

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has had a history of significant overdue debts which have not been resolved. Additionally, Applicant's conduct in 2002, exhibited questionable judgment , untrustworthiness, and unwillingness to comply with rules and regulations. Mitigation has not been shown. Clearance is denied.

CASENO: 03-17870.h1

DATE: 03/08/2005

DATE: March 8, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-17870

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Jason Perry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has had a history of significant overdue debts which have not been resolved. Additionally, Applicant's conduct in 2002, exhibited questionable judgment, untrustworthiness, and unwillingness to comply with rules and regulations. Mitigation has not been shown. Clearance is denied.

STATEMENT OF THE CASE

On January 8, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the 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 a clearance should be denied or revoked.

In a signed and sworn statement, dated July 7, 2004, Applicant responded to the SOR allegations. He requested that his case be decided on the written record in lieu of a hearing. On August 5, 2004, Department Counsel prepared the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed no response to the FORM. The case was assigned to this Administrative Judge on November 1, 2004.

Department Counsel offered 10 documentary exhibits, which were submitted and marked as Items 1-10, and which have been admitted as Exhibits 1-10, without objection. Applicant offered no documentary evidence into the record.

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 20 allegations, 1.a., through 1.t., under Guideline F, and two allegations, 2.a. and 2.b., under Guideline E.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR and the admitted documents, and upon due consideration of that evidence, I make the following Findings of fact:

Applicant is 33 years old. He is employed as a Security Manager by 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 20 allegations of overdue debts, 1.a. through 1.t, under Adjudicative Guideline F. These will be discussed in the order that they were listed in the SOR.

1.a. This overdue debt to Creditor 1 is cited in the SOR in the amount of \$4,177. Applicant denied that this debt is due and owing in Exhibit 3, his Response to the Statement of Reasons (RSOR). He contends that this debt was to be paid by his ex-wife as a result of a property settlement agreement, but that since she has refused to pay the debt, it has been listed on his Chapter 13 bankruptcy filing. No evidence was ever introduced, either with Applicant's RSOR, or during the period he had to respond to the FORM, up to September 24, 2004, to establish that a bankruptcy was filed on behalf of Applicant. I find that Applicant owes the entire amount stated.

1.b. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$4,514. Applicant admitted that this debt is due and owing in Exhibit 3, but he claimed that to resolve this debt, it has been listed on his Chapter 13 bankruptcy filing. No evidence was introduced to establish that a bankruptcy was filed on behalf of Applicant. I find that Applicant owes the entire amount stated.

1.c. This overdue debt to Creditor 3 is cited in the SOR in the amount of \$3,766. Applicant admitted that this debt is due and owing in Exhibit 3, but he claimed this debt was the same as 1.b., above. I find this to be a duplicate debt. Applicant will not be considered to owe this debt as listed here.

1.d. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$2,096. Applicant admitted that this debt is due and owing in Exhibit 3, but he claimed that to resolve this debt, it has been listed on his Chapter 13 bankruptcy filing. No evidence was introduced to establish that a bankruptcy was filed on behalf of Applicant. I find that Applicant owes the entire amount stated.

1.e. This overdue debt, also to Creditor 5, is cited in the SOR in the amount of \$421. Applicant admitted that this debt is due and owing in Exhibit 3, but he claimed that to resolve this debt, it has been listed on his Chapter 13 bankruptcy filing. No evidence was introduced to establish that a bankruptcy was filed on behalf of Applicant. I find that Applicant owes the entire amount stated.

1.f. This overdue debt to Creditor 6 is cited in the SOR in the amount of \$937. Applicant contends that this debt was paid in June 2004 (Exhibit 3). I find that Applicant has resolved this debt.

1.g. This overdue debt to Creditor 6 is cited in the SOR in the amount of \$150. Applicant admitted that this debt is due and owing in Exhibit 3, but he claimed that to resolve this debt, it has been listed on his Chapter 13 bankruptcy filing. No evidence was introduced to establish that a bankruptcy was filed on behalf of Applicant. I find that Applicant owes the entire amount stated.

1.h. This overdue debt to Creditor 7 is cited in the SOR in the amount of \$3,467. Applicant contends that this debt was paid in June 2001 (Exhibit 3). I find that Applicant has resolved this debt.

1.i. This overdue debt to Creditor 8 is cited in the SOR in the amount of \$654. Applicant denied that this debt is due and owing in Exhibit 3. He contends that this debt was also to be paid by his ex-wife as a result of a property settlement agreement, but that since she has refused to pay the debt, it has been listed on his Chapter 13 bankruptcy filing. No evidence was ever introduced to establish that a bankruptcy was filed on behalf of Applicant. I find that Applicant owes the entire amount stated.

1.j. This overdue debt to Creditor 9 is cited in the SOR in the amount of \$578. Applicant admitted that this debt is his in

Exhibit 3, and contends that he has reduced it from \$2,763 to \$578. He contends that this debt was also listed on his Chapter 13 bankruptcy filing. No evidence was ever introduced to establish that a bankruptcy was filed on behalf of Applicant. I find that Applicant owes \$578 on this debt.

1.k. This overdue debt to Creditor 8 is cited in the SOR in the amount of \$2,426. Applicant denied that this debt is due and owing in Exhibit 3. He contends that this debt was also to be paid by his ex-wife as a result of a property settlement agreement, but that since she has refused to pay the debt, it has been listed on his Chapter 13 bankruptcy filing. No evidence was ever introduced to establish that a bankruptcy was filed on behalf of Applicant. I find that Applicant owes the entire amount stated.

1.l. This overdue debt to Creditor 9 is cited in the SOR in the amount of \$4,213. Applicant admitted that this debt is due and owing in Exhibit 3, but he claimed this debt was the same as 1.a., above. I find this to be a duplicate debt. Applicant will not be considered to owe this debt as listed here.

1.m. This overdue debt to Creditor 10 is cited in the SOR in the amount of \$118. Applicant admitted that this debt is due and owing in Exhibit 3, but he claimed that to resolve this debt, it has been listed on his Chapter 13 bankruptcy filing. No evidence was introduced to establish that a bankruptcy was filed on behalf of Applicant. I find that Applicant owes the entire amount stated.

1.n. This overdue debt to Creditor 11 is cited in the SOR in the amount of \$7,742. Applicant denied that this debt is due and owing in Exhibit 3, contending that this medical bill was paid by an insurance company, during the period around March 2003. However, in his Response to Interrogatories, dated January 14, 2004, Applicant listed this debt as unpaid (Exhibit 6). He claims that he listed this debt on his Chapter 13 bankruptcy filing, because he has no been able to confirm from the creditor that it has been paid. No evidence was ever introduced to establish that the debt, listed as unpaid in Exhibit 6, has now been paid or that a bankruptcy was filed on behalf of Applicant. I find that Applicant owes the entire amount stated.

1.o. This overdue debt to Creditor 12 is cited in the SOR in the amount of \$8,344. Applicant denied that this debt is due and owing in Exhibit 3, contending that this medical bill was paid by an insurance company, during the period around March 2003. However, in his Response to Interrogatories, Applicant listed this debt as unpaid (Exhibit 6). He claims that he listed this debt on his Chapter 13 bankruptcy filing, because he has no been able to confirm from the creditor that it has been paid. No evidence was ever introduced to establish that the debt, listed as unpaid in Exhibit 6, has now been paid or that a bankruptcy was filed on behalf of Applicant. I find that Applicant owes the entire amount stated.

1.p. This overdue debt to Creditor 13 is cited in the SOR in the amount of \$6,825. Applicant denied that this debt is due and owing in Exhibit 3, contending that this medical bill was paid by an insurance company, during the period around March 2003. However, in his Response to Interrogatories, Applicant listed this debt as unpaid (Exhibit 6). He claims

that he listed this debt on his Chapter 13 bankruptcy filing, because he has no been able to confirm from the creditor that it has been paid. No evidence was ever introduced to establish that the debt, listed as unpaid in Exhibit 6, has now been paid or that a bankruptcy was filed on behalf of Applicant. I find that Applicant owes the entire amount stated.

1.q. This overdue debt to Creditor 14 is cited in the SOR in the amount of \$6,825. Applicant denied that this debt is due and owing in Exhibit 3, contending that this medical bill was paid by an insurance company, during the period around March 2003. However, in his Response to Interrogatories, Applicant listed this debt as unpaid (Exhibit 6). He claims that he listed this debt on his Chapter 13 bankruptcy filing, because he has no been able to confirm from the creditor that it has been paid. No evidence was ever introduced to establish that the debt, listed as unpaid in Exhibit 6, has now been paid or that a bankruptcy was filed on behalf of Applicant. I find that Applicant owes the entire amount stated.

1.r. This overdue debt to Creditor 15 is cited in the SOR in the amount of \$437. Applicant denied that this debt is due and owing in Exhibit 3, contending that this medical bill was paid by an insurance company, during the period around March 2003. However, in his Response to Interrogatories, Applicant listed this debt as unpaid (Exhibit 6). He claims that he listed this debt on his Chapter 13 bankruptcy filing, because he has no been able to confirm from the creditor that it has been paid. No evidence was ever introduced to establish that the debt, listed as unpaid in Exhibit 6, has now been paid or that a bankruptcy was filed on behalf of Applicant. I find that Applicant owes the entire amount stated.

1.s. This overdue debt to Creditor 16 is cited in the SOR in the amount of \$170. Applicant denied that this debt is due and owing in Exhibit 3, contending that this medical bill was paid by an insurance company, during the period around March 2003. However, in his Response to Interrogatories, Applicant listed this debt as unpaid (Exhibit 6). He claims that he listed this debt on his Chapter 13 bankruptcy filing, because he has no been able to confirm from the creditor that it has been paid. No evidence was ever introduced to establish that the debt, listed as unpaid in Exhibit 6, has now been paid or that a bankruptcy was filed on behalf of Applicant. I find that Applicant owes the entire amount stated.

1.t. This overdue debt to Creditor 17 is cited in the SOR in the amount of \$455. Applicant denied that this debt is due and owing in Exhibit 3, contending that this medical bill was paid by an insurance company, during the period around March 2003. However, in his Response to Interrogatories, Applicant listed this debt as unpaid (Exhibit 6). He claims that he listed this debt on his Chapter 13 bankruptcy filing, because he has no been able to confirm from the creditor that it has been paid. No evidence was ever introduced to establish that the debt, listed as unpaid in Exhibit 6, has now been paid or that a bankruptcy was filed on behalf of Applicant. I find that Applicant owes the entire amount stated.

Paragraph 2 (Guideline E - Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he his conduct involved questionable judgment , untrustworthiness, and unwillingness to comply with rules and regulations.

In August 2002, Applicant was arrested and charged with Driving Under the Influence (DUI). In September 2002, he pled guilty, and he was fined \$600, with \$300 suspended, sentenced to 30 days, with all but 24 hours suspended, and ordered to attend an Alcohol Safety Action Program. He was also sentenced to 12 months probation, and his driver's

license was suspended for 12 months (Exhibit 5 and 10).

In January 2002, Applicant was arrested and charged with Felonious Assault. He spent five days in prison for handling a pocketknife in a bar in a manner that was considered threatening. The case was not prosecuted when a material witness did not appear at trial (Exhibit 5 and 9).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case.

As set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are

reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of alcohol abuse and criminal conduct that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

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 the 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.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the 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

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance. This the Applicant has not done.

(Guideline F - Financial Considerations)

The Government has established its case under Guideline F. The record evidence clearly establishes Applicant's long history of indebtedness, and there is no evidence that Applicant has resolved most of these overdue debts.

Applicant's overall conduct pertaining to his financial obligations falls within Financial Considerations Disqualifying Condition (DC) (E2.A6.1.2.1.), and DC (E2.A6.1.2.3.), a history of not meeting financial obligations, and an inability or unwillingness to satisfy debts. I find that Mitigating Condition (MC) (E2.A6.1.3.3.) is applicable to this case. There have been several reasons that Applicant is in such poor financial condition that were not completely within his control. He underwent a divorce in 2001, loss of employment for 5 months in 2002, and a heart attack in 2002. However, they do not mitigate his significant debts, because the evidence has not established that Applicant has initiated a good faith effort to repay or otherwise resolve his overdue debts. Therefore, I can not find that MC (E2.A6.1.3.6.) is applicable.

Until Applicant makes a good-faith effort to resolve his debts, and he can establish a record of financial responsibility and stability, security concerns will continue to exist under Guideline F. I resolve Guideline F against Applicant.

(Guideline E -Personal Conduct)

With respect to Guideline E, the evidence establishes that Applicant was involved in two incidents in 2002, in which he was arrested for a DUI and Felonious Assault.

The Government relies heavily on the good judgement , reliability and willingness to comply with rules and regulations of individuals seeking access to our nation's secrets.

In this case, Applicant failed to offer any independent evidence indicating that he has reformed and is now reliable and exhibits good judgement. This precludes a finding that it is now clearly consistent with the national interest to grant him access to classified information. I resolve Guideline E against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: For Applicant Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: For Applicant

Subparagraph 1.m.: Against Applicant

Subparagraph 1.n.: Against Applicant

Subparagraph 1.o.: Against Applicant

Subparagraph 1.p.: Against Applicant

Subparagraph 1.q.: Against Applicant

Subparagraph 1. r.: Against Applicant

Subparagraph 1.s.: Against Applicant

Subparagraph 1.t.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against 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.

Martin H. Mogul

Administrative Judge

