

DATE: May 23, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-10070

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR.

APPEARANCES

FOR GOVERNMENT

Nygina T. Mills, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated the security concerns raised by his adverse financial history by demonstrating 1) that his financial difficulties were due to circumstances beyond his control, 2) that he had dealt responsibly with his creditors as his means permitted, 3) that the 17 debts alleged in the SOR were either satisfied or included in a debt management plan Applicant entered into with a credit counseling agency, and 4) that he had begun to deal with his delinquent accounts as soon as his medical condition permitted. Clearance granted.

STATEMENT OF THE CASE

Applicant challenges the 2 February 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 18 February 2004 and requested a hearing. DOHA assigned the case to me 3 June 2004 and I convened a hearing on 15 July 2004. DOHA received the transcript 27 July 2004.

PROCEDURAL RULINGS

At the hearing, I gave Applicant until the close of business 23 July 2004 to provide an updated debt management plan covering two debts that had inadvertently been left out of the plan by the credit counseling agency (Tr. 53-54). Applicant submitted a timely response, the government raised no objection, and I admitted the response as A.E. B.

FINDINGS OF FACT

Applicant--a 55-year-old senior systems engineer for a defense contractor since January 1999--seeks to retain the access to classified information he has held since approximately 1965. He retired from the U.S. Navy as a Chief Internal Communications Technician [ICC (paygrade E-7)] in September 1985, after 21 years active service. He has been continuously employed in the defense industry since his retirement, and most recently had his clearance renewed in December 1998. ⁽²⁾ He admitted the SOR allegations.

Applicant's history of financial difficulties includes a 1976 bankruptcy discharge,⁽³⁾ tax arrearages and a voluntary foreclosure on a home in the late 1980s,⁽⁴⁾ and several tax liens in the mid-1990s that Applicant had satisfied by 2000 (G.E. 2). Applicant and his second wife separated in December 1997, but with the exception of the tax liens, Applicant's finances remained in pretty good shape.⁽⁵⁾ In December 2002, Applicant made a series of what he described as "bonehead" moves: He bought a house and allowed his girlfriend to move in, along with assorted hangers-on. As he was paying all the expenses of this crowd, he began to rely on his credit cards too much. His October 2003 response to DOHA interrogatories (G.E. 2)⁽⁶⁾ contains a credit report showing a number of slow pay accounts as well as past due accounts. In comparison, his March 2003 credit report shows only one account ever in a past due status, and that was an account both closed and paid. In October 2003, Applicant recognized he was losing control of his finances and was pursuing a consolidation loan. Alternatively, he planned to enter credit counseling.

His plan of action was interrupted by a major heart attack on Thanksgiving Day 2003, caused by his insulin-dependent diabetes. He almost died. While he was in the the hospital, his girlfriend--convinced he was going to die--cleaned out his house and his bank accounts before leaving him. Applicant's finances collapsed.⁽⁷⁾

Through his company human resources office, Applicant got a referral to a credit counseling service. In February 2004, he entered a debt management plan (DMP) covering 21 debts totaling nearly \$39,000.00. The initial payment plan called for him to pay \$1,007 per month for between 27 and 47 months depending on the creditor (Answer). The plan was later amended to add two more creditors and increase the monthly payout to \$1,070.00 (because two creditors requested higher monthly payments than the original plan had proposed). As of June 2004, Applicant had paid over \$4,000.00 to his creditors and had satisfied three accounts. His monthly payments have been made by electronic transfer since May 2004.

Of the 17 debts alleged in the SOR, Applicant paid the debt at 1.n. when he sold his house in March 2004 (A.E. A). His divorce was final in May 2004. His credit counseling budget is tight but manageable. He expects his DMP to be paid by 2007. The DMP records Applicant has submitted to date cover more accounts than alleged in the SOR, but do not appear to cover the debt at 1.g. (which was omitted by credit counselor oversight),⁽⁸⁾ and the debt at 1.i. (for a repossessed automobile Applicant simply forgot to include in the DMP).⁽⁹⁾ He entered into this comprehensive repayment plan because he wanted to avoid having to file bankruptcy if possible.

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. [\(10\)](#)

CONCLUSIONS

The government established a Guideline F case, but the Applicant mitigated the security concerns. First, he demonstrated that his financial problems were largely due to circumstances beyond his control. While his finances were deteriorating in late 2003 because of some poor romantic choices he made, he recognized his need to regain control of his finances and was moving to address them when his heart attack caused them to collapse entirely. Second, he demonstrated that all but two debts alleged in the SOR have either been paid or included in a comprehensive DMP that will satisfy the debts by 2007 with monthly payments that are within Applicant's current means. Third, he demonstrated a history of attempting to address his delinquent accounts as soon as his financial and health situation permitted. This was also true of his pre-1990 financial problems which were favorably adjudicated in 1990. [\(11\)](#) Finally, although he has not addressed two of the debts alleged in the SOR, I found credible his statements that he would address them, wanted to do everything he could to avoid bankruptcy, and took his security responsibilities seriously. Given the lengths he went to address over \$40,000.00 in debt, I think it unlikely he would allow the omitted debts to influence his security responsibilities. Further, I conclude that Applicant is unlikely to experience financial difficulties in the future given that his DMP is within his financial means. Accordingly, I resolve Guideline F for Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline F: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

Subparagraph f: For the Applicant

Subparagraph g: For the Applicant

Subparagraph h: For the Applicant

Subparagraph i: For the Applicant

Subparagraph j: For the Applicant

Subparagraph k: For the Applicant

Subparagraph l: For the Applicant

Subparagraph m: For the Applicant

Subparagraph n: For the Applicant

Subparagraph o: For the Applicant

Subparagraph p: For the Applicant

Subparagraph q: For 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 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. He had previously had his industrial clearance renewed in November 1988 and in 1990.
3. Applicant and his second wife had been married only a short time, and had both been through rough divorces. With their combined family of five children they could not keep up with their expenses and eventually filed bankruptcy to get a new start.
4. Applicant surrendered the house when he had been unable to sell it for about a year and had been unable to keep up with payments on two houses. The bank ultimately sold the house for all but \$10,000.00 of the VA guarantee, which Applicant was paying by direct deduction from his retired pay. Applicant had federal tax arrearages for 1988 and 1989 that he had a payment plan he was paying on, and state tax arrearages for 1989 that he was paying by garnishment. These financial issues were favorably adjudicated in approximately December 1990 (G.E. 1, 8, 9).
5. As reflected in his September 2002 (G.E. 6) and March 2003 (G.E. 5) credit reports.
6. Which were sent to ascertain the status of some of the tax liens that continued, erroneously, to appear on his credit report as unpaid.
7. His January 2004 (G.E. 4) and April 2004 (G.E. 3) credit reports show virtually every account past due, referred to collection, or charged off.
8. I examined Applicant's hand written notes prepared for his credit counseling interview and those notes clearly show this debt.
9. Although discrepancies between the credit reports and Applicant's credit counseling records make it difficult to establish an exact correlation between the SOR and the DMP.
10. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
11. That favorable adjudication does not insulate Applicant from reconsideration of that history in this adjudication.