

DATE: May 25, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-00479

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's pattern of financial irresponsibility, criminal conduct, and falsifications renders him an unsuitable candidate for a security clearance. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 16 October 2003 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) ⁽¹⁾ recommending denial or revocation of Applicant's clearance. Applicant answered the SOR and requested an administrative decision on the record on 3 November 2003. He responded to the Government's File of Relevant Material (FORM), issued 3 February 2004; the record in this case closed 24 February 2004, the day Department Counsel indicated no objection to the response was due at DOHA. The case was assigned to me on 4 May 2004 to decide if clearance should be granted, continued, denied, or revoked.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR. Accordingly, I incorporate these admissions as findings of fact.

Applicant--a 41-year-old employee of a defense contractor--seeks access to classified information. He previously had a clearance in the early 1990s.

Applicant has a history of dishonesty, false reporting, and falsification leading to adverse housing, criminal, and employment consequences. He also has a history of financial irresponsibility.

In November 1997, Applicant was charged with making a false report to law enforcement and was fined and placed on one-year probation. In May 2001, he was terminated from his job for unauthorized use of a company vehicle and then lying to the company about the circumstances of the incident. Also, in May 2001, he was evicted from his apartment for violation of the terms of his lease by allowing unauthorized people to stay in the apartment during the day, including an

individual the rental company had barred from the property.

On 1 May 2001, Applicant falsified his Security Clearance Application (SCA) by failing to disclose his November 1997 arrest for false report, by failing to disclose his delinquent debts, and by failing to disclose three significant periods of residence within the last seven years. Although he truthfully disclosed that he had been fired from a job for unauthorized use of a company vehicle, he provided a false explanation of the circumstances of that firing in a 26 July 2002 sworn statement.

Applicant has six delinquent credit accounts totaling over \$15,000.00, that fell delinquent between January 1992 and April 2001. None of these debts were caused by circumstances beyond Applicant's control. Three of the six debts are medical bills totaling less than \$1,000.00. Although Applicant has provided corroboration that he entered into a debt repayment plan with a credit counseling organization and asserts that he has been making payments on the plan, he has provided no payment records to corroborate the claimed payments.

The record is otherwise silent on Applicant's character or work performance.

POLICIES

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. Each adjudicative decision must also assess the factors listed in Section 6.3. and in Enclosure (2) of the Directive. 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.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

FINANCIAL CONSIDERATIONS (GUIDELINE F)

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. The conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment. . . divorce or separation).

CRIMINAL CONDUCT (GUIDELINE J)

E2.A10.1.1. 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.

PERSONAL CONDUCT (GUIDELINE E)

E2A5.1.1. 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. . .

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

E2.A5.1.2.2. 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, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, . . . in connection with a personnel security or trustworthiness determination;

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

Burden of Proof

Initially, the Government must prove controverted facts alleged in the SOR. If the Government meets that burden, the burden of persuasion then shifts to an applicant to establish 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

The Government has established its case under Guideline F. The record demonstrates Applicant's substantial indebtedness, but contains no corroboration of claimed payments made pursuant to a credit counseling repayment plan executed in June 2003.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and not isolated; indeed they are ongoing. They do not appear to be due to circumstances beyond his control. It does not appear that Applicant has stopped digging himself into a financial hole, much less started to pull himself out of it. I conclude Guideline F against Applicant.

The Government has established its case under Guideline E. Applicant falsified substantial pieces of his criminal record and financial difficulties, and later lied to the Government about the reason for his firing--just as he lied to his company about the misuse of the company vehicle, precipitating the firing. I conclude Guideline E against Applicant.

The Government has established its case under Guideline J. Applicant's arrest for false report is simply one more instance in which Applicant has displayed dishonest conduct. I conclude Guideline J against Applicant.

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

Paragraph 2. Guideline J: AGAINST THE APPLICANT

Subparagraph a: For the Applicant⁽²⁾

Subparagraph b: 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

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: 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.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6, as amended (Directive).
2. The February 2002 public nuisance charge was for Applicant pulling off the side of the road to urinate, a crime with no particular security significance.