10.1.1. The Concern: 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.

(Guideline E - Personal Conduct)

E2.A5.1.1. *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. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

E2.A5.1.2. Conditions that could raise a security concern and may be disqualifying also include:

E2.A5.1.2.2. The deliberate omission, concealment, falsification or misrepresentation 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.A5.1.3. Conditions that could mitigate security concerns include:

E2.A5.1.3.2. 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 that 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

(Guideline F - Financial Considerations)

The government has established its case under Guideline F. The record evidence clearly establishes Applicant's indebtedness. It shows Applicant has a history of financial difficulties. Twenty seven of Applicant's debts were included in the bankruptcy, which was filed on August 6, 2003 (Exhibit E). However, the debts had not been discharged at the time of the close of evidence. Since, a bankruptcy may end without resolving all of the debts listed on it, I cannot conclude that these debts were or will be discharged. Additionally, based on applicant's testimony, I conclude debt 1.b has not yet been resolved. Finally, regarding debt 1.d, Applicant had no documentation to establish that this debt was paid, and his testimony conflicts with his admission in the SOR response that this debt was still owing as of October 24, 2002. Applicant has failed to establish that this debt is no longer outstanding. The only debt, listed in the SOR, that I can conclude has been paid is 1.l.

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. I find that no Mitigating Condition (MC) is applicable to this case.

Applicant appears to have finally made a good-faith effort to resolve his indebtedness. However, since the vast majority of Applicant's debts have not been resolved, I cannot conclude that Applicant's financial problems are behind him. Until his debts are paid, and he can establish a record of financial responsibility and stability, security concerns will continue

to exist under Guideline F. I resolve Guideline F. against Applicant

(Guideline J - Criminal Conduct)

The Government established by substantial evidence that Applicant was arrested for, or convicted of, three criminal offenses. These incidents have resulted in criminal conduct from 1993 until 2001. DC E2.A10.1.2. and DC E2.A10.1.2.1. apply in this case. Applicant has not mitigated this allegation. Paragraph 2 is found against the Applicant.

(Guideline E - Personal Conduct)

With respect to Guidelines E, the evidence establishes that Applicant intentionally provided false material information to the Government in response to three questions on the SCA he executed in August 2001. 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 nevertheless possesses the judgment, reliability and trustworthiness required of clearance holders. In this case, Applicant's falsifications of his SCA occurred approximately two years ago, and his failure to offer any independent evidence indicating that he has reformed and is now reliable and trustworthy, precludes a finding that it is now clearly consistent with the national interest to grant him access to classified information. I resolve Guideline E against Applicant.

In reviewing the Disqualifying Conditions (DC) under Guideline E, I conclude that DC E2.A5.1.2.2. applies because the information that Applicant provided in his SCA was known or should have been known by him to be an omission and concealment of relevant and material facts. No MCs apply.

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

Subparagraph l: For the Applicant

Subparagraph m: Against the Applicant

Subparagraph n: Against the Applicant

Subparagraph o: Against the Applicant

Subparagraph p: Against the Applicant
Subparagraph q: Against the Applicant
Subparagraph r: Against the Applicant
Subparagraph s: Against the Applicant
Subparagraph t: Against the Applicant
Subparagraph u: Against the Applicant
Subparagraph v: Against the Applicant
Subparagraph w: Against the Applicant
Subparagraph x: Against the Applicant
Subparagraph y: Against the Applicant
Subparagraph z: Against the Applicant
Subparagraph aa: Against the Applicant
Subparagraph bb: Against the Applicant
Subparagraph cc: Against the Applicant
Subparagraph dd: Against the Applicant

Paragraph 2. Guideline J: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant.

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Paragraph 3. Guideline E: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant.

Subparagraph b: Against the Applicant

Subparagraph c: 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.

Martin H. Mogul

Administrative Judge