

DATE: June 29, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-00759

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esq, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of not meeting his financial obligations. He has compounded his financial problems with his repeated yet empty promises for over two years to repay his overdue debts. Given this pattern of inaction for more than two years, Applicant's payment of one of the creditors in late October 2004, coupled with his decision to enroll in the debt consolidation plan, are insufficient to overcome his history of financial difficulties. Conversely, the record lacks sufficient evidence of deliberateness to warrant a finding against Applicant under the personal conduct guideline. Clearance is denied.

STATEMENT OF THE CASE

On May 7, 2004, 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, amended through Change 4, April 20, 1999, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under the financial considerations and personal conduct guidelines 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. The SOR also recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant filed his Answer to the SOR on May 27, 2004. Applicant elected to have his case decided on a written record. The Government provided a copy of the File of Relevant Material (FORM) on September 27, 2004. Applicant received the FORM on October 4, 2004. His response is dated October 29, 2004. The case was assigned to me for decision on November 16, 2004.

RULINGS ON PROCEDURE

Pursuant to E3.1.7., subparagraph 3.a. of the SOR is amended by changing the date July 1, 2002, to June 28, 2002, to conform the SOR with the evidence presented. A review of the security clearance application (SCA), which is item 4 of the Government's FORM, and the subject matter of the allegation in 3.a., shows that the SCA is dated June 28, 2002, not

July 1, 2002.

FINDINGS OF FACT

In his answer to the SOR, Applicant admitted all factual allegations under the financial guideline. He claimed subparagraph 1.a. and 1.e. are the same debts as are 1.b. and 1.f. (1) He denied he deliberately failed to disclose information (subparagraph 2.a.) in response to question 39 of his security clearance application (SCA) dated July 1, 2002.

Applicant is 29 years old and employed as a network specialist by a defense contractor. He seeks a secret security clearance. Applicant's SCA, dated June 28, 2002 (Item 4), indicates Applicant was on active duty in the military from 1993 to 2002; he held a secret security clearance during the period.

The six debts in the table below are listed in the same order they appear in the SOR. The table is divided into three columns: (1) column 1 identifies the creditor and type of debt; (2) the second identifies the status; and (3) the third column identifies the location in the record where the status of the debt can be found.

Creditor ©)	Status	Record location
C 1, military store	\$1,842.00, delinquent	Item 7, CBR
C 2, military bank	Paid	Response to FORM, attachment
C 3, unidentified	\$5,571.00, delinquent	Applicant's answer to SOR
C 4, military credit union	7,364.00, delinquent	Item 5 (sworn statement), Item 6 (interrogatory answers)
C 5, military bank	\$1,824.00, delinquent	Item 5 (sworn statement), Item 6 (interrogatory answers)
C 6, military bank, same debt as C 2	Paid	Response to FORM, attachment
Totals	Paid, \$757.78	Owes, \$16,601.00

On June 28, 2002, Applicant signed his SCA. In response to Question 39, requiring information of debts over 90 days delinquent, Applicant answered "no," explaining he was unaware of the overdue debts.

On September 30, 2002 (sworn statement, Item 5), Applicant explained the bills listed in the SOR became delinquent because (1) he had to pay too much money in moving from the local area to another location in the middle Atlantic region; (2) he discovered when he got to his destination, the cost of living was higher than in the local area; and (3) it took his wife some time to find employment at the new location. In Applicant's personal financial statement (attached to his sworn statement), he indicated he had \$500.00 left over every month after he paid all bills and expenses.

In Item 5 (sworn statement dated September 30, 2002), Applicant also outlined the steps he was going to take to pay the past due debts. He intended to contact the creditors in the next 30 days to discuss settlements or payoffs because (1) he was in better financial shape, (2) he moved to more affordable rental accommodations, and (3) his wife was working, although she was scheduled to take time off from work for about two months, and then return to work in January 2003.

On October 11, 2003 (Item 6, interrogatory answers), Applicant was asked to provide updated information regarding his efforts to resolve the debts identified in subparagraph 1.a., 1.d., and 1.e. Applicant claimed he discovered the creditor in 1.a. was willing to set up a payment plan, but he had not made contact with the creditor to commence payments under the plan. Applicant claimed the creditors in 1.d. and 1.e. consented to a payment plan of \$400.00 a month that he was scheduled to start in November 2003. Applicant also stated he would pay an unlisted creditor in November 2003. However, between October 2003 and May 2004, Applicant had not paid any of the creditors.

In his response to the FORM, dated October 29, 2003, Applicant explained he was involved in an auto accident in December 2002 that totaled his car. The money he was going to use to resolve the SOR debts he had to use to purchase transportation for his wife in October 2003. In addition, his wife's surgery kept her out of work longer than anticipated and she encountered trouble finding a job. Applicant repeated his intention to repay his past due debts. To bolster his claim, Applicant enrolled in a credit consolidation plan to pay off the delinquent creditors. According to Applicant, the

plan will pay all the debts in nine months. However, no payments have been made under the plan.

Considering the evidence as a whole, Applicant's credibility is undercut by his repeated promises to pay his debts for over two years. Applicant made a strong representation in September 2002 when he provided a sworn statement that because of his improved financial position, he would have no trouble making contact with his over-due creditors and resolving his debts. One year later in October 2003, he claimed he made contact with the three of the creditors and was about to launch a repayment plan that would require him to pay \$400.00 a month. However, he provided no evidence of payment of any of the past due debts. Applicant's answer in May 2004 reflects he had not provided documentation to prove he had paid any of his creditors. Applicant did not provide any evidence of payment until October 28, 2004, more than two years after he promised to make his creditors whole.

Applicant indicated there were a lot of physical hardships in the military that resulted in his current debt. He did not explain what those hardships were and their precise impact on his financial status. He believes he is working on a software program that will bring invaluable dividends to the military planning structure.

POLICIES

Enclosure 2 of the Directive sets forth policy conditions which must be given binding consideration in making security clearance decisions. These conditions must be considered in every case according to the pertinent guideline; however, the factors are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

Financial Considerations (Guideline F)

The concern of this guideline is that individuals who are financially overextended place themselves at risk of engaging in illegal acts to generate funds.

Personal Conduct

The concern of this guideline is deliberately providing false information during a security investigation.

Burden of Proof

The Government has the burden of proving controverted facts by substantial evidence. Once the Government meets its burden, the burden shifts to applicant to rebut, refute, explain, mitigate, or extenuate the facts. An applicant has the ultimate burden of persuasion to demonstrate he qualifies for a security clearance. Any doubt concerning an applicant's security clearance access should be resolved in favor of national security. *Department of the Navy v. Egan*, 484 U.S. 518, at 531

CONCLUSIONS

The circumstances of this case invoke the financial considerations disqualifying condition (FI DC) E2.A.6.1.2.1. (*a history of not meeting financial obligations*) because there are six debts that have been delinquent since 1991 and 1992. The total delinquent amount is about \$17,300.00. Applicant's repeated promises to pay the debts between September 2002 and October 2004 require the application of FC DC E2.A6.1.2.2. (*inability or unwillingness to satisfy debts*). Initially, Applicant was unable to repay the past due debts, but his improved financial status over the last two years, i.e., the \$500.00 monthly remainder he had in September 2002, should have persuaded him to resolve the smaller debts to demonstrate he was truly committed to eliminating the debt delinquencies.

There are five FC mitigating conditions (MC) that are potentially applicable to the circumstances of this case. FC MC E2.A6.1.3.1. (*the behavior was not recent*) applies in a limited fashion as all the debts became delinquent in 1991 and 1992. Even though the debts became delinquent in 1991 and 1992, the fact there are still six debts totaling more than \$17,300.00 requires FC MC E2.A6.1.3.2. (*it was an isolated incident*) to be dismissed due to inapplicability.

FC MC E2.A6.1.3.3. (*the conditions that resulted in the behavior were largely beyond the person's control*) applies to

unforeseen events that arise to interfere with a person's ability to pay his or her debts. Inordinate moving expenses, compounded by a higher cost of living, and his wife's inability to get employment immediately are unfortunate events that can hinder a person's ability to pay his bills. However, higher moving expenses to a location with a higher cost of living are facts of life that can be reduced in amounts during the planning stage by choosing less costly movers and moving to a area with a lower cost of living as Applicant ultimately did. Applicant's moving and cost of living explanations for not addressing the delinquent debts earlier do not entitle Applicant to mitigation as an unanticipated condition.

The medical problem caused by Applicant's wife is a condition that warrants some consideration under FC MC 3. Applicant's car wreck and required purchase of a used car in October 2003 would provide Applicant with considerable additional consideration had he provided documentation of the monetary loss due to the accident and the cost of the used vehicle in October 2003. Additional concerns are raised about the credibility of the car wreck and purchase of the used vehicle in October 2003 because neither incident is mentioned in Applicant's interrogatory answers or his answer to the SOR. The limited application of FC C 1 and FC MC 3 is insufficient to overcome the adverse evidence under FC DC 1 and FC DC 3.

FC DC E2.A6.1.3.4. (*the person has received or is receiving counseling for the problem and there are clear indications the problem is being resolved or is under control*) will generally apply where the evidence shows that financial counseling has aided an applicant in restoring order to his or her financial obligations. The condition does not apply as there is no evidence of official or unofficial counseling. FC MC E2.A6.1.3.5. (*the affluence resulted from a legal source*) is not applicable to these facts. FC MC E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies in mitigation because Applicant paid off the sixth creditor (listed in the SOR) on October 28, 2004. However, the mitigation is diluted by the time it took for Applicant to take his first documented step in repaying his creditors. The consolidation plan does not receive much weight because Applicant has made no payments under the plan.

While Applicant has failed to overcome the Government's case under the personal conduct guideline, the Government has presented insufficient evidence, especially Item 7 (CBR), to show Applicant deliberately falsified his answer to question 39 of the SCA. PC DC E2.A5.1.2.2. (*the deliberate omission, concealment, or falsification of relevant and material facts from a personnel security questionnaire used to determine security clearance eligibility or trustworthiness.*) There is no doubt the missing information is material in that it could affect the course of the investigation. However, the absence of sufficient evidence of deliberateness supports a finding in Applicant's favor under the PC guideline.

The findings against Applicant under the FC guideline and for him under the PC guideline remain unchanged after a full review of the evidence under the whole person concept. The unfulfilled promises by Applicant to settle or pay off his delinquent debts raise lingering security concerns that his financial problems will persist in the future.

FORMAL FINDINGS

Paragraph 1 (financial considerations, Guideline F): AGAINST THE APPLICANT.

- a. Against the Applicant.
- b. For the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. For the Applicant.

Paragraph 2 (personal conduct, Guideline E): FOR THE APPLICANT.

a. 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 or continue a security clearance for Applicant.

Paul J. Mason

Administrative Judge

1. The record indicates 1.b. and 1.f. are the same. However, the evidence is lacking as to whether 1.a. and 1.e. are the same.