

DATE: September 14, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 04-06994

DECISION OF ADMINISTRATIVE JUDGE

JACQUELINE T. WILLIAMS

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 41 years old and has been employed since 2000 as an inspector for a defense contractor. He was fired from two jobs after he was discovered adjusting orders and pocketing the companies' money. One of those incidents led to an arrest, where he was charged with embezzlement, a felony, but he pled guilty to a reduced charge of petty larceny. Currently, there is an outstanding warrant against him for the petty larceny charge because of his failure to pay court costs and restitution. He also owes approximately \$5,441 in delinquent debt. Applicant has not mitigated security concerns stemming from his criminal conduct, financial difficulties, and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On December 17, 2002, Applicant applied for a security clearance and completed a Security Clearance Application (SF 86).⁽¹⁾ On October 26, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, 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. The SOR detailed reasons under Guideline J (Criminal Conduct), Guideline F (Financial Considerations), and Guideline E (Personal Conduct) 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 granted or revoked.

In a sworn, written statement, dated October 31, 2005, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing.⁽²⁾ Department Counsel submitted the Government's written case on May 11, 2006. A complete copy of the file of relevant material (FORM)⁽³⁾ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He had 30 days to respond to the FORM. He chose not to respond. The case was assigned to me on July 25, 2006.

FINDINGS OF FACT

Applicant admitted the factual allegations pertaining to criminal conduct under Guideline J (subparagraphs 1.a and 1.b), financial considerations under Guideline F (subparagraphs 2.a through 2.e), and personal conduct under Guideline E (subparagraphs 3.a through 3.c). Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is 41 years old and is currently employed as an inspector by a defense contractor. He is single and has never been married.

Applicant was terminated from employment with a pizza franchise in about 1995, after he was discovered adjusting orders and pocketing the company's money. In about 1996, he was terminated from employment with another pizza franchise, after he was discovered adjusting orders and pocketing the company's money. He was arrested on about September 27, 1996, and charged with embezzlement, a felony. He pled guilty to a reduced charge, petit larceny, and was sentenced to six months in jail, with all jail time suspended except for time already served. He was ordered to complete 20 hours of community service, pay restitution of approximately \$946.58, and pay fines and court costs of \$209.00. A bench warrant was issued on July 24, 1997, because he failed to pay restitution and perform 20 hours of community. Applicant pled guilty and was required to perform an additional 20 hours of community service, pay restitution, and a 20-day jail sentence was reimposed with weekend confinements to start on September 15, 1997. Additionally, his driver's license was suspended.

A warrant against Applicant for his prior petty larceny charge was issued on about February 5, 1998, for violation of a bench warrant issued on July 24, 1997. That warrant was the result of Applicant's failure to pay the fine, court costs, and restitution. As of about August 1, 2005, this arrest warrant remains active.

Applicant admits that he did not pay either the court costs or the restitution. He contends that he did not know about the outstanding warrant until approximately two weeks after he was interviewed by a Defense Security Service agent on October 9, 2003, regarding a December 17, 2002 SF 86. In an undated letter submitted with his Answer to the SOR regarding the outstanding warrant, Applicant stated:

I had forgot about having to pay the \$946.58 fines [restitution] and the \$209.00 [court costs]. I'm sorry I would like to try to get money to pay off the debts or fines stated. I have been working for 5 years at [defense contractor]. I just want to get on with life. I'm not saying I do not owe the fines listed. I am just asking for a chance to settle the debts. It is hard to believe [sic] that I forgot about the fines but I did. I would like to try to settle these debts I owe without losing my job.

On about June 1, 2000, he was terminated from employment with a third pizza franchise for having a dispute with another employee.

Applicant admits that he currently owes approximately \$5,441 in debt to four different creditors. The debts at issue in the SOR⁽⁴⁾ are as follows:

Sallie Mae (\$2,068.00). This is a delinquent student loan account, which was charged off as a bad debt in about April 2001. This account has not been paid off.

County (\$392.00). A judgment was entered against him in October 2002. This debt has not been satisfied.

OSFA-EDS (\$2,307). Delinquent student loan account, which was placed for collection in November 2002. This debt has not been satisfied.

Bank (\$674.00). Delinquent account, which was charged off as a bad debt in December 1997. This debt has not been satisfied.

The record is devoid of evidence that Applicant has made any payments on the four delinquent accounts. Applicant

admitted, however, that he is unable to pay on his delinquent accounts based on his personal financial statement showing a monthly net remainder of \$0.72.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁵⁾ The government has the burden of proving controverted facts.⁽⁶⁾ The burden of proof is something less than a preponderance of evidence.⁽⁷⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.⁽⁸⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

No one has a right to a security clearance⁽¹⁰⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹¹⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹²⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹³⁾ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline J (Criminal Conduct): *The Concern:* A history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness.

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.

Guideline E (Personal Conduct): *The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards, and I reach the following conclusions.

Criminal Conduct

Under Guideline J, a history or pattern of criminal activities creates doubt about a person's judgment, reliability, and trustworthiness. Applicant was arrested in 1996 for embezzlement, and pled guilty to a reduced charge of petit larceny for adjusting orders and pocketing the money from a pizza restaurant. Subsequently, a bench warrant was issued in July 1997 because he failed to pay court ordered restitution and perform community service. He pled guilty and was required to perform an additional 20 hours of community service, pay restitution, and a 20-day jail sentence was reimposed. Additionally, his driver's license was suspended because he failed to pay the fine, court costs, and restitution. Thus, Criminal Conduct Disqualifying Conditions (CC DC) E2.A1.1.2.1 (*allegations or admission of criminal conduct, regardless of whether the person was formally charged*) and CC DC E2.A10.1.2.2 (*a single serious crime or multiple lesser offenses*) both apply.

Various conditions can mitigate security concerns arising from criminal conduct. Applicant was arrested in 1996. That arrest could have been mitigated by time, since there were no subsequent arrests. However, in 1998, an arrest warrant was issued against him, for violation of the original court order and his failure to pay court costs, restitution, and perform community service. That warrant remains outstanding. Thus, neither Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.3.1 (*the criminal behavior was not recent*) nor CC MC E2.A10.1.3.6 (*there is clear evidence of successful rehabilitation*) applies here. Applicant has not mitigated the Government's case. Accordingly, allegations 1.a and 1.b of the SOR are concluded against Applicant.

Financial Considerations

Under Guideline F, a security concern exists for an individual who is financially overextended. This person is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information.

Applicant admits that he owes approximately \$5,400 to four different creditors. One of the debts is from December 1997, one is from April 2001, and the others are from 2002. Applicant has not attempted to pay these debts. Moreover, he still owes court costs and restitution based on an outstanding warrant for a petty larceny charge in 1998. Thus, Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1 (*a history of not meeting financial obligations*) and FC DC E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*) both apply.

Various conditions can mitigate security concerns arising from financial difficulties. Here, however, Applicant only has a net remainder of \$0.72 after his monthly expenses. Thus, he is not in a position to pay off his delinquent debt. Moreover, there is still an outstanding warrant for his arrest because he failed to pay court costs and restitution after pleading to a reduced charge in 1998. Further, Applicant failed to provide any evidence as to what caused his debts to become delinquent or whether he has received any financial guidance or advice. Therefore, Financial Considerations Mitigating Conditions (FC MC) E2.A6.1.3.3 (*the 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)*), FC MC E2.A6.1.3.4 (*the 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*), and FC MC E2.A6.1.3.6 (*the individual initiated a good faith effort to repay overdue creditor*) do not apply. Applicant has not mitigated the Government's case. Accordingly, allegations 2.a through 2.e of the SOR are concluded against Applicant.

Personal Conduct

Personal conduct is always a security concern because it asks the central question whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Having financial problems is the type of personal conduct which causes security concerns.

Applicant admitted to being fired from two different pizza franchises in 1995 and 1996, for adjusting orders and pocketing both companies' money. He was terminated in 2000 from a third pizza franchise for having a dispute with another employee. Applicant's history of theft from his employers establishes a pattern of dishonesty. Additionally, he has numerous delinquent debts that have gone unpaid for years. Thus, Personal Conduct Disqualifying Conditions (PC DC) E2.A5.1.2.1. (*reliable, unfavorable information provided by associates, employees, coworkers, neighbors, and*

other acquaintances) and PC DC E2.A5.1.2.5 (*a pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency*) apply. Under the facts presented, none of the available Personal Conduct Mitigating Conditions apply. Applicant has failed to mitigate or overcome the Government's case. The evidence shows Applicant is not security eligible and suitable. Accordingly, allegations 3.a through 3.c of the SOR are concluded against Applicant.

I have considered all the evidence in this case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I am persuaded by the totality of the evidence in this case that Applicant's termination from three jobs, together with an outstanding warrant that is active, and delinquent debt of about \$5,441 is substantial proof of his inability to be suitable for or have access to classified information. It is clearly not consistent with the national interest to grant Applicant a security clearance.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline J (Criminal Conduct): AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Paragraph 2. Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

Subparagraph 2.e: Against Applicant

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

Subparagraph 3.a: Against Applicant

Subparagraph 3.b: Against Applicant

Subparagraph 3.c: Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Jacqueline T. Williams

Administrative Judge

1. Item 4 (Security Clearance Application, dated December 17, 2002).
2. Item 3 (Applicant's Answer, dated November 18, 2005).

3. The Government submitted 13 items in support of the allegations.
4. The source of the current information of these debts comes from the Credit Bureau Reports, dated May 11, 2006 (Item 6), December 22, 2003 (Item 12), and December 20, 2002 (Item 11).
5. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
6. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
7. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
8. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, ¶ E3.1.15.
9. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15.
10. *Egan*, 484 U.S. at 531.
11. *Id.*
12. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
13. Executive Order 10865 § 7.