

DATE: July 15, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-04639

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 44-year-old material coordinator who has worked for the same defense contractor since October 2001. He received nonjudicial punishment under the Uniform Code of Military Justice in 1983 and 1997, as well as judicial punishment in 1995 for assault and 2001 for theft. He has a financial record dating back to 1995 that includes at least nine unsatisfied debts. Moreover, he falsely answered six pertinent questions on his security clearance application regarding actions against him, finances, drug usage, and prior security clearances. Applicant admitted to all allegations and countered with no extenuating or mitigating facts or explanations. Clearance is denied.

STATEMENT OF THE CASE

On November 22, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR). That SOR detailed why, pursuant to Guideline J (Criminal Conduct), Guideline F (Financial Considerations), and Guideline E (Personal Conduct), it 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. By letter notarized on December 8, 2004, Applicant admitted to the four allegations under Guideline J, nine under Guideline F, and five under Guideline E, as set forth in the SOR. As to each allegation, he requested a determination without hearing.

The Government's case was submitted on February 11, 2005, and a complete copy of the file of relevant material (FORM)-[\(U\)](#) was provided to Applicant. Applicant was afforded the opportunity to file objections and submit evidence in refutation, extenuation, or mitigation. Applicant signed for a copy of the FORM on March 5, 2005, but chose not to submit additional materials or argument. I was assigned this case on May 18, 2005.

FINDINGS OF FACT

Applicant has admitted to all of the allegations in the SOR. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is a 44-year-old material coordinator who has worked for the same defense contractor since October 2001. Prepared with a high school education, Applicant joined the military in 1977. After 21 and a half years of service, he was unemployed for a little less than a year before securing his first employment as a material coordinator in 1999. In the interim, Applicant was married in 1980 and separated in 1991. The couple has no children.

Over the years, Applicant has had four instances of criminal conduct. First, on about December 29, 1983, Applicant received nonjudicial punishment under the Uniform Code of Military Justice for the offense of "Fleeing the Scene." Second, a judicial punishment of three days in jail and approximately \$915 in fines and costs was imposed on about August 20, 1995, for "Assault Causes Bodily Injury." Third, for committing the offense of "Wrongful Use/Possession of a Controlled Substance (Marijuana)(Positive Urinalysis)" on November 14, 1995, he received a second nonjudicial punishment. This punishment was imposed on about April 10, 1997.⁽²⁾ Fourth and finally, after being arrested on August 26, 2001, and charged with "Theft \$50-\$500," Applicant pled guilty, was sentenced to three days in jail, and was found liable for approximately \$962.25 in fines and costs.

Additionally, Applicant is financially overextended for nine debts amounting to approximately \$12,556 and placed for collection, charged off as bad debts, or designated as unsatisfied.⁽³⁾ They are dated as recently as 2003 and go back as far as 1995. Applicant has not provided proof of payment, satisfaction, or other resolution of these debts.

Finally, on March 11, 2002, a few months after starting his present employment, Applicant completed and certified a security clearance application form (SF-86). To six of the questions on that application, he falsely gave the answer as "no." Specifically, he falsely answered in the negative to the following questions:

25. Your Police Record - Military Court: In the last 7 years, have you been subject to court martial or other disciplinary proceedings under the Uniform Code of Military Justice? (Include non-judicial, Captain's Mast, etc.). (*In truth, non-judicial punishment was imposed on Applicant on April 10, 1997, as noted, supra.*)

26. Your Police Record - Other Offenses: In the last 7 years, have you been arrested for, charged with, convicted of any offense(s) not listed in modules 21, 2, 23, 24, or 25? (Leave out traffic fines of less than \$150 unless the violation was alcohol or drug related.) For this item, report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the court record. The single exception to this requirement is for certain convictions under the Federal controlled Substances Act for which the court issued an expungement under the authority of 1 U.S.C. 844 or 18 U.S.C. 3507. (*In fact, Applicant was arrested on August 20, 1995, and August 26, 2001, as noted, supra.*)

27. Your Use of Illegal Drugs and Drug Activity - Illegal Use of Drugs: Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs? (*In actuality, Applicant used marijuana in or about November 1995, as noted, supra.*)

32. Your Investigation Record - Clearance Actions: To your knowledge have you ever had a clearance or access authorization denied, suspended, or revoked, or have you ever been debarred from government employment? (Note: An administrative downgrade or termination of a security clearance is not a revocation.) (*Revocation of Applicant's security clearance by a branch of the United States military occurred on about November 6, 1996.*)

38. Your Financial Delinquencies - 180 Days: In the last 7 years, have you been over 180 days delinquent on any debt(s)?, and **39. Your Financial Delinquencies - 90 Days:** Are you currently over 90 days delinquent on any debt(s)? (*Applicant's answer of "no" to both questions deliberately failed to acknowledge that he had been over 180 days delinquent on debts and/or was currently over 90 days delinquent on debts, as described, supra, as 1.a through 1.f, in a list reflecting subparagraphs 3.a through 3.f of the SOR.*)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, these adjudicative guidelines are subdivided into those that may be considered in deciding whether to deny or revoke one's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to determine one could still be eligible for access to classified information (Mitigating Conditions).

In application, an Administrative Judge is not strictly bound to the adjudicative guidelines. As guidelines, they are but part of an amalgam of elements for the Administrative Judge to consider in assessing an applicant in light of the circumstances giving rise to the SOR, as well as in assessing the applicant as a whole. The concept of the "whole person" means that all available, reliable information about the person - whether it is good or bad, present or past - should be considered in making a fair, impartial, and meaningful decision as to his or her suitability to hold a security clearance. To that end, Enclosure 2 also sets forth factors to be considered during this part of the adjudicative process, including: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

After a full and thorough examination, however, the final assessment must comport with the considerable gravity of the final decision. There is no right to a security clearance⁽⁴⁾ and one seeking access to classified information must be prepared to enter into a fiduciary relationship with the United States Government that is inherently predicated on trust and confidence. Therefore, when the facts proven by the Government raise doubts as to an applicant's judgment, reliability, or trustworthiness, the applicant has the heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁵⁾ Therefore, any doubts will be resolved in favor of the national security, not the applicant.

Finally, it should be noted that Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Therefore, nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts in this case:⁽⁶⁾

Guideline E - Personal Conduct. *The Concern:* 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.

Guideline F - Financial Considerations. *The Concern:* An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

Guideline J - Criminal Conduct. *The Concern:* A history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness.

Specific conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, are set forth and discussed below.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all legal precepts, factors, and conditions, including those described briefly above, I find the following with respect to the allegations set forth in the SOR:

The Government has met its burden with regard to Guideline E (Personal Conduct). Applicant admits that the falsifications he made on his March 12, 2002, security clearance application concealed material facts concerning his past criminal activity and finances. Therefore, I find that Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2 (*[t]he 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*) applies. When the Government's initial burden has been met and a disqualifying condition raised, the burden then shifts to the Applicant to come forward with evidence in rebuttal, explanation, or mitigation which is sufficient to overcome or outweigh the Government's case. Here, Applicant has chosen only to admit to the allegations contained in the SOR, and nothing more. Examining the mitigating conditions available under Guideline E (Personal Conduct) *sua sponte*, I find, based on the facts before me, that none of those conditions apply. [\(7\)](#)

The Government has also met its burden with regard to Guideline F (Financial Considerations). Applicant admits to a lengthy list of unsatisfied debts spanning several years and acknowledges that he has not been able to satisfy those debts. Consequentially, I find that both Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*[a] history of not meeting financial obligations*) and FC DC E2.A6.1.2.3 (*[i]nability or unwillingness to satisfy debts*) apply. Given that no effort, to date, has been made to satisfy the debts at issue, I find no mitigating conditions available under Guideline F (Financial Considerations) apply. [\(8\)](#)

Similarly, the Government has established its case with respect to Guideline J (Criminal Conduct). Applicant admits that he has a history or pattern of criminal activity. Given this admission of criminal acts, I find that both Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1 (*[a]llegations or admissions of criminal conduct, regardless of whether the person was formally charged*) and CC DC E2.A10.1.2.2 (*[a] single serious crime or multiple lesser offenses*) apply. Based on the record evidence before me, there is no indication that any of the mitigating conditions found under Guideline J (Criminal Conduct) apply. [\(10\)](#)

Considering all relevant and material facts and circumstances present in this case, including the "whole person concept," the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has failed to mitigate security concerns. Because Applicant has not met his burden, I similarly conclude that he has failed to show that it is clearly consistent with the national interest to grant him a security clearance. Consequentially, I find for the Government with regard to paragraph 1, subparagraphs 1.a through 1.e; paragraph 2, subparagraphs 2.a through 2.i; and paragraph 3, subparagraphs 3.a through 3.i of the SOR.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.2.5 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline E: AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

Paragraph 2, Guideline J: AGAINST THE APPLICANT

Subparagraph 2.a: Against the Applicant

Subparagraph 2.b: Against the Applicant

Subparagraph 2.c: Against the Applicant

Subparagraph 2.d: Against the Applicant

Paragraph 3, Guideline F: AGAINST THE APPLICANT

Subparagraph 3.a: Against the Applicant

Subparagraph 3.b: Against the Applicant

Subparagraph 3.c: Against the Applicant

Subparagraph 3.d: Against the Applicant

Subparagraph 3.e: Against the Applicant

Subparagraph 3.f: Against the Applicant

Subparagraph 3.g: Against the Applicant

Subparagraph 3.h: Against the Applicant

Subparagraph 3.i: Against 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 deny a security clearance for Applicant. Clearance is denied.

Arthur E. Marshall, Jr

Administrative Judge

1. ⁰ The government submitted eight items in support of its case.

2. As well, Applicant was fined approximately \$480 per month for two months and was reduced in grade from E-5 to E-4, suspended, was given 45 days extra duty, 45 days confinement, and was required to complete a drug and alcohol abuse prevention and control program.

3. The debts and their descriptions, incorporated herein, are more fully described at paragraph 3 of the SOR (subparagraphs a-i).

4. ⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

5. ⁰ *Id.*, at 531.

6. *See* Directive, Enclosure. 2, Attachment 5, Guideline E, ¶ E2.A5.1.1, Enclosure 2, Attachment 6, Guideline F, ¶ E2.A6.1.1; and Enclosure 2, Attachment 10, Guideline J, ¶ E2.A10.1.1; respectively.

7. *See* ¶E2.A5.1.3.

8. [\(9\)](#)

9. The most arguably applicable Criminal Conduct Mitigating Condition (CC MC) would be ¶E2.A10.1.3.1 (*[t]he criminal conduct was not recent*). Given that the last conduct cited in Applicant's criminal record occurred in 2001, however, this conduct remains recent. - - ¶

10. The most arguably applicable Criminal Conduct Mitigating Condition (CC MC) would be E2.A10.1.3.1. (*[t]he criminal conduct was not recent*). Given that the last conduct cited in Applicant's criminal record occurred in 2001, however, this conduct remains recent, obviating application of that mitigating condition.