

DATE: March 7, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-08107

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's failure to mitigate his established financial irresponsibility since 1992 renders him an unsuitable candidate for a security clearance. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 29 January 2004 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of Applicant's clearance because of financial considerations. ⁽¹⁾ Applicant answered the SOR 18 February 2004, and requested a hearing. The case was assigned to me 4 May 2004 and I heard it 15 June 2004. DOHA received the transcript (Tr.) 12 July 2004.

PROCEDURAL ISSUES

At the hearing, I gave Applicant until the close of business 25 June 2004 to provide any additional documentation of his financial situation or repayment efforts. Applicant timely provided six additional documents; Department Counsel's objection to the first and last of the six go to the weight and not admissibility. Accordingly, I admitted Applicant's submission as Applicant's Exhibit G (A.E. G).

FINDINGS OF FACT

Applicant denied the SOR allegations. ⁽²⁾ He is a 44-year-old electrical engineer employed by a defense contractor since November 1993 and seeks to retain the access to classified information he has held since 1983.

Applicant has a history of financial difficulties dating back to 1982 when he graduated from college. He had three college loans that were to start repayment in spring 1983. However, between 1983 and October 1986 he made only sporadic payments. At various times, he was as many as six months behind in his payments. In June 1983, Applicant was involved in an automobile accident he claims was not his fault and for which he claimed to have state-mandated

automobile insurance. Although he claims he referred the matter to his insurance company, the opposing insurance company obtained a judgment against Applicant for \$1,000.00 in October 1985 and Applicant's state driver's license was later suspended for failure to establish proof of financial responsibility (insurance coverage). There is no evidence in the record to show this judgment has been paid. Nevertheless, Applicant received his clearance as a result of a background investigation in 1986. However, when his clearance came up for periodic reinvestigation in 1995, Applicant continued to have financial problems. He had four charged off accounts, two unpaid collection accounts, and a state tax lien filed in March 1993. Although his educational loan balances showed that he had been making payments, he was 120 days delinquent on one account and 60 days delinquent on another. In August 1995, Applicant discussed 12 delinquent accounts with the Defense Security Service. He attributed his financial problems to a period of unemployment from summer 1992 to November 1993.⁽³⁾ He provided documentation that he had just paid one of the collection accounts, and was making payments to two collection agents for two of the bad debts. His clearance was continued in March 1996.

Applicant's clearance came up again for periodic investigation in March 2002. He truthfully disclosed adverse financial information on his clearance application. He disclosed a November 1995 IRS lien for \$6,000.00,⁽⁴⁾ three 180-day delinquent accounts from 1995 and 1999, and a 90-day past due account from December 2001. The tax lien and two of the 180-day delinquent accounts make up four of the six debts alleged in the SOR and denied by Applicant.

Applicant attributes his financial difficulties to being defrauded of \$12,000.00 in a real estate transaction in 1992-1993, a loss he did not describe in his 1995 clearance interview and for which he provides no corroboration. He also describes a series of unfortunate--but not atypical--life events: parental illness, unexpected automobile repairs, brief periods of unemployment and underemployment. Nevertheless, his income began to increase substantially in approximately 2000, and is now \$72,000.00 per year.

The SOR alleges six delinquent debts totaling over \$22,000.00, the oldest of which date back to March 1993. Over \$18,000.00 of the debt is for two IRS tax liens filed in November 1995 and September 2000.⁽⁵⁾ Although Applicant's income stream began to improve in 2000, he did not seek credit counseling until he received DOHA financial interrogatories (G.E. 5) in October 2003 and did not retain counsel to address his IRS indebtedness (A.E. E) until after he received the SOR. Despite this, the only alleged debt being paid is the 2000 IRS lien (1.b.) and that only because the IRS began garnishing Applicant's wages in April 2004. The other debts remain unpaid.⁽⁶⁾

Applicant's co-workers and character references consider him clearance worthy. They vary in their awareness of his financial difficulties, but all are generally aware of his problems with the IRS.

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. ⁽⁷⁾

CONCLUSIONS

The Government established a Guideline F case and Applicant failed to mitigate the financial concerns. Applicant's finances have been in varying degrees of chaos since he graduated college in 1982. While he appears to have weathered two previous clearance adjudications raising concerns over his finances, his financial problems have continued. That his current debts are different than the debts that were the focus of his earlier adjudications does not obscure the fact that he does not appear to have mastered his finances any better now than in 1982. Disqualifying Conditions 1 and 3 apply here.

Applicant meets none of the mitigating factors for financial considerations. Even if I concluded that circumstances beyond his control contributed to his problems, he has been slow to respond to his debts since his income picture began improving in 2000. And some of the circumstances beyond his control involve incidents (car repairs) that prudent financial planners incorporate into their thinking. Otherwise, his financial problems are both recent and not isolated; indeed they are ongoing. Applicant has not stopped digging himself into a financial hole, much less started to pull himself out of it. I conclude Guideline F against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: 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, as amended and Department of Defense Directive 5220.6, as amended (Directive).
2. However, Applicant's denials reflect disputes over the amount owed and not the underlying debt.
3. He did not mention his asserted \$12,000.00 fraud loss in 1991-1992 that he now claims is the beginning of his financial problems.
4. He did not disclose a September 2000 IRS lien for \$6,800.00.
5. Neither the government nor Applicant produced any IRS records showing the disposition of the 1995 lien (1.a.). The

IRS began garnishment on the 2000 lien (1.b) in April 2004 and as of June 2004 had reduced his outstanding balance from \$6,512.98 to \$1,489.54.

6. In fairness to Applicant, he has been handicapped in addressing the remaining debts because he has been unable to contact the creditor (1.d.) or to get a clear statement of the current amount owed (1.e. and 1.f.). But Applicant bears the ultimate responsibility for his inability to locate the creditors because he allowed those debts to age so.

7. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).