

DATE: June 29, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR OSD Case No. 03-26194

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 24-year-old employee of a defense contractor. Following high school graduation, he accepted a lucrative position in January 1999 and eventually purchased a truck. The upkeep, gas, and insurance, along with his other expenses, became onerous and his payments were always late. His finances worsened during a brief period of unemployment and his truck was repossessed. Although he quickly found his current job, Applicant decided to move out from home, incurring even more expenses and further precluding payments to his debtors. He eventually filed for Chapter 13 Bankruptcy. Applicant failed to mitigate security concerns. Clearance is denied.

STATEMENT OF THE CASE

On January 27, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR). That SOR detailed why, pursuant to Guideline F (Financial Considerations), it could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. In response, by letter of March 15, 2005, Applicant admitted to the four allegations contained in the SOR and requested an administrative determination based on the record.

The Government's case was submitted on May 13, 2005, and a complete copy of the file of relevant material (FORM) ⁽¹⁾ was provided to Applicant. Applicant was afforded the opportunity to file objections and submit evidence in refutation, extenuation, or mitigation. Applicant signed for a copy of the FORM on May 23, 2005, and submitted a timely response on June 6, 2005. I was assigned this case on June 15, 2005.

FINDINGS OF FACT

Applicant has admitted to the four allegations set forth in the SOR. After a complete and thorough review of the

evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 24-year-old single male who has worked for a defense contractor since April 2003. Graduating from secondary school in May 1998, he continued working at his high school job at a local bicycle shop until the end of the year. In January 1999, he accepted a position as a multi media service technician with a nearby company. While so employed, he purchased a new truck in 2001 for \$26,000, requiring monthly payments of \$596.⁽²⁾ The true economic impact of this acquisition proved initially elusive. Because of the added burden of gas and insurance for his truck, along with the monthly truck payments and regular living expenses, Applicant was "always slow" in making payments.⁽³⁾

Two years later, in February 2003, his company experienced a drop in business. Applicant, as one of the more recently hired, was made redundant effective February 7. After briefly living off his severance pay and unemployment insurance, he commenced his current position on April 9, 2003, and applied for a security clearance on April 28, 2003.

During this brief period between being laid off and starting his new, albeit lower paying, job, Applicant realized that he was becoming so late on his bills that "he got too far behind to catch up on anything."⁽⁴⁾ Eventually, the truck company called about his delinquent payments and he unsuccessfully attempted to refinance or trade down to a smaller vehicle. As a consequence, he let the truck return to the company for auction. Due to the discrepancy between the auction price and the vehicle price, he incurred a debt then set at \$11,315.⁽⁵⁾ He has been unable to stay current on this debt, as well.

In May 2003, a month after his return to employment, Applicant moved out of his family home and into his own apartment. This move increased his living expenses.⁽⁶⁾ As of the time of his interview with a Defense Security Service in October 2003, he had made no payments toward his outstanding accounts, but had attempted to contact a debt consulting service.

A judgment was entered against Applicant around May 2004 with regard to the outstanding truck debt. By June 2004, he had retained legal representation and was in the process of filing for protection under bankruptcy.⁽⁷⁾ According to Applicant, by June 2005, Chapter 13 Bankruptcy had been filed and he had been put on a payment plan requiring him to pay \$104 per month toward "remaining debt."⁽⁸⁾ Applicant did not provide any documentation regarding, substantiating, or explaining these matters.

As listed below, #1.a - #1.d mirror, *in seriatim*, the allegation of debt set forth in each corresponding subparagraph of the SOR:⁽⁹⁾

1.a - Indebted to (a collection agency) in the approximate amount of \$466, for an account placed for collection by (a major department store) in about August 2002. As of August 4, 2004, this debt had not been satisfied.

1.b - Indebted to (a collection agency) in the approximate amount of \$3,662, for an account placed for collection by (an unidentified entity) in about December 2002. As of August 4, 2004, this debt had not been satisfied.

1.c - Indebted to (a bank) in the approximate amount of \$5,262, for an account charged off as a bad debt in about September 2003. As of June 21, 2004, this debt has not been satisfied.

1.d - Indebted to (the automotive credit company) in the approximate amount of \$13,376, for a judgment entered against the Applicant in about May 2004. As of August 4, 2004, this debt had not been satisfied.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, these adjudicative guidelines are subdivided into those that may be considered in deciding whether to deny or revoke one's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to determine one could still be eligible for access to classified information (Mitigating Conditions).

In application, an Administrative Judge is not strictly bound to the adjudicative guidelines. As guidelines, they are but part of an amalgam of elements for the Administrative Judge to consider in assessing an applicant in light of the circumstances giving rise to the SOR, as well as in assessing the applicant as a whole. The concept of the "whole person" means that all available, reliable information about the person - whether it is good or bad, present or past - should be considered in making a fair, impartial, and meaningful decision as to his or her suitability to hold a security clearance. To that end, Enclosure 2 also sets forth factors to be considered during this part of the adjudicative process, including: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 pertinent behavioral changes; (7) the motivation of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

After a full and thorough examination, however, the final assessment must comport with the considerable gravity of the final decision. There is no right to a security clearance⁽¹⁰⁾ and one seeking access to classified information must be prepared to enter into a fiduciary relationship with the United States Government that is inherently predicated on trust and confidence. Therefore, when the facts proven by the Government raise doubts as to an applicant's judgment, reliability, or trustworthiness, the applicant has the heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹¹⁾ Therefore, any doubts will be resolved in favor of the national security, not the applicant.

Finally, it should be noted that Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Therefore, nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Guideline F - Financial Considerations. *The concern. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.*⁽¹²⁾

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, are set forth below.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all legal precepts, factors, and conditions, including those described briefly above, I find the following with regards to the allegations set forth in the SOR:

With respect to Guideline F (Financial Considerations), the Government has established its case. Applicant admits to the four allegations contained in the SOR and to having a history of not being able to cover his debts. Such a history raises a genuine security concern with regard to Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*[a] history of not meeting financial obligations*) and FC DC E2.A6.1.2.3 (*[i]nability or unwillingness to satisfy debts*).

With disqualifying conditions thus established, the burden shifts to Applicant to mitigate the security concerns raised. Given the age and the number of debts at issue, mitigation cannot be found under either Financial Considerations Mitigation Condition (FC MC) E2.A6.1.3.1 (*[t]he behavior is not recent*) or FC MC E2.A8.1.3.2 (*[i]t was not an isolated incident*). Additionally, because no single incident precipitated Applicant's inability to pay his debts,⁽¹³⁾ FC MC E2.A6.1.3.3 (*[t]he conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation)*) does not apply. Moreover, Applicant concedes that he never went through with financial counseling, thus obviating application of FC

MC E2.A6.1.3.4 ([t]he person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control).

Under FC MC A2.E6.1.3.6 ([t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) mitigation may yet be found. Indeed, Applicant seems to urge consideration of the fact that he has filed for Chapter 13 Bankruptcy as mitigation of the underlying security concerns, implying that it represents a good-faith effort to resolve or pay his debts. As a threshold matter, however, Applicant has failed to provide any documentation substantiating or supporting his claim that the bankruptcy was filed or detailing the terms and contents of that filing. ⁽¹⁴⁾ Without such documentation, it is impossible to ascertain whether all four debts here at issue are even included in the Chapter 13. Regardless, although the Defense Office of Hearings and Appeals' Appeals Board has indicated that the concept of good-faith requires a showing that a person acted in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation, ⁽¹⁵⁾ it has specifically found that an applicant must do more than merely show that he relied on a legally available option (such as bankruptcy) in order to claim the benefit of FC MC A2.E6.1.3.6. ⁽¹⁶⁾

Therefore, even with the appropriate substantiation, this section does not apply.

I have considered both the record evidence and the Applicant using the "whole person" concept. Applicant, at a young age and lacking life experience, began undertaking financial obligations and seeking immediate gratification before first learning how to budget, live within his means, prioritize needs, and exercise patience. While the recent bankruptcy relief will grant him the ability to start anew, as a wiser, more mature man, it cannot be employed in proceedings such as this to mitigate the security concerns raised by a history of not meeting financial obligations or an inability or unwillingness to satisfy debts. In the absence of any appropriate facts or argument, I cannot find that he has, through evidence of extenuation and explanation, successfully mitigated or overcome the Government's case. Having thus failed to carry his burden and ameliorate security concerns, I find all the allegations against the Applicant and in the Government's favor.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.2.5 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: AGAINST THE APPLICANT

Subparagraph 1.a Against the Applicant

Subparagraph 1.b Against the Applicant

Subparagraph 1.c Against the Applicant

Subparagraph 1.d Against 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 deny a security clearance for Applicant.

Arthur E. Marshall, Jr

Administrative Judge

1. ⁰ The government submitted 9 items in support of its case.

2. Item 5 (Applicant Statement to DSS, dated October 15, 2003), at 1.

3. *Id.*

4. Item 6 (Interrogatories, dated June 21, 2004), at 4.

5. *See*, debt 1.d, *infra*, for a more current balance.

6. *E.g.*, his rent became more than it was when he lived with his parents. *Id.*, *supra* note 5, at 2.

7. *Id.*, Item 6.

8. Applicant's Response to the FORM (dated June 6, 2005).

9. Applicant presented no evidence that any payment or reduction in debt or terms has transpired with regard to any of the sums set forth in the SOR.

10. ⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

11. ⁰ *Id.*, at 531.

12. Directive, Enclosure 2, Attachment 6, Guideline F, ¶ E2.A6.1.1.

13. While it is arguable that the loss of his position in February 2003 *may* have added to his debt total for 1.c and 1.d, his unemployment only lasted two months, was cushioned by both unemployment insurance and a severance package, and, as he states, his inability to pay 1.d in a timely manner went back nearly as far as the truck's purchase date.

14. *E.g.*, whether all four debts here at issue were included in the filing; the date of the actual filing, etc.

15. ISCR Case No. 99-0201 (October 12, 1999) at p. 4.

16. ISCR Case No. 99-9020 (June 4, 2001), at pp. 5-6.