

DATE: January 28, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-02818

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Nygina Mills, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant contends his child support arrearage of \$19,481.96 does not reflect the voluntary support payments he provided through the years. However, he has not submitted corroboration of any payments other than through garnishment or pursuant to court order. Based on the record, it does not appear that significant progress was made in addressing Applicant's child support arrearage until his pay was subjected to garnishment in May 2001. Combined with his failure to address a \$3,439.21 judgment against him, the record fails to mitigate or otherwise address financial security concerns. Applicant has also failed to provide a satisfactory explanation for his failure to disclose his delinquent child support obligation on his security clearance application. Clearance is denied.

STATEMENT OF THE CASE

On October 15, 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) and Guideline E (Personal Conduct). 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 January 2, 2004, Applicant answered the SOR and requested a hearing. The case was assigned to me on March 22, 2004. A notice of hearing was issued on April 28, 2004, and the hearing was held on May 25, 2004. During the hearing, five Government exhibits (Govt Ex), three Applicant exhibits (Ap Ex) and the testimony of Applicant were received. The transcript (Tr) was received on June 4, 2004.

Without objection by Department Counsel, I granted Applicant until June 15, 2004 to provide documentation pertaining to the status of his indebtedness. On June 11, 2004, Applicant submitted the documentation that I have marked Applicant as Ap Ex D and that I have considered it in reaching my decision.

FINDINGS OF FACT

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

Applicant is a 45-year-old installation manager employed by a defense contractor. He has never been married but has four children, including a daughter born on May 7, 1988, twin daughters born on May 24, 1990, and a son born on January 1, 1993. The three youngest children reside with him.

On May 17, 1996, a state court ordered Applicant to pay \$100.00 per month to satisfy an arrearage in the amount of \$8,746.00 for his oldest daughter's support. The court did not order Applicant to pay current support because this daughter had been living with him since July 1995. Applicant's custody of his daughter continued for approximately 13 months. ⁽³⁾

On May 4, 1998, the Applicant's former lessor filed suit against him. The exact nature of the claim is not clear from the record. On December 15, 1998, a default judgment was entered against Applicant in the amount of \$3,439.21, including attorney fees and costs. Applicant has not paid or otherwise satisfied the obligation (SOR ¶ 1.b).

In May 2001, a state bureau for child support enforcement began garnishing \$330.00 per month from Applicant's pay. This included \$200.00 per month for current child support and \$130.00 per month to pay an arrearage for the support of his daughter who was born on May 7, 1988. By June 22, 2002, Applicant's arrearage for child support amounted to \$19,481.96. By May 21, 2004, Applicant's total payments through garnishment amounted to \$12,032.49 (SOR ¶ 1.a).

In March 2002, Applicant executed a security clearance application (SF 86). In response to question 38 ⁽⁴⁾ on the SF 86, Applicant answered, "no," and did not report the delinquent child support he owed or the judgment against him (SOR ¶ 2.a).

On July 26, 2002, Applicant was interviewed by a special agent of the Defense Investigative Service (DIS) and provided a sworn statement. In addition to discussing his child care obligation, Applicant explained that a collection account listed on his credit report pertained to a claim by a former lessor that he disputed.

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 guidelines are 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). None of the conditions that could mitigate security concerns are applicable in this case.

Guideline E: Personal Conduct

The concern under Guideline E is 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. Conditions that could raise a security concern and may be disqualifying under Guideline E include E2.A5.1.2.2 (Disqualifying Condition 2). Disqualifying Condition 2 covers 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, determine employment, qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

CONCLUSIONS

Guideline F: Financial Considerations

The record establishes Applicant's history of not meeting financial obligations, as well as his inability or unwillingness to satisfy debts. In 1996, Applicant had incurred a child support arrearage in the amount of \$8,746.00. By June 2002, it had increased to \$19,481.96. To date, it has only been partially addressed through the garnishment of his pay. In December 1998, a judgment in the amount of \$3,439.21 was awarded against Applicant that he refuses to pay and has not otherwise addressed. This record raises both Disqualifying Condition 1 and Disqualifying Condition 3.

Applicant contends that the judgment against him is the result of a damage claim for which he is not responsible (SOR ¶ 1.b). He testified that the property damage resulted from a leak in his rental property of which he repeatedly complained and which management failed to fix. However, Applicant has not provided any corroboration. Moreover, he has none nothing to challenge it, even though he been aware of the claim for at least the past two years.

Applicant contends that his child support arrearage is excessive (SOR ¶ 1.a). However, he has not provided supporting evidence or even evidence of him raising the matter with the bureau for child support enforcement. He also contends that the child support arrearage does not reflect the voluntary support payments he provided through the years. However, he has not submitted corroboration of any payments other than through garnishment or pursuant to court order. Based on the record, it does not appear that significant progress was made in addressing Applicant's child support arrearage until his pay was subjected to garnishment in May 2001. Combined with his failure to address the judgment against him, the record fails to mitigate or otherwise address financial security concerns. Therefore, I find against Applicant with regard to Guideline F.

Guideline E: Personal Conduct

Applicant's failure to report his delinquent child support obligation, as well as the judgment against him, on his security clearance application raises Disqualifying Condition 2. Applicant contends that he was not aware of the judgment against him at the time he submitted his security clearance application. This would explain his failure to report that obligation. Applicant further explained that he did not understand that he was delinquent on his child support obligation because he had been paying it since May 2001. Although he was and remains delinquent in payments, it is not unreasonable for him to have understood he was "current" on child support at the time of his application. However, the question required him to disclose if he *had* been 180 days delinquent on any debts in the past seven years. As he knew, the garnishment of his pay had begun less than a year earlier, in part, to recover an arrearage of more than nineteen thousand dollars. His rationale does not explain how he could have ignored such a substantial financial delinquency when he submitted his security clearance application. Based on the record, I find against Applicant with respect to Guideline E.

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

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: 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. Tr 62-63.
4. "In the last 7 years, have you been over 180 days delinquent on any debt(s)?"