

DATE: August 4, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-03079

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esquire, Department Counsel

FOR APPLICANT

Jon L. Roberts, Esquire

Roberts, Abokhair & Mardula, LLC

SYNOPSIS

The Applicant's debt situation arose primarily from his divorce, which concluded in 2001. Since that time, as his financial situation has improved, the Applicant has made efforts at paying off his overdue debt. His current financial situation is stable and he shows every indication that he will successfully resolve his remaining debt situation. Adverse inference is overcome. Clearance is granted.

STATEMENT OF THE CASE

On February 3, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing through counsel on March 26, 2004, and requested that the Decision be made without a hearing. The Department Counsel submitted the File of Relevant Material (FORM) to the Applicant on July 28, 2004. The case was received by the undersigned for Decision on November 1, 2004. The Department Counsel subsequently submitted the FORM to Applicant's counsel on June 15, 2005. The Applicant's counsel was given 30 days after receipt of the FORM to submit any additional information to the Administrative Judge. Applicant's counsel submitted additional information on July 14, 2005. The Department Counsel submitted additional information on August 1, 2005. The record closed on that date.

FINDINGS OF FACT

The Applicant is 32. He is employed by a defense contractor as an Operations Manager, and he seeks to obtain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR and the exhibits.

Paragraph 1 (Guideline F - Financial). The Government alleges in this paragraph that the Applicant is financially overextended and therefore at risk of having to engage in illegal acts in order to generate funds. Such conduct may also show poor judgment, unreliability or untrustworthiness on the Applicant's part.

1.a. The Applicant admitted that he was indebted to this department store in the amount of \$336.00 on a past due account. However, an analysis of the exhibits shows that, while the account was charged off, the \$336.00 figure was the credit limit. (Item 7 at 5.) The 2004 and 2005 credit reports do not show a past due figure for this account. (Item 8 at 2 and Item 9 at 2.) Notwithstanding his admission, the Government has not proved this debt. This allegation is found for the Applicant.

1.b. The Applicant denied owing the Defense Finance and Accounting Service \$380.00. This debt does not appear in the 2004 and 2005 credit reports (Items 8 and 9). The Government submitted no information, other than a 2002 credit report (Item 7), to support this allegation. It is found for the Applicant.

1.c. The Applicant admitted owing this creditor \$888.00 on a past due account. Item 9 at page 2 states regarding this creditor, "Settlement accepted on this account." Accordingly, I find that this debt has been resolved. This allegation is found for the Applicant.

1.d. The Applicant admitted owing this creditor \$779.35 on a past due account. The 2005 credit report shows that this debt is still outstanding. (Item 9 at 2.)

1.e. The Applicant admitted owing this creditor \$507.88 on a past due account. The 2005 credit report shows that this debt is still outstanding. (Item 9 at 2.)

1.f. The Applicant admitted owing this department store \$2,226.94 on a past due account. The 2005 credit report shows that this debt is still outstanding. (Item 9 at 2.)

1.g. The Applicant admitted owing this department store \$1,707.57 on a past due account. The 2005 credit report shows that this debt is still outstanding. (Item 9 at 1.)

1.h. The Applicant admitted owing this bank \$8,111.00, the balance owed after resale of an automobile. This debt does not appear in the 2004 or 2005 credit reports (Items 8 and 9). However, there is no evidence that the debt has been resolved.

1.i. The Applicant admitted owing this telephone company \$468.82 on a past due account. This debt does not appear in the 2004 or 2005 credit reports (Items 8 and 9). The 2005 credit report indicates that the Applicant has an unpaid telephone bill in the amount of \$77.00. This may be the debt set forth in this subparagraph or 1.k. (Item 9 at 1.)

1.j. The Applicant denied owing this debt in the amount of \$145.00. Item 9 at 1 shows this item as "Paid." This allegation is found for the Applicant.

1.k. The Applicant admitted owing this telephone company \$296.00 on a past due account. This debt does not appear in the 2004 or 2005 credit reports (Items 8 and 9). The 2005 credit report indicates that the Applicant has an unpaid telephone bill in the amount of \$77.00. This may be the debt set forth in this subparagraph or 1.i. (Item 9 at 1.)

1.l. The Applicant admitted owing this credit card company \$2,300.00 on a past due account. It appears that this debt has been transferred or sold. Item 9 at page 2 shows the current balance to be \$5,318.00. There is no evidence that the debt has been resolved.

1.m. The Applicant admitted that he was past due on a student loan. Item 9 at 3 shows that he is making current payments on his student loan. This allegation is found for the Applicant. (*See*, Answer to SOR (Answer) at Enclosure 5.)

1.n. The Applicant was divorced in 2001. He was awarded full custody of his young daughter at that time. In 2001, he was making \$18,000.00 a year. By the time the Answer to the SOR was filed in March 2004, he was making \$41,000.00 a year. (Answer at 2.) As of July 13, 2005, the Applicant states he is making approximately \$60,000.00 a year. (Response to FORM (Response) at Enclosure 1.)

In his Answer to the SOR, the Applicant states that he was in the process of arranging a debt consolidation for his debts. (Answer at 2, and Enclosure 4.) The Response does not show that the Applicant has made any further steps towards a debt consolidation.

Concerning his current debt situation, the Applicant states, "My total payments for debts and mortgage is \$2107 per month. My take home pay is \$3610 per month. Thus I can quite comfortably meet my financial obligations, my monthly living expenses and pay additional money against my outstanding debts." (Response at Enclosure 1.)

The 2004 credit report indicates that the Applicant had a total past due indebtedness of \$9,942.00. (Item 8 at 3.) The 2005 credit report shows that the past due indebtedness had been reduced to \$9,456.00. (Item 9 at 3.) The Applicant contends, and the available records indicate, that he has not created more past due debt in the recent past. In addition, he submitted evidence showing that he is making timely payments on his current debts. (Answer at Enclosures 5, 6, 7, 8 and 9; Response at Enclosure 2.)

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case shall be set forth under "Conclusions," below.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of financial irresponsibility that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting or continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has a history of not meeting his financial obligations. Disqualifying Condition E2.A6.1.2.1 applies to the facts of this case, *A history of not meeting financial obligations*.

The Applicant has mitigated the security significance of his conduct. Most, if not all, of the past due debts occurred during the time leading up to his divorce from his wife in 2001. Mitigating Condition E2.A6.1.3.1 applies, *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)*. The fact that the debts were incurred four or more years ago, and that he has been able to remain current on his present indebtedness for a prolonged period of time, brings Mitigating Condition E2.A6.1.3.1. into effect, *The behavior was not recent*. Finally, the records show that he has made efforts over the last few years to pay off his past due debts as his financial situation has improved. Mitigating Condition E2.A6.1.3.6. applies, *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*. The Applicant has not completely resolved his debt situation, but he has made tremendous strides and shows every indication of continuing to pay the remainder off in a timely manner. Under the whole person concept, and considering all the available evidence, he has mitigated the security significance of his conduct. Guideline F is found for the Applicant.

On balance, it is concluded that the Applicant has overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding for the Applicant as to the conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: For the Applicant.

Subparagraphs 1.a. through 1.n.: 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 the Applicant.

Wilford H. Ross

Administrative Judge