

DATE: February 18, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-02912

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jason Perry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's (1) long-standing financial difficulties and (2) criminal and dishonest conduct preclude a finding that it is clearly consistent with the national interest to grant him access to classified information. Clearance is denied.

STATEMENT OF THE CASE

On October 24, 2003, 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, issued a Statement of Reasons (SOR) to applicant which detailed reasons 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on November 28, 2003, and elected to have his case determined on a written record in lieu of a hearing. Department Counsel (DC) submitted the Government's written case (FORM) on or about April 19, 2004. Applicant did not file a response to the FORM. The case was assigned to me on June 8, 2004.

FINDINGS OF FACT

Applicant is a 36 year old employee of a defense contractor.

Applicant admits SOR Allegations 1c, 1f, 1i, and 1m without qualification. These allegations are therefore incorporated by reference as Findings of Fact.

SOR Allegation 1a: Applicant is indebted to this creditor in the approximate amount of \$567.00. This past-due debt was written off by the creditor.

SOR Allegation 1b: Applicant is indebted to this creditor in the approximate amount of \$1,639.00. As of February

2002, this debt was at least 120 days delinquent.

SOR Allegation 1d: Applicant is indebted to this creditor in the approximate amount of \$1,506.00. This debt is past-due.

SOR Allegation 1e: Applicant is indebted to this creditor. He claims that this was a judgment debt that he paid. Although Exhibit 8 (at page 1) indicates applicant satisfied a judgment debt to this creditor in 1999, it also indicates (at page 2) that applicant is still indebted to this creditor in the past-due amount of \$5,371.00.

SOR Allegation 1g: Applicant was indebted to this creditor in the approximate amount of \$103.00. In a June 4, 2002 signed, sworn statement that he gave to the Defense Security Service (DSS), applicant stated that this debt was included in his 1995 bankruptcy. However, the bankruptcy records (Exhibit 9) indicate that applicant reaffirmed this debt in bankruptcy court. This fact, and the fact that a February 2002 credit report (Exhibit 7) indicates that applicant is still indebted to this creditor, leads me to conclude that he is still indebted to this creditor.

SOR Allegation 1h: Applicant is indebted to this creditor in the amount of \$703.00. The debt was placed for collection years ago.

SOR Allegation 1j: Applicant is indebted to this creditor in the approximate amount of \$248.00. This debt is past-due.

SOR Allegation 1k: Applicant is indebted to this creditor in the approximate amount of \$170.00. This debt is past-due.

SOR Allegation 1l: Applicant is indebted to this creditor in the approximate amount of \$161.00. This debt was placed for collection years ago.

SOR Allegations 1n and 2a: In 1998, applicant pleaded guilty to Making, Uttering, and Possessing Counterfeit Securities, a felony. He was sentenced to five years of probation, and ordered to pay approximately \$60,000.00 in restitution, at the rate of \$100.00 per month. Applicant has not made the required restitution payments on a consistent basis.

In a June 13, 2002 signed, sworn statement that he gave to the DSS (Exhibit 6), applicant significantly downplayed his involvement in this crime. A review of the court records (Exhibit 10) indicates that applicant was much more involved in the conspiracy to use counterfeit documents and checks to obtain merchandise than he admitted to in his DSS statement.

SOR Allegation 2b: As of February 8, 2002, there were four separate arrests warrants out for applicant.

SOR Allegations 3b and 3c: The Government alleges that on a Security Clearance Application (SCA) he executed on January 30, 2002, applicant lied about his financial history when, in response to both Question 38, which asked, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" and Question 39, which asked, "Are you currently over 90 days delinquent on any debt(s)?" he stated "no." DC did not submit this SCA into evidence.⁽¹⁾ Rather, DC relies upon applicant's response to the SOR to prove these allegations. When applicant's multiple statements in response to these allegations are read as a whole, they indicate that he (1) really did not recall how he responded to the financial questions on this SCA, and (2) adamantly denied intentionally providing false information. Based on these facts, applicant's SOR responses cannot be deemed admissions that he knowingly falsified his responses to Questions 38 and 39. Without any other evidence to support these allegations, they are found for applicant.

CONCLUSIONS

With respect to Guideline F, the evidence establishes that applicant is indebted to numerous creditors listed in the SOR for past-due debts in an amount in excess of \$11,000.00. Applicant's failure to honor his financial obligations reflects adversely on his judgment and reliability, and suggests he cannot be relied upon to safeguard classified information. With respect to the Financial Considerations guideline, Disqualifying Conditions E2.A6.1.2.1 (*a history of not meeting financial obligations*) and E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*) are applicable.

Once the Government established a *prima facie* case under Guideline F, the burden shifted to applicant to show he has reformed. Applicant failed to meet his burden. Although he offered uncorroborated statements that he is currently satisfying a few of the debts listed in the SOR, he offered no credible evidence that he (1) is in a position to significantly reduce his past-due indebtedness anytime soon, or (2) is unlikely to experience additional financial difficulties. Applicant does not qualify for any Mitigating Condition under Guideline F.

With respect to Guideline J, applicant's 1998 felony conviction for defrauding businesses by using counterfeit checks and other documents that he created raises serious concerns about his judgment, reliability and trustworthiness. These concerns are compounded by the fact that applicant was less than candid with the DSS when discussing his role in this felonious conduct, and by the fact there are four warrants for applicant's arrest currently outstanding. Disqualifying Condition E2.A10.1.2.2 (*a single serious crime or multiple lesser offenses*) is applicable. No mitigating conditions under Guideline J are applicable.

Applicant's participation in the aforementioned fraud is also cognizable under Guideline E as it certainly involved questionable judgment, untrustworthiness, unreliability and dishonesty. This conduct, together with the fact there are four warrants for applicant's arrest currently outstanding, requires application of Disqualifying Condition E2.A.5.1.2.5 (*a pattern of dishonesty or rule violations*). No mitigating conditions under Guideline E are applicable.

FORMAL FINDINGS

PARAGRAPH 1: AGAINST THE APPLICANT

PARAGRAPH 2: AGAINST THE APPLICANT

Subparagraphs 2a and 2b found against the applicant

Subparagraph 2c found for the applicant

PARAGRAPH 3: AGAINST THE APPLICANT

Subparagraph 3a found against the applicant

Subparagraphs 3b and 3c found 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.

Joseph Testan

Administrative Judge

1. DC offered into evidence an unsigned SCA that is dated December 24, 2002 (Exhibit 4). In the FORM, DC repeatedly references Exhibit 4 as though it was the actual SCA applicant allegedly falsified. Based on the facts that (1) the SOR refers to an SCA executed by applicant on January 30, 2002, and Exhibit 4 is dated December 24, 2002 (and states it was signed by applicant on February 1, 2002), and (2) the SOR alleges applicant responded "no" to Question 39, but on Exhibit 4, applicant responded "yes" to Question 39, I conclude that Exhibit 4 is not the SCA that applicant is alleged to have falsified.