

DATE: January 5, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-02815

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Nygena T. Mills, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant attributed his financial problems to the support he provided to his elderly parents who were in poor health and had limited means of support. However, he failed to provide any corroborating evidence of such support. Moreover, Applicant failed to produce any supporting evidence of alleged partial payments of his delinquent indebtedness. In addition to lacking supporting evidence for any mitigation, the record does not demonstrate any progress on the part of Applicant to resolve over \$18,000.00 of delinquent indebtedness. Clearance is denied.

STATEMENT OF THE CASE

On November 19, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order ⁽¹⁾ and Department of Defense Directive, ⁽²⁾ issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline F (Financial Considerations). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant him access to classified information and recommends that his case be submitted to an Administrative Judge.

On December 20, 2003, Applicant responded to the SOR and requested a hearing. The case was assigned to me on March 11, 2004. A notice of hearing was issued on April 21, 2004 and the hearing was held on May 11, 2004. During the hearing, seven Government exhibits (Govt Ex) and the testimony of Applicant were received. The transcript (Tr) was received on May 20, 2004.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is a 56-year-old quality assurance specialist employed by a defense contractor. He is seeking a security clearance.

In 1997, Applicant obtained nursing home care for his father. He incurred a debt that he did not pay. In May 1999, the creditor obtained a judgment against Applicant in the amount of \$10,955.00. There is no evidence in the record that the debt has been paid or otherwise satisfied (SOR ¶ 1.a).

In May 1999, Applicant opened a credit card account. By February 2001, he failed to pay a balance on the account in the amount of 537.00 and it was charged off as a bad debt. There is no evidence that this debt has been paid or otherwise satisfied (SOR ¶ 1.e).

In March 2000, Applicant opened an account for cable service. By September 2000, he had a delinquent debt in the amount of \$456.00. There is evidence in the record that Applicant returned the converters he was issued but there is no evidence that this debt has been paid or otherwise satisfied (SOR ¶ 1.c).

In June 2000, Applicant opened a credit card account with a bank. By April 2001, he was past due on payment of a balance on the account and the bank transferred it to a debt collector. There is no evidence in the record that the debt in the amount of \$499.00 has been paid or otherwise satisfied (SOR ¶ 1.b).

In September 2000, Applicant financed the purchase of a vehicle. By August 2001, he was delinquent in the payment of the loan and the vehicle was subsequently repossessed. There is no evidence in the record that the debt, with an outstanding balance in the amount of \$5,662.00, has been paid or otherwise satisfied (SOR ¶ 1.f).⁽³⁾

Applicant experienced a four month period of unemployment in 2001. He was out of work from April 11 until August 12.

In February 2002, Applicant opened a credit card account with a bank. By September 2002, he was past due on payment of a balance on the account and the bank charged it off as a bad debt. There is no evidence in the record that the debt in the amount of \$691.00 has been paid or otherwise satisfied (SOR ¶ 1.d).

On July 24, 2002, Applicant acknowledged his delinquent debts in a sworn statement he provided to a special investigator for the Defense Investigative Service (DIS). Despite the fact the personal financial statement he provided reflected a negative monthly remainder of \$654.00, Applicant stated, "I am confident that my records will be cleared within the next year and a half of all negative notations."

POLICIES

Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted. Directive E3.1.14. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts

admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (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. Any doubt as to whether

access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as

further conditions that could mitigate a concern and support granting a clearance. The following guideline is applicable to this case.

Guideline F: Financial Considerations

The concern is that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Conditions that could raise a security concern and may be disqualifying include E2.A6.1.2.1, a history of not meeting financial obligations (Disqualifying Condition 1). They also include E2.A6.1.2.3, inability or unwillingness to satisfy debts (Disqualifying Condition 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, a business downturn, unexpected medical emergency, or a death, divorce or separation) (Mitigating Condition 3). They also include E2.A6.1.3.6, the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (Mitigating Condition 6).

CONCLUSIONS

Applicant's record of more than \$18,000.00 in delinquent indebtedness since 1997 substantiates SOR ¶ 1.a through ¶ 1.g. It establishes both his history of not meeting financial obligations, as well as his inability or unwillingness to satisfy debts, Disqualifying Condition 1 and Disqualifying Condition 3, respectively.

Applicant attributes his financial situation to providing support for his parents, including attorney fees to prevent the foreclosure on their home. He testified that he provided financial support to his mother, who suffered from heart disease before her death in 1997, and to his father, who had prostate cancer and required nursing home care because of his dementia. Applicant incurred the debt to the nursing home (SOR ¶ 1.a) for the care he arranged for his father. The inability to pay debts because of providing such support might support Mitigating Condition 3. However, Applicant was unable to provide any corroborating evidence for the support he provided, having acknowledged that the obligation was to some extent satisfied from funds he received from the sale of his parents home and his father's social security payments. Applicant provided no supporting evidence for his claim that he was billed for more than he agreed to for the nursing home care. He also failed to provide any corroborating evidence of paying for the funeral arrangements for his father, who passed away in March 2003. Finally, Applicant also could not provide corroborating evidence for his assertion that the nursing home had agreed to settle the judgment against him for \$7,500.00.

Applicant also failed to provide any corroborating evidence of his contention that he had reduced the outstanding obligation on two of the delinquent debts (SOR ¶ 1.b, c). He acknowledged that he opened the accounts but denied that he ever incurred any liability on two other accounts (SOR ¶ 1.d, e). Applicant also could not understand how the creditor for an automobile loan could have any further claim against him, following his default, because the creditor had repossessed the car (SOR ¶ 1.f).

Applicant is to be commended for support he provided to his parents. However, the record does not establish that his financial problems are solely attributable to such support. Even if he could corroborate such support, it would not excuse his failure to demonstrate any progress in paying or otherwise resolving his outstanding indebtedness. The same is true of his four month period of unemployment in 2001. Although it would have contributed to his financial problems, it does not excuse his failure to show progress in resolving his indebtedness three years later. I find against Applicant.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

DECISION

In light of the evidence of record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Signed

Roger E. Willmeth

Administrative Judge

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.
3. SOR ¶ 1.f slightly understates the latest balance in the record. Govt Ex 4 at 1.