

DATE: August 28, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-07412

ISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has had a history of financial difficulties. He has taken action to contact the creditors and pay off his debts, but he still has a great deal of overdue debt. Applicant knew or should have known that the financial information that he provided to the Government on a Security Clearance Application (SCA) regarding his financial history and overdue debts was materially incorrect and incomplete. litigation has not been shown. Clearance is denied.

STATEMENT OF THE CASE

On September 16, 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 November 2, 2004, Applicant responded in writing to the SOR allegations. He requested a clearance decision based on a hearing record.

On March 20, 2006, 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 May 30, 2006, and the hearing was held on July 6, 2006.

At the hearing, Department Counsel offered seven documentary exhibits (Government's Exhibits 1 through 7), and no witnesses were called. Applicant offered 22 documentary exhibits, (Applicant's Exhibits A through V) and offered his own testimony. The record was held open to allow Applicant to offer post hearing exhibits. Since his documents were in the process of being moved back to the United States, he was given until August 15, 2006. Applicant offered four additional sets of documents on four subsequent days, which have been identified as Applicant's Exhibits W through Z. All exhibits were entered into evidence without objection. The transcript (Tr) was received on July 19, 2006.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. The SOR contains 12 allegations, 1.a. through 1.l., under Guideline F, and three allegations, 2.a. through 2.c., under Guideline E. Applicant admitted SOR allegations 1.a. through 1.l., and he denied 2.a., 2.b., and 2.c. The admitted allegations are incorporated herein as a 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 45 years old. He is married, and he has three children. Applicant has a Bachelor of Science degree in Political Science. He retired after a 20 year career in the United States Marine Corps. He is employed as a Senior Analyst for a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Paragraph 1 (Guideline F - Financial Considerations)

The SOR lists 12 debts that Applicant owed as of May 7, 2004. 1.a. through 1.l., under Adjudicative Guideline F. The debts will be discussed in the order that they were listed in the SOR:

1.a. This debt to Creditor 1 is listed in the SOR in the amount of \$1,736. Applicant testified that he has paid \$200 a month on this debt since July 2005. He did not have a current amount that he still owes on this debt. A post hearing letter from a creditor, which Applicant identifies as Creditor 1, dated August 7, 2006, shows that the current balance on this debt is \$0. However, a term payment schedule, prepared and provided by Applicant post hearing, shows that at the time of the hearing, he owed \$1,969, and his debt will not be paid in full until June 2007 (Exhibit Z).

1.b. This debt to Creditor 2 is in the amount of \$4,283.76. Applicant began making payments of \$50 a month, starting on May, 2004, and then he increased it to \$200 a month. He has now made six \$300 payments for a total of \$1,800. Applicant's term payment schedule shows that as of August 15, 2006, he owes \$1,754.39, and his debt will not be paid in full until May 2007 (Exhibit Z).

1.c. This debt to Creditor 3 is in the amount of \$200. Applicant testified that he can not locate this creditor, and he has made no payments on this debt.

1.d. This debt to Creditor 4 is listed in the SOR in the amount of \$5,944 for a judgement entered against him in August 2000. Applicant's term payment schedule shows that as of August 15, 2006, he owes \$15,870.32. He is now making payments of \$300 a month, and he will not pay this debt in full until March 15, 2010 (Exhibit Z).

1.e. This debt to Creditor 5 is listed in the SOR in the amount of \$1,506. This debt is part of student loans for Applicant's education that he is now paying off. He graduated in 1987. His term payment schedule shows that he owes \$3,972 as of August 15, 2006, and he will not pay off this debt until May 15, 2008 (Exhibit Z).

1.f. This debt to Creditor 6 is listed in the SOR is in the amount of \$3,012. Applicant testified that this is also part of the same debt as 1.e., above. This will also be resolved in May 2008.

1.g. This debt to Creditor 7 is listed in the SOR in the amount of \$5,541. According to Applicant's testimony and his term payment schedule, he has made no payments on this debt. He is scheduled to start paying \$200 a month on this debt, and he will not pay it off until November 2008.

1.h. This debt to Creditor 8 is listed in the SOR in the amount of \$309. Applicant testified that this debt has been paid. He stated that he would submit a letter from the creditor post hearing establishing that this debt has been paid. No letter was submitted from this creditor.

1.i. This debt to Creditor 9 is listed in the SOR in the amount of \$1,555. Applicant testified that he disputes this debt. He

averred that when he spoke to the collection agency for this creditor that he was informed the debt would be removed from his credit report.

1.j. This debt to Creditor 10 is listed in the SOR in the amount of \$333. Applicant testified that this debt has been paid on June 2004. Applicant offered that he would submit evidence to prove that this debt had been paid, but no documentation was offered.

1.k. This debt to Creditor 11 is listed in the SOR in the amount of \$332. Based on Applicant's testimony at the hearing, this allegation was amended to the following: "Based upon your estimate, the amount due on this debt is now approximately \$80,000." At the hearing, Applicant admitted that this debt, for two car purchases and student loans, is still due and owing. Applicant's term payment schedule shows that as of August 15, 2006, he owed \$71,095, and this debt will not be paid in full until December 2010.

1.l. This debt to Creditor 12 is listed in the SOR in the amount of \$1,609. Applicant testified that this debt has not been paid.

Applicant's primary reason for his financial difficulties is that he paid for two daughters to get a college education, and he has also given some financial aid to his son for his education.

Despite his relatively recent good efforts to pay his overdue debts, at this time Applicant still owes more than \$90,000 on these debts, and it will be several years before they are all resolved.

Paragraph 2 (Guideline E - Personal Conduct)

The Government alleges in this paragraph that Applicant failed to furnish accurate information to the Government when he completed a signed, sworn Security Clearance Application (SCA) on July 11, 2002.

2.a. Question #36 asks, "In the last 7 years, have you have you had a lien place against your property for failing to pay taxes or other debts?" Applicant responded "No." Applicant should have responded by including the tax lien placed against him in August 1999 in the amount of \$6,500 in taxes, penalties, and interest for non payment of a state tax debt.

2.b. Question #37 asks, "In the last 7 years, have you have you had any judgements against you that you have not paid?" Applicant answered "No" to this question. Applicant should have answered "Yes" to this question and included the judgement listed as 1.d. in the SOR.

2.c. Question #38 asks, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Applicant answered, "No" to this question and listed no debts (Exhibit 1). Clearly, at the time he completed the SCA, Applicant was or had been over 180 days delinquent on all the debts listed on the SOR, and he should have included all of these debts.

Question #39 asks, "Are you currently over 90 days delinquent on any debt(s)?" Applicant answered, "No" to this question and again listed no debts (Exhibit 1). At the time he completed the SCA, Applicant was still delinquent on the debts listed on the SOR, and he should have included all of these debts.

During his testimony, Applicant contended that he did not intend to submit incorrect information to the Government. He gave two different explanations for his failure to list the correct information regarding tax liens, unpaid judgements, and his financial delinquencies.

Applicant claimed that he had a relatively short time to gather the material and prepare for the responses to the SOR, and that he did not really want to know what was on his credit report. An individual can not escape his responsibility to furnish complete information to the Government by arbitrarily deciding that he does not want to know what any negative information might be. This explanation was not previously given when Applicant gave a signed, sworn statement to the Defense Security Service (DSS) on January 6, 2003 (Exhibit 2).

The explanation that he did provide in Exhibit 2, and which he reiterated, with more detail at the hearing, was that the

individual who electronically entered all of the information that he furnished on his written SCA, was the wife of a man, whom Applicant supervised. He did not include the adverse information regarding his finances, because he did not want this man to become aware of this information.

Based on this latter explanation for his responses on the SCA, I find that Applicant knew that he was giving incomplete and untruthful information regarding his financial situation. While he may have had some concern about the confidentiality of the information he provided, there is no evidence that it was a reasonable concern, or that he attempted in any way to circumvent this concern and provide the accurate information to the Government.

Mitigation

As discussed above, Applicant served twenty years in the United States Marine Corps. Exhibit W is a series of Fitness Reports of Applicant for years 1990 through 2000. Applicant received excellent evaluations in these reports. Exhibit X consists of a number of personal awards received by Applicant from 1984 through 2000, including the Meritorious Service Medal. Finally, Applicant also submitted a fitness report for 1989 which stated that Applicant has an "approach to leadership that always ensured that the correct actions are take-even in mentally and physically challenging situations" (Exhibit Y).

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 regarding Guidelines F and E:

(Guideline F - Financial Considerations)

With respect to Guideline F, the Government has established that Applicant has had a history of financial difficulties. The evidence shows that Applicant has made recent good efforts to pay these debts.

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 Mitigating Condition (MC) E2.A6.1.3.6. also applies because Applicant has initiated a good-faith effort to repay his overdue creditors and resolve his debts. However, despite his efforts, at this time Applicant still owes more than \$90,000 on these debts, and it will be several years before they are all paid. I, therefore, resolve Guideline F against Applicant.

(Guideline E - Personal Conduct)

With respect to Guideline E, the evidence establishes that Applicant provided inaccurate information to the Government in response to four questions, #36, 37, 38, and 39, on the SCA that he executed in November 2003. I conclude that when Applicant completed the SCA, he knew or should have known that he had a lien placed against his property, a judgement placed against him, and that he had many overdue debts. He should have furnished this information to the Government.

The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. When such an individual intentionally falsifies material facts on a security clearance application, it is extremely difficult to conclude that he nevertheless possesses the judgment, reliability and trustworthiness required of clearance holders.

In reviewing the Disqualifying Conditions (DC) under Guideline E, I conclude that DC E2.A5.1.2.2. applies because the information that Applicant provided to the Government, in his SCA, was known or should have been known by him to be an omission of relevant and material facts. No Mitigating Conditions (MC) apply. I resolve Guideline E against Applicant.

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.: For Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: For Applicant

Subparagraph 1.j.: For Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Paragraph 2, Personal Conduct, Guideline E: Against Applicant

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: 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