

DATE: March 16, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-33174

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 48 years old, an electronics technician for a defense contractor, and married with three children. Applicant has 16 delinquent debts, five domestic disturbance arrests from 1989 to 1998, a fraudulent check charge from 2002, and failed to disclose his delinquent debts, and his various arrests on his security clearance application. Applicant mitigated the financial considerations and criminal conduct security concerns. He did not mitigate the personal conduct security concern. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On February 4, 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on March 1, 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on September 15, 2004. On October 5, 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence, and submitted additional exhibits within the given time period after the hearing to which Department Counsel had no objection. Applicant waived the 15 day notice period (Tr. 9). DOHA received the hearing transcript (Tr.) on October 15, 2004.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 48 years old, married to his second wife but lives separately from her, has three children and three

stepchildren. He retired from the Air Force in 1998, and presently works for a defense contractor as an electronics technician. He owns one house on which he pays \$1,129 monthly on a mortgage, an apartment he shares with his oldest daughter for which his share of the rent is \$275 monthly, and he helps his wife pay the maintenance on her mother's house where his wife lives. Applicant owns a twenty-year-old car. He graduated recently with a masters degree in aeronautical engineering. Applicant's financial problems started with his first wife incurring debts that she did not pay when he was deployed overseas in 1991, and aggravated when he retired from the Air Force in 1998 and could not find immediate employment. Applicant filed Chapter 7 bankruptcy December 4,, 1991, and was discharged May 6, 1992. (Tr. 28, 51, 56, 67, 68, 71-74, 137,160, 196; Exhibits 1-4)

Applicant's debts as listed in the SOR and their current status is as follows:

DEBT/AMOUNT	FINDING	RECORD EVIDENCE
1.a. Department store, \$1,654	Paid off October 14, 2004	Tr. 91-95; Exhibits 2, 3, N, Q, P
1.b. Military department store, \$3,740	Paying by allotment \$152 monthly	Tr. 95-101, 165; Exhibits 2, 3, E, Q
1.c. Telephone bill, \$171	Paying on installment	Tr. 77, 78; Exhibits 2, 3, P, Q
1.d. Bank credit card, \$708	Paying \$65 monthly, and owes \$370. Government admits is mitigated.	Tr. 102-105, 165, 190; Exhibits 2, 3, G, K, and Q
1.e. Pizza purchase and check bounced, \$13	Paid in full	Tr. 106; Exhibits 2, 3, Q
1.f. Loan company, \$115	Paid in full. Government admits is mitigated.	Tr. 116, 117, 190, Exhibits 2, 3, H
1.g. Public library for unreturned items, \$168	Paid in full	Tr. 118-123, 165; Exhibits 2, 3, I, and Q
1.h. Telephone bill, \$87	The telephone company has not located the debt after Applicant sought to pay it.	Tr. 77, 79-83; Exhibits 2, 3, A, and Q
1.i. Dentist, \$532	Applicant contacted creditor and is paying \$70 monthly	Tr. 124-126, 165; Exhibits 2, 3, P and Q
1.j. Credit card, \$696	Combined with 1.d. and Applicant is paying	Tr. 126, 127, 162; Exhibits 2, 3, and Q
1.k. Bank debt, \$803.09	Paid in full, and Government admits is mitigated.	Tr. 127-136, 142, 168, 190; Exhibits 2, 3, J and Q
1.l. Telephone bill, \$175	Settlement amount of \$128 paid in full	Tr. 76, 87-90, 168; Exhibits 2, 3, P, and Q
1.m. Telephone bill, \$510	Paying by installment \$60 monthly	Tr. 77, 83-86, 168; Exhibits 2, 3, B, and Q
1.n. Cable T.V. bill, \$68	Paid in full. Government concedes is mitigated.	Tr. 142, 168, 190; Exhibits 2, 3, and Q
1.o. Grocery store purchases with check that was NSF, \$490	Paid in full	Tr. 144-149; Exhibits 2, 3, L, P, and Q
1.p. Grocery store purchase with NSF check, \$558	Paid in full	Tr. 149-151, 168; Exhibits 2, 3, M, and Q

Applicant was arrested on April 8, 2002, on an insufficient fund check written by him to buy a pizza for \$13. Applicant was found guilty and fined. He had to pay about \$500 on this debt at the end of the action. This debt is paid in full. Applicant disclosed this arrest on his security clearance application (SCA) filed ay 31, 2002. (Tr. 52-54; Exhibits 1 and 2)

Applicant was arrested on June 12, 1998, for domestic battery involving an altercation with his wife. Applicant pled not guilty on June 12, 1998, and the city attorney dismissed the case in September 1998. Applicant deliberately did not list this offense on his SCA in answer to Question 26 (arrests in the past seven years) although he claims he forgot about it, even though it was a significant event because his wife was ill just before the time of the incident. (Tr. 29-31, 39, 40, 152, 155; Exhibits 2 and 5)

Applicant and two of his sons had a domestic altercation on August 24, 1997, at Applicant's military housing on his assigned military post. His son hit Applicant. The military police report lists Applicant and his son as subjects of the report, but does not state either were arrested. Applicant does not recall being arrested on that date for that incident. Applicant was not arrested for this offense and was released to his military unit. No military disciplinary action was taken against Applicant. Applicant did not list this incident on his SCA. (Tr. 35-39; Exhibit 6)

Applicant had a domestic fight with his wife on June 16, 1996, over her lengthy stay one day away from the family. His wife wielded a knife during the argument and blocked the doorway of the house, preventing him from leaving. Applicant never departed from his house that day. The police were called and came to the house, and arrested his wife. Applicant was arrested also, but released to his military unit. Applicant does not remember being arrested. The offense occurred off the military installation. Applicant attended anger management classes voluntarily. No military justice action was taken against Applicant. Applicant deliberately did not list this incident on his SCA in answer to Question 26 about arrests in the past seven years. (Tr. 40-44; Exhibits 2 and 7)

Applicant was arrested on August 6, 1991, for a domestic disturbance involving himself and his first wife over debts she incurred while he was deployed overseas with the military. His wife had spent his life savings, incurred maximum debt on their credit cards without paying those debts, and had an affair. She moved out of the marital home, leaving Applicant to care for their three children. Applicant received a notice to appear from the police officer. He pled not guilty to the charge, was sentenced to 30 days in jail and nine months probation on August 29, 1991. Applicant does not remember spending the 30 days in jail. (Tr. 44-47; Exhibits 2 and 8)

Applicant was arrested on March 5, 1989, for assault and battery on a child. He spanked his stepson from his first marriage. The police report stated Applicant hit his stepson with his fist on the stepson's face and back. No disciplinary action was taken against Applicant, and he was counseled. (Tr. 47; Exhibit 9)

Applicant did not list any offenses in answer to Question 25 of the SCA regarding being subject in the past seven years to court-martial or other disciplinary proceedings under the Uniform Code of Military Justice. Applicant never received non-judicial punishment or court-martial punishment for any action between ay 31, 1995 and May 31, 2002, when he completed his SCA. (Tr. 35-44; Exhibits 6 and 7)

Applicant disclosed his two largest debts in response to Question 38 of the SCA concerning debts more than 180 days delinquent in the past seven years. He did not disclose any other debts. Applicant answered "no" in response to Question 39 that sought delinquent debt information for debts currently over 90 days delinquent. Applicant did provide information in response to Question 43 about his older delinquent accounts, but he did not have amounts or dates incurred. He stated they were small amounts. The Government conceded the SOR allegations 3.c. and 3.d. were mitigated by the disclosure in Question 43. (Tr. 10; Exhibit 1)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

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 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (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 the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that 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. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

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: *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.A6.1.1

Guideline J: Criminal Conduct: *The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.* E2.A10.1.1

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.* E2.A5.1.1

Disqualifying Conditions (DC) and Mitigating Conditions (MC) under each guideline are discussed in the Conclusions section of this decision. I relate them to the fact findings previously made.

CONCLUSIONS

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR. Applicant submitted relevant and probative evidence on each of the allegations, and denied paragraphs 2.e., 3.b., and 3.d.

Regarding the Financial Considerations, Applicant has a history of not meeting financial obligations under Disqualifying Conditions (DC) E2.A6.1.2.1. Applicant also has displayed an inability or unwillingness to satisfy his debts under DC E2.A6.1.2.3. Applicant's first wife incurred debts in 1991 and then left him. He tried to pay the debts, but had to declare Chapter 7 bankruptcy to save his house. In the course of the next ten years he incurred other debts by charging items to credit cards and not paying the debt, writing insufficiently funded checks, and not managing his money carefully.

In the past two years, Applicant has paid off all the debts listed on the SOR, or has installment payment agreements for the others. There is one debt to a telephone company that he is attempting to pay. Applicant retired from the Air Force in 1998 and had to find civilian work. He eventually did, but for a while he was unemployed. He also has one mortgage to pay, an apartment in the city where he works, and helps pay expenses at the house where his wife lives with her mother. Mitigating Condition (MC) E2.A6.1.3.3, based on Applicant's divorce from his first wife and separation from his second wife, his military retirement with a lack of civilian follow-on employment, applies. Applicant has made a good-faith effort to repay his debts or establish repayment plans, and C E2.A6.1.3.6 applies. I conclude this security concern for Applicant.

Regarding the Criminal Conduct security concern, Applicant has allegations or admissions of criminal conduct regarding him, regardless of whether he was formally charged, going back to 1989. All but one involve domestic disturbances showing a pattern of Applicant not being able to resolve his family problems peaceably. DC E2.A10.1.2.1 applies. Also, these incidents involve a single serious crime or multiple lesser offense, so DC E2.A10.1.2.2 applies.

These offenses have been mitigated by the passage of time, so MC E2.A10.1.3.1 applies, due to the lack of recency for the offenses. There is evidence of successful rehabilitation in the domestic disturbance realm because the last incident was in 1998. MC E2.A10.1.3.6 applies. I conclude this security concern for Applicant.

The Personal Conduct security concern arises because Applicant failed to make certain disclosures on his SCA. The Government concedes that sufficient disclosures were made to mitigate the allegations in paragraphs 3.c. and 3.d. regarding the financial questions 38 and 39 on the SCA. I agree. Also, Applicant was never disciplined under the Uniform Code of Military Justice for the 1996 and 1997 incidents alleged in paragraphs 2.c. and 2.d. of the SOR. I conclude the Government did not have sufficient evidence in the exhibits or testimony to show Applicant ever was court-martialed or subject to non-judicial punishment for his actions. Therefore, I conclude allegations 3.b, 3.c., and 3.d for Applicant because no deliberate falsification was proven or shown, and no DC apply.

The remaining allegations in paragraph 3.a. of the SOR refers to the non-disclosure by Applicant of his 1998 arrest by civilian police, and the 1996 and 1997 incidents at Applicant's last military assignment. DC E2.A5.1.2.2 of deliberate omission or falsification of relevant and material facts from any personal security questionnaire used to conduct investigations, determine security clearance eligibility or trustworthiness applies.

I conclude there was no arrest in the incident in 1997 with Applicant's son, and in fact Applicant thinks his son was arrested for hitting him. Therefore, there can be no falsification in response to Question 26 on that arrest alleged in SOR paragraph 2.c. and incorporated into SOR paragraph 3.a.

I conclude differently on the other two arrests alleged in SOR paragraph 3.a. The 1998 arrest Applicant forgot because it was in the past, he claims, and it was four years before he completed the SCA, but he also could not recall why he did not list the arrest and he did admit it was a significant event. The 1996 arrest was not disclosed because Applicant did not remember being arrested but that his wife was arrested because she brandished a knife at him during a domestic quarrel. Applicant did not disclose the two significant arrests involving his domestic altercations with his wife, and therefore, I conclude there is a pattern of conduct shown. The evidence shows Applicant was arrested for the incidents alleged in SOR paragraphs 2.b. and 2.d. Applicant should have disclosed these arrests on his SCA. I do not find his explanations credible, nor do I find any MC applicable on these facts. Therefore, I conclude the Personal Conduct

security concern alleged in SOR paragraph 3.a. against Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: For Applicant

Subparagraph 1.k: For Applicant

Subparagraph 1.l: For Applicant

Subparagraph 1.m: For Applicant

Subparagraph 1.n: For Applicant

Subparagraph 1.o: For Applicant

Subparagraph 1.p: For Applicant

Subparagraph 1.q: For Applicant

Paragraph 2. Guideline J: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: For Applicant

Subparagraph 2.e: For Applicant

Subparagraph 2.f: For Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Subparagraph 3.b: For Applicant

Subparagraph 3.c: For Applicant

Subparagraph 3.d: For Applicant

DECISION

In light of all of 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. Clearance is denied.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).