

DATE: May 25, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-01800

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR.

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated the security concerns raised by his adverse financial history by demonstrating 1) that his financial difficulties were due to circumstances beyond his control, 2) that he had dealt responsibly with his creditors as his means permitted, 3) that two of the three debts alleged in the SOR were not his responsibility, and 4) that he had begun to deal with his delinquent accounts well before the SOR was issued. Clearance granted.

STATEMENT OF THE CASE

Applicant challenges the 25 November 2003 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of financial considerations and personal conduct. [\(1\)](#) Applicant answered the SOR on 13 February 2004 and requested a hearing. DOHA assigned the case to me 3 May 2004 and I convened a hearing on 16 June 2004. DOHA received the transcript 7 July 2004.

PROCEDURAL RULINGS

Before the hearing, Department Counsel moved to amend the SOR by adding two additional falsification allegations. At hearing, Applicant did not object to the amendments--which I then granted--but denied the allegations (Tr. 14-18).

FINDINGS OF FACT

Applicant--a 47-year-old roll-out technician for a defense contractor since July 2002--seeks access to classified information. He had never applied for a clearance until July 2002. He admitted owing the debt at 1.a., but denied owing the debts at 1.b. and 1.c. He also denied falsifying his clearance application (2.a., 2.b., 2.c.).

The SOR alleges that Applicant falsified his July 2002 clearance application by 1) failing to disclose the past due debts at 1.b. and 1.c. (2.a.), 2) failing to disclose being fired from a job in September 1995 for marijuana use (2.b.), and 3) failing to disclose the full extent of his marijuana use between 1978 and 1995 (2.c.). Applicant's clearance application

(G.E. 1) and his draft application (A.E. A), along with copies of his spouse's bankruptcy discharge provided in his Answer, corroborate his testimony and answer that he lacked the intent to mislead the government when he completed the clearance application.

Applicant was offered a job with his current employer on 27 June 2002, and told to complete the electronic clearance over the weekend, and bring it to the employer the following Monday, 30 June 2002. Applicant spent the weekend collecting the required information and entering it into the application. He printed a copy of his efforts on 30 June 2002 (A.E. A). Applicant reported adverse information about himself, including a lien and a delinquent mortgage, (2) his firing in 1995, and his use of marijuana 200 times between 1978 and 1995. However, his security officer informed him that he only had to report his employment history for the last five years and his drug history for the last 7 years. Having not applied for a clearance before, Applicant relied on that advice and deleted two pre-1995 employments from his employment history (including the job he was fired from) as well as the adverse employment incident. He also amended his drug history to reflect the 10 uses of marijuana he had in 1995. (3) The updated clearance application was validated on 1 July 2002, the same day he was formally hired. He signed the application on 2 July 2002 and it was electronically transmitted to the government on 3 July 2003.

Before April 2001, when he and his wife separated, his financial accounts were current. His had been a two-earner household for many years, and like many such households, was incurring debt fairly close to their income limits. Their finances had suffered some in 1995, when Applicant was unemployed for three months following his being fired from his job for marijuana use. (4) His finances took a larger hit when his wife lost her job in January 2000. They remained current on their accounts, but at the cost of taking on a second mortgage and carrying revolving balances on the three credit cards in paragraph 1 of the SOR. (5) They used these three account to consolidate other debts as well as pay necessary bills like medical bills and car repairs.

Applicant's wife obtained full time employment in January 2001, and shortly thereafter told Applicant she wanted a divorce. They separated in April 2001, having agreed that Applicant would be responsible for the debt at 1.a. and his wife responsible for the debts at 1.b. and 1.c. (6) Applicant also agreed to quitclaim his interest in the family home to his wife, who hoped to rent it out for the income and tax benefits. (7) He took steps to remove his wife's name from the account at 1.a. and assumed his wife had done the same for him. He later discovered that was not the case. He also discovered that she had file for bankruptcy protection and believed that satisfied his obligation for the debts at 1.b. and 1.c. He related as much during his subject interview in September 2002 (G.E. 2) where he also explained the circumstances of his failure to report his 1995 job termination.

The ultimate blow to Applicant's finances occurred in June 2002. He was advised mid-month that his employer had lost the government contract which employed him and he would be terminated by the end of the month. Although he nominally obtained employment with his current employer in July 2002, he was effectively unemployed between July 2002 and March 2003. He had some hours with his employer in July 2002, and took other part-time employment to minimize the financial impact of his underemployment.

He managed to keep the account at 1.a. current until October 2002. By the time he returned to full time work in March 2003, the creditor had charged off his account and sold it to a collection agent. The collection agent demanded an up-front payment of \$6,000.00 before they would give Applicant a repayment plan. Applicant made a lump sum payment of \$5,000.00 in March 2003 by cashing in his 401K account from his previous employer. He then began making monthly payments of \$400 on this account. He had made three monthly payments when the collection agent demanded he change the payments to \$500 per month. Applicant made three payments and the collection agent demanded Applicant pay the remaining balance.

When Applicant could not do so, the account was sold to another collection agent. Applicant worked out a payment schedule with that agent to pay \$250.00 per month beginning in December 2003. As of the date of the hearing, Applicant had made six monthly payments by automatic debit, reducing his balance on the account to approximately \$23,500.00 (A.E. C, D). In addition, in April 2004 Applicant entered a debt management plan (DMP) for three accounts he had been paying on (A.E. I). These account were current when the SOR was issued (G.E. 3) but had been 30-60 days past due at various times before and after the SOR was issued. He was paying \$350.00 per month for distribution to

these three creditors, and planned to add the debt at 1.c. to his plan, having finally located the collection agent for the account (Tr. 102-103).

Applicant's character references (A.E. B) consider him an honest, hardworking employee. I found his testimony credible.

POLICIES

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline F (Financial Considerations) and E (Personal Conduct).

BURDEN OF PROOF

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government. ⁽⁸⁾

CONCLUSIONS

The government established a Guideline F case, but the Applicant mitigated the security concerns. First, he demonstrated that his financial problems were largely due to circumstances beyond his control. Second, he demonstrated that the debt at 1.b. was neither legally nor morally his--as well as having actually been paid in December 2000 through a balance transfer to the account at 1.c. He demonstrated that his wife had agreed to assume the responsibility for the debt at 1.c., had not removed his name from the account, then had her liability discharged in bankruptcy. Third, he demonstrated a consistent record of attempting to address his delinquent accounts as soon as his financial situation permitted and not waiting until he received the SOR to address his debts. He had kept the account at 1.a. current for six months after becoming unemployed in July 2002 and began dealing with collection agents in March 2003 as soon as he regained full time employment. Finally, he appeared at hearing having continued to make payments on the debt at 1.a. (\$9,200.00 between March 2003 and May 2004) and having entered into a DMP for three accounts that continued to be problematic for him. He intends to add the debt at 1.c to that plan even though it is not clear to me that he is still responsible for that account. Given the lengths he has gone to bring his accounts current and keep them current, I conclude Applicant is unlikely to experience financial difficulties in the future. Accordingly, I resolve Guideline F for Applicant.

The government established a Guideline E case, but Applicant mitigated the security concerns by demonstrating that he lacked the intent to mislead the government. He reported the debts and liens he was aware of. He relied on bad advice from his security officer in removing his drug history and adverse employment history from his draft clearance application. The government acknowledged its satisfaction with his explanation for the omissions (Tr. 105-107). I conclude Guideline E for Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline F: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Paragraph 2. Guideline E: FOR the Applicant

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is 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 and Department of Defense Directive 5220.6, as amended (Directive).
2. He did not report the debts at 1.b. and 1.c. as delinquent because, to his knowledge, those accounts were not delinquent. When he and his wife separated in April 2001, she agreed to take responsibility for those two accounts and all the statements were mailed to her. In fact, creditor records (A.E. H) show that Applicant had never signed for the credit line at 1.b. (although the proceeds of the credit line were credited to a joint account) and the loan had been substantially paid in December 2000, but never reflected on the credit report as paid.
3. However, in so doing, he incorrectly typed "1975" as the beginning date of his marijuana use instead of "1995".
4. At which time he stopped using marijuana.
5. They also accumulated debt on three credit cards (A.E. I) that were current in July 2003 (when the credit report that supports the SOR was generated), but which had been between 30- and 60-days past due in the past.
6. The account and balance alleged at 1.b. corresponds to a specific account number and balance reflected in a July 2003 credit report (G.E. 3). However, the creditor has removed this account from Applicant's credit record (G.E. 6) because Applicant did not sign for the loan (A.E. H). Further, the creditor's December 2000 statement sent to Applicant (showing the identical account number) shows that the account was paid, except for a last interest charge of \$30.00, on 7 December 2000 (A.E. H). The November 2000 statement contains a hand-written annotation reflecting a balance transfer on 5 December 2000 of the outstanding balance for November 2000 to the credit card debt alleged at 1.c. The amount noted for the balance transfer exactly matches the amount credited in the December 2000 statement. The balance transfer was made to reduce the interest rate from 18% to 8%, albeit only for six months.
7. To that end, he cooperated by executing various documents required by the bank. In the meantime, his spouse had trouble getting a tenant for the house and by the time she did so, the mortgage payments were substantially in arrears (reported by Applicant on his clearance application). She ultimately filed for bankruptcy protection, including the accounts at 1.b. and 1.c., a petition that was later converted to a chapter 7 filing and discharged in November 2002. The bank began foreclosure proceedings, but the tenant bought the house before the proceedings were complete. Applicant

was ultimately released from his liability on the mortgage.

8. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).