

DATE: November 10, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-04491

ECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has had a long history of financial difficulties. He has taken little action to pay off his debts, and he still has a significant amount of outstanding debt. Based on his tenuous financial situation and his history of financial irresponsibility, Applicant has failed to demonstrate a stable and mature outlook about his finances. Mitigation has not been shown. Clearance is denied.

STATEMENT OF THE CASE

On February 17, 2004, 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.

In a signed and sworn statement, dated March 15, 2004, Applicant responded in writing to the SOR allegations. He requested a clearance decision based on a hearing record.

On May 14, 2004, this case was assigned to this Administrative Judge to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on June 4, 2004, and the hearing was held on June 25, 2004.

At the hearing, Department Counsel offered twenty nine documentary exhibits (Government Exhibits 1 through 29), and no witnesses were called. Applicant offered eleven documentary exhibits, (Applicant Exhibits A through K), and offered his own testimony. The transcript (TR) was received on July 15, 2004.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline F (Financial

Considerations) of the Directive. The SOR contains eight allegations, 1.a. through 1.h., under Guideline F. In his Response to the SOR (RSOR), Applicant admitted SOR allegations 1.a., 1.b., 1.e., 1.g., and 1.h. The admitted allegations are incorporated herein as Findings of Fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the documents and the live testimony, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant is a 49 year old computer systems analyst for a defense contractor who seeks access to classified information. He is married and has two children, a daughter, age 19, and a son, age 26. Applicant received a Bachelor of Science degree in Computer Science in 2000.

Paragraph 1 (Guideline F - Financial Considerations)

The SOR lists six debts that Applicant has owed, 1.a. through 1.j, under Adjudicative Guideline F. The debts will be discussed in the order that they were listed in the SOR.

1.a. This overdue debt to the Internal Revenue Service (IRS) is in the amount of \$142,687 for failing to pay his Federal taxes for tax years 1988 through 2001 (Exhibits 27 and 29). Applicant admitted this debt was due and owing in his RSOR. At the hearing he testified that not only has he not made any payment on this debt, but he failed to pay his Federal taxes for tax years 2002 and 2003. Applicant claimed that he has recently filed for bankruptcy, and that he is attempting to reduce the amount owed to the IRS, but he offered no evidence that the IRS has reduced this debt (TR at 40-43). I find that he owes the entire amount stated plus an additional debt, the amount was not entered into evidence, for tax years 2002 and 2003.

1.b. This overdue debt to a state tax board in the amount of \$2,061 (Exhibits 4, 22 and 28). In his RSOR, Applicant admitted that this debt is due and owing. Since Applicant has made no payment on this debt, I find that he owes the entire amount stated.

1.c. This overdue debt to Creditor 3 is listed in the SOR in the amount of \$999. In his RSOR and during his testimony, Applicant contended that he paid this debt in November 2003 (TR at 43-44). Since Applicant failed to introduce any independent evidence to establish that this debt has been paid, and the September 17, 2003 credit report still lists this as an outstanding debt, I find that Applicant owes the entire amount stated (Exhibit 12).

1.d. This overdue debt to Creditor 4 is in the amount of \$5,795. In his RSOR and during his testimony, Applicant contended that he paid \$3,000 as payment in full on this debt. Since Applicant failed to introduce any independent evidence to establish that this debt has been paid, and the September 17, 2003 credit report still lists this as an outstanding debt, I find that Applicant owes the entire amount stated (Exhibit 12).

1.e. This overdue debt to Creditor 5 is in the amount of \$650. In his RSOR and during his testimony, Applicant contended that he paid this debt in November 2003 (TR at 46). Since Applicant failed to introduce any independent evidence to establish that this debt has been paid, and the September 17, 2003 credit report still lists this as an outstanding debt, I find that Applicant owes the entire amount stated (Exhibit 12).

1.f. This overdue debt to Creditor 6 is listed in the SOR for a civil judgment awarded against Applicant in the amount of \$2,354. In his RSOR, Applicant contended that his wife owes this debt, but he would attempt to pay the amount owed to resolve it. During his testimony, Applicant admitted that he was told by a judge in the civil case, that he owes this debt. He also stated that he has made no payment on this debt but he has listed it on his latest bankruptcy filing (TR at 48). Since I have received no evidence of the status of this bankruptcy, I have determined that Applicant owes the entire amount stated.

1.g. Applicant filed a voluntary position for Chapter 13 Bankruptcy on October 20, 2000. He listed assets of \$1,900 and liabilities of \$122,100 (Exhibit 10). Applicant failed to discharge his debts, because he dismissed the bankruptcy on March 2, 2001.

1.h. Applicant filed a voluntary position for Chapter 13 Bankruptcy on November 19, 1999 (Exhibit 11). Applicant failed to discharge his debts, because he dismissed the bankruptcy on February 10, 2000.

Applicant cited two primary reasons for his failure to resolve his debts. These included the illnesses and deaths of a number of his family members and his involvement in a number of vehicular accidents. However, Applicant could not show a nexus between these incidents and his inability to file tax returns and pay his taxes for tax years 1988 through 2003.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 2).

BURDEN OF PROOF

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to Applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of Applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following with respect to guideline F:

With respect to Guideline F, the Government has established that Applicant has had a long history of financial difficulties. The evidence has shown that Applicant has taken far too little action to pay off these debts. Based on his extremely large debt to the IRS, he has a long way to go before his debts are resolved. Based on his tenuous financial situation and his history of financial irresponsibility, Applicant has failed to demonstrate a stable and mature outlook about his finances. I, therefore, resolve Guideline F against Applicant.

Regarding the Disqualifying Conditions (DC) under Guideline F, I conclude both DC E2.A6.1.2.1., and DC E2.A6.1.2.3 apply, because of Applicant's history of not meeting financial obligations and his inability to satisfy his debts. I find that none of the Mitigating Conditions (MC) apply.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1, Financial Considerations, 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 all the circumstances and facts presented by the record in this case, it is clearly not consistent with the national interest to grant or continue a security clearance for Applicant.

Martin H. Mogul

Administrative Judge