

DATE: March 28, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-04704

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR.

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial irresponsibility makes him unsuitable for a security clearance. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 31 January 2004 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of financial considerations. (1) Applicant answered the SOR on 2 April 2004 and requested a hearing. DOHA assigned the case to me 23 July 2004 and I convened a hearing on 31 August 2004. DOHA received the transcript 8 September 2004.

FINDINGS OF FACT

Applicant admitted nine debts and denied one other. He is a 41-year-old software engineer for a State Department contractor, seeking to retain access to classified information.

Applicant has a history of financial difficulties and irresponsibility dating back to approximately 1992, when he first became indebted to the IRS because he failed to have sufficient income tax withheld and was unable to pay the amount due. Applicant states his financial problems were originally due to his poor spending habits and financial irresponsibility, (2) a business failure, and family problems that ultimately resulted in a 1996 divorce. He considers himself to have hit bottom in 2000 and acknowledges that he did not begin to seriously work on his past due bills until January 2004, when he received the SOR. He makes \$85,000.00 per year; his new wife earns \$62,500.00 per year.

The SOR alleged ten debts (3) totaling over \$19,000.00 which became delinquent between July 1999 and May 2002. The government concedes that the debts at 1.b. and 1.c. are the same debt, and I accept Applicant's testimony that he is not responsible for the debt at 1.d. (4) Applicant acknowledges eight debts totaling approximately \$16,000.00. Of those eight, only two were addressed before Applicant received the SOR: Applicant entered into a repayment plan on the debt

at 1.a. in August 2003 and had reduced the outstanding balance to \$267.00 by the hearing. He satisfied the July 2000 judgment⁽⁵⁾ at 1.e. in May 2001.

Applicant addressed all the remaining debts between January 2004 and the hearing date. He paid the debt at 1.b/1.c. in May 2004, the debts at 1.h. and 1.i. in arch 2004, and a May 2002 state tax lien for 1994-1999 (1.j.) in August 2004. In January 2002, he entered a payment plan with the creditor at 1.f. to establish a payment history (\$275.00/mo for six months) whereby the creditor would waive some of the fees and accept two final payments totaling \$800.00 to settle the account.

However, the IRS lien for tax years 1995-1998 (1.g.) remains unsatisfied and unaddressed. Applicant made an offer in compromise in December 2003 by which he would have paid approximately 20% of his outstanding debt. He has received no response to that offer. Applicant's \$3,727 tax refund for 2003 was applied to his 1995 balance (now zero) and 1996 balance (now \$723.50). The record does not indicate whether he still has a balance for 1997 and 1998, but other records from the IRS suggest that he does, as well as a remaining tax liability for 1999-2000 and 2002. Because his account is still in "offer" status, he cannot set up a formal repayment plan, but had committed to make "voluntary" payments of \$250.00 per month beginning in September 2004.

POLICIES

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline F (Financial Considerations).

BURDEN OF PROOF

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁽⁶⁾

CONCLUSIONS

The Government established a Guideline F case. Applicant's substantial indebtedness was acquired largely through his own irresponsibility (or poor responses when the initial loss was caused by circumstances beyond his control). Although Applicant lacked the means to address his debts at some times in the past, and currently has the means to do so, he has made inadequate progress on his debts since his income has improved. He acknowledged his lack of financial insight in the past, but while he has obviously matured, his current level of financial insight seems only slightly higher than in the past. While he has now addressed the bulk of the debts alleged in the SOR, I remain concerned about the substantial remaining indebtedness to the IRS as well as the fact that Applicant appears to have addressed the bulk of the debts only in the wake of the SOR. Disqualifying Factors 1 and 3 apply.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and

not isolated; indeed they are ongoing. They do not appear to be due to circumstances beyond his control. While he has addressed a substantial portion of his debt, a substantial amount remains unpaid and--to the extent that he has not heard from the IRS for tax years 1999-2000 and 2002--undetermined. At a minimum, it is too early to conclude that Applicant has regained his financial footing, particularly where his financial problems extend as far back as 1992. I conclude Guideline F against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: For the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: Against 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.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. For example, buying a car he couldn't afford.
3. The debt at 1.j. was added at hearing pursuant to Department Counsel's motion.
4. An alleged debt to a long-distance telephone carrier that Applicant asserts "slammed" his long-distance service.
5. He acknowledges having ignored the creditors attempts to collect the amount owed before resorting to judicial proceedings.
6. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).