

DATE: March 10, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-10625

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR.

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esquire, Department Counsel

Erin C. Hogan, Esquire, Deputy Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial irresponsibility renders him an unsuitable candidate for a security clearance. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 12 December 2003 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of financial considerations and personal conduct. [\(1\)](#) Applicant answered the SOR in January and April 2004, and requested a hearing. The case was assigned to me 22 June 2004, and heard on 14 July 2004. DOHA received the transcript (Tr.) on 23 July 2004.

FINDINGS OF FACT

Applicant denied falsifying his clearance application, but admitted having had financial difficulties. Accordingly, I incorporate his admissions as findings of fact.

Applicant--a 35-year-old security guard for a defense contractor--seeks access to classified information. He has not previously held a clearance.

The SOR alleges nine past due accounts totaling over \$11,000.00 falling delinquent between 1997 and 2003. The record evidence demonstrates that the debts at 1.a. and 1.c. are the same debt. This debt, as well as the debts at 1.b., 1.g., and 1.h. were paid by Applicant between the time he received the SOR and the time he submitted his answer. However, the four debts at 1.d., 1.e., 1.f., and 1.i., totaling \$8,100.00, remain unpaid, and Applicant has not entered into repayment arrangements with these creditors.

The bulk of Applicant's debt is for medical treatment for pneumonia in 1997-1998 (1.f.) and other medical expenses in

2001 (1.i.), for which he did not have medical insurance. Applicant's hours have been cut back because he is not able to work at sites requiring him to have a clearance. Nevertheless, he has a positive monthly cash flow (A.E. A).

Applicant allegedly falsified his July 2002 clearance application by failing to disclose five debts just over \$1,600.00. However, he disclosed two debts totaling nearly \$7,400.00 and credibly testified he reported the debts he remembered at the time. The record contains no character or work references.

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 guidelines are guidelines F (Financial Considerations) and E (Personal Conduct).

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. ⁽²⁾

CONCLUSIONS

The Government established a Guideline F case and Applicant did not mitigate the security concerns. Accepting that the largest of the debts are due to medical conditions beyond his control, the fact remains that much of this debt goes back to 1997-1998 and Applicant has not been diligent in resolving it. Although Applicant paid half the alleged debts in the wake of the SOR, the half he paid constitutes only about 25% of his delinquent debt. The remaining debts remains unpaid and unaddressed. Disqualifying Conditions 1 and 3 apply. I conclude Guideline F against Applicant.

The Government established a Guideline E case, but Applicant mitigated the security concerns by demonstrating that he lacked the intent to mislead the Government, as well as disclosing the largest of his past due debts. I conclude Guideline E for 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

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

Paragraph 2. Guideline E: FOR the Applicant

Subparagraph a: For 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. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).