

DATE: December 30, 2004

In Re:

SSN:

Applicant for Security Clearance

ISCR Case No. 03-17772

ECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The security concerns caused by Applicant's past due indebtedness are mitigated through the refinancing of his house to successfully repay all creditors in the SOR. Although the passage of time can potentially mitigate adverse conduct, the time element is individually insufficient to overcome the intentional security violation and rule violations. Clearance is denied.

STATEMENT OF CASE

On June 15, 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, amended April 4, 1999, issued a Statement of Reasons (SOR) to Applicant. The SOR 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.

Applicant furnished his answer to the SOR on July 19, 2004. Applicant elected to have his case decided on a written record. The Government provided Applicant a copy of the File of Relevant Material (FORM) on August 23, 2004. Applicant received the FORM on August 31, 2004. His response to the FORM was due by October 2, 2004. No response was received. The case was assigned to me on October 12, 2004.

FINDINGS OF FACT

The SOR alleges financial considerations (Guideline F), security violations (Guideline K), and personal conduct (Guideline E). Applicant admitted all factual allegations and requested his case be decided without a hearing. Applicant is 49 years old and employed as a demolitions specialist.

Financial Considerations. Before Applicant paid off/settled the six delinquent debts listed in the SOR on March 8, 2004, he owed a total of \$20,302.00 to creditors or collection agencies. Four of the six listed accounts became delinquent in 1999 or 2000. On November 21, 2003, Applicant was mailed interrogatories regarding the status of the six

creditors. In his reply to the interrogatories, Applicant provided a list of all his past due debts and declared he was refinancing his house and was informed by his loan officer all the debts would be paid off. (Item 9) He then advised that his loan officer should be contacted for additional information regarding the refinancing. Applicant's financial problems resulted from sporadic unemployment and medical debts.

Security Violations. On July 18, 1996, Applicant was issued a letter of reprimand for furnishing a key to his uncleared employees for entry into a building containing classified information.

Personal Conduct. On November 15, 1996, Applicant received a letter of reprimand for instructing four of his employees to move certain material without the proper authorization documents, then backdating the document to make it appear the move was authorized.

On August 5, 1997, Appellant was issued a letter of reprimand for allowing his employees to place excess material in two buildings, resulting in both buildings being over the net explosive weight limits. He was suspended without pay for two days.

On December 31, 1997, Applicant was selected for lay-off in anticipation of reduction-in-force due to falsifying his time card and the time cards of employees he supervised. According to Item 13, "when the time sheets were prepared for [Christmas Eve], under [Applicant's] direction, those employees made false entries on their time sheets, as [Applicant] did on his own. [Applicant] then signed and approved each of the time sheets crediting the employees, and [himself] with a full ten hours of work, instead of the eight hours [he] required of them."

Character Evidence. Applicant served in the United States (U.S.) Army between January 1974 and January 1977, and the Army National Guard between January 1986 and January 1992. He has held a security clearance since 1976. Applicant has been working as a demolitions specialist since 2000.

POLICIES

Enclosure 2 of the Directive sets forth policy conditions which must be given binding consideration in making security clearance determinations. These conditions must be considered in every case according to the pertinent guideline; however, the conditions are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts and circumstances, it should not be assumed that the conditions exhaust the entire realm of human experience or that the conditions apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Conditions most pertinent to evaluation of the facts in this case are:

Financial Considerations

Disqualifying Conditions (DC):

1. A history of not meeting financial obligations;
4. Unexplained affluence.

Mitigating Conditions (MC):

1. The behavior was not recent;
3. The conditions that resulted in the behavior were largely beyond the person's control;
5. The affluence resulted from a legal source;
6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Security Violations

Disqualifying Conditions (DC):

2. Violations that are deliberate or multiple or due to negligence.

Mitigating Conditions (MC):

2. Were isolated or infrequent;
4. Demonstrate a positive attitude towards the discharge of security responsibilities.

Personal Conduct**Disqualifying Conditions (DC):**

5. A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency.

Mitigating Conditions (MC):

Since there are no corresponding mitigating conditions for DC 5, the condition should be evaluated under the general factors of the whole person concept.

General Policy Factors (Whole Person Concept)

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at page 16 of Enclosure 2 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (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 behavioral changes; (7) the motivation for the conduct; and, (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Burden of Proof

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information in the future. The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must establish a *prima facie* case under financial considerations, security violations and personal conduct that establishes doubt about a person's judgment, reliability, and trustworthiness. Then, the burden shifts to Applicant to refute, explain, mitigate, or extenuate the facts. An Applicant has the ultimate burden of persuasion to demonstrate he qualifies for a security clearance.

CONCLUSIONS

An individual who has trouble paying his debts is at risk of engaging in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts. The six past due debts listed under paragraph 1 of the SOR total more than \$20,000.00. Four of the debts were converted to delinquent status in 1999 or 2000. The government has established a case under Guideline F based on DC 1. Applicant's payment of the delinquent debts also raises security concerns under DC 4.

There are five mitigating conditions under the financial guideline that could mitigate DC 1 and DC 4. While the record

shows no new debt delinquencies in the past two years, Applicant has provided no updated evidence regarding his financial status since March 8, 2004, the date when all delinquent debts in the SOR were paid off. MC 1 and MC 2 are not available for mitigation. Applicant's generalizations about why he encountered financial problems is insufficient to weigh in his favor under MC 3. Even though Applicant provided no evidence of financial counseling, his payment of the listed creditors provides some evidence under MC 4 his financial responsibilities are under control. MC 5 also weighs in his favor because the \$20,000.00 (to pay the delinquent debts) was produced from the refinancing of his house. Applicant's refinancing of his house to pay his past due debts represents a good-faith effort under MC 6 to repay his creditors. Applicant's demonstrated good judgment in following through with his stated intention to repay his creditors. The financial considerations guideline is found for Applicant.

Security Violations/Personal Conduct. Common to both guidelines are rules or regulations that are intentionally or negligently violated. A violation of rules raises security concerns about the individual's trustworthiness and his ability to safeguard classified information at all times and in all places. On July 1, 1996, Applicant issued a key to two uncleared employees to work in building containing classified information. The security violation falls within the scope of DC 2 because it was deliberate. Though the violation was not inadvertent within the meaning of MC 1, it was isolated as defined by MC 2. Therefore, Applicant receives some mitigation under MC 2. However, he offered no evidence whether the violation resulted from inadequate security training. More importantly, there is no evidence of any steps taken by Applicant to improve the execution of his security responsibilities. As noted in **POLICIES**, Applicant has the burden of proof in establishing all mitigating circumstances. With no evidence being presented by Applicant on MC 3 or MC 4 of the security guideline, I cannot assume Applicant was improperly trained or that he has adopted a more vigilant attitude toward security rules since the violation. Accordingly, Applicant has not met his burden under the security violations guideline.

Applicant's failure to follow the rules of his employer in 1996 and 1997 resulted in three deliberate, regulatory violations that have not been mitigated under DC 5 of the personal conduct guideline. In October 1996, Applicant instructed four employees to move material without the proper authorization, then covered-up the move by falsifying the documentation to make it appear the move was authorized. On August 5, 1997, Applicant was disciplined for allowing his subordinates to place too much explosive material in two buildings, resulting in both buildings being above the net explosive weight limits. On December 24, 1997, Applicant allowed his employees to leave work two hours early and directed them to make false entries on their time cards to fraudulently show they had worked the two hours. Applicant signed and approved each of the time sheets, including his own, with ten hours of work, instead of the normal eight hours.

In evaluating Applicant's security violations and personal conduct under the whole person concept, it is noted the violations share two characteristics. All infractions were intentional (factors 2 and 5) as opposed to negligent rule breaches. Item 4 (SCA, #6, employment activities) reflects that Applicant has some background and experience for the responsibilities of his job so it is probably unlikely he did not have the proper security training. While the conduct occurred about seven years ago (factor 3), there is an absence of evidence demonstrating Applicant has made remedial changes in his attitude toward rule compliance to warrant credit under factor 6. In sum, without substantial evidence in rehabilitation regarding the overall discharge of his security responsibilities and compliance with rules, it is too early to conclude that rule violations will not recur in Applicant's future. Accordingly, Applicant has met his burden under the financial guideline, but has failed to persuade under the security guideline, the personal conduct guideline, and also the general factors of the whole person concept.

FORMAL FINDINGS

Paragraph 1 (Financial Considerations, Guideline F): FOR THE APPLICANT.

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.

e. For the Applicant.

f. For the Applicant.

g. For the Applicant.

Paragraph 2 (Security Violations, Guideline K): AGAINST THE APPLICANT.

a. Against the Applicant.

Paragraph 3 (Personal Conduct, Guideline E): AGAINST THE APPLICANT.

a. Against the Applicant.

b. Against the Applicant.

c. 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 Applicant a security clearance.

Paul J. Mason

Administrative Judge