

DATE: July 27, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 04-11564

DECISION OF ADMINISTRATIVE JUDGE

MARY E. HENRY

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred significant debt while a student, as well as other small debts. He still owes a significant amount of his education debt. He has not yet made any payments under his recently negotiated payment plan. He did not intentionally falsify his answers to questions on his security clearance application about the amount of his debt. He has mitigated the government's concerns regarding personal conduct, but has not overcome the government's concerns regarding his financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On July 13, 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 Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. 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. Specifically, the SOR set forth security concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Applicant submitted a response to the allegations, and requested a hearing.

This matter was assigned to another administrative judge on October 6, 2005, but reassigned to me on November 29, 2005 because of caseload considerations. A notice of hearing was issued on February 1, 2006, and a hearing was held on February 22, 2006. Eight government exhibits and three Applicant Exhibits were admitted into evidence. The record was held open for 30 days to allow Applicant time to submit additional evidence. He submitted one document, and requested additional time because he was unable to complete his efforts to obtain the additional information requested at the hearing. He was given until April 21, 2006 to provide any further information. He timely submitted additional documents. The government agrees to the admission of these documents as Applicant Exhibits. In light of his submissions, additional documentation was requested twice, but has not been received. Applicant testified. The hearing

transcript (Tr.) was received on March 3, 2006.

FINDINGS OF FACT

Applicant admitted, with explanation, the allegations under Guideline F, subparagraphs 1.a. through 1.g., and Guideline E, subparagraphs 2.a. and 2.b. of the SOR. (1) Those admissions are incorporated here as findings of fact. He denied deliberately falsifying his answers in the SF-86. (2) After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 26-year-old painter for a defense contractor. (3) He has worked for this contractor for almost three years. (4) He completed a security clearance application (SF 86) in July 2003. (5)

Following his graduation from high school, Applicant attended a local community college for one semester and a state university for two years. (6) He did not complete his college education because he lacked funds to pay both his education expenses and school loans. (7) He worked in his parents' pizza shop before obtaining his current employment. (8)

Applicant is currently training through his job to be a mechanic. (9) His employer recently named him employee of the year. (10) His supervisors describe him as a responsible employee with a positive attitude. (11) He performs his job correctly and very well. (12) He reports to work daily and performs his duties as assigned. (13) His supervisors and co-workers view him very favorably. (14)

Applicant presently earns \$13.48 an hour and works 40 hours a week, for a gross weekly income of \$539.20, and a gross monthly income of \$2,256.80. (15) His net weekly income is \$350 for a net monthly income of \$1,400. (16) Although he has worked overtime in the past, he presently does not. (17) Thus, he has no additional income. His current monthly expenses are: \$500 for rent, \$75 for utilities, \$100 for groceries, \$200 to repay his parents for funds used to purchase a car, \$100 for cell phone, \$80 for gas for his car, \$91 for car insurance, and \$50 for miscellaneous expenses. (18) His monthly expenses total \$1,196, leaving excess income of \$216 a month.

Applicant's debts alleged in the SOR, including current status, are summarized in the following table:

| SOR ¶ | TYPE OF DEBT | AMOUNT | CURRENT STATUS |
|-------|--------------------------|---------------|---|
| 1.a. | credit card debt (19) | \$ 1,255 (20) | Unpaid (21) |
| 1.b. | school housing loan (22) | \$11,362 (23) | Current unpaid balance is \$8,847.25 (24) |
| 1.c. | education loan (25) | \$ 3,910 (26) | Paid (27) |
| 1.d. | insurance bill (28) | \$ 134 (29) | Unpaid (30) |
| 1.e. | education loan (31) | \$ 4,759 (32) | Paid (33) |
| 1.f. | education loan (34) | \$ 3,244 (35) | Paid (36) |
| 1.g. | cable bill (37) | \$ 106 (38) | Unpaid (39) |

In September 2004, the government garnished his wages for nonpayment of two education loans. (40) As a result of the garnishment, these two loans have been paid. (41) Applicant recently moved, which reduced his rent payment by \$175 a month. (42) His move also caused confusion with his mail, resulting in his never receiving the cable bill. (43)

Applicant contacted a debt consolidator on line. He completed the application, but did not move forward with consolidation of his debt. The debt consolidator advised that since the majority of his debt was for school loans, he could not get a better interest rate and lower payment. (44) He recently contacted the state university regarding his school housing loan. On April 15, 2006, he signed a promissory note, agreeing to pay \$300 a month on his debt, beginning

May 1, 2006 until paid in full. (45) The state university has indicated his unpaid debt totals \$8,847.25. (46) He has not provided documentation which reflects that he made any payments as agreed. Based on the SOR allegations, his education debt totaled \$23,275, but his remaining outstanding education debt is now \$8,847.25. (47)

Applicant contacted the collection agency to arrange payment on his outstanding credit card debt of \$1,255. (48) He states that he has made arrangements to pay \$50 a month on this debt. (49) He also states that he has paid the insurance and cable bills. (50) He has not provided documentation of his payments. In his 2004 signed statement, he indicated that he would pay his debts or work out a payment plan. (51) He paid his small debts, including a video bill for \$134, but not his insurance bill of \$134.

On July 21, 2003, Applicant completed his security clearance application. He answered "yes" and listed education debt in an approximate amount of \$5,000 to the following questions: (52)

Question 38. Your Financial Delinquencies - 180 days

In the last 7 years, have you ever been over 180 days delinquent on any debt(s)?

Question 39. Your Financial Delinquencies - 90 Days

Are you currently over 90 days delinquent on any debt?

He did not have all his documents when completely has application as he had just moved. He listed the debts to the best of his recollection. (53) Until he met with the security investigator, he did not realize how much debt he had. (54) He did not list the one credit card debt as he did not remember it. (55)

POLICIES

Enclosure 2 of the Directive sets forth adjudication guidelines which must be considered in the evaluation of security suitability. An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the adjudicative process provision in Paragraph E2.2., Enclosure 2 of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Included in the guidelines are disqualifying conditions and mitigating conditions applicable to each specific guideline. In addition, each security clearance decision must be 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, 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; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. (56) 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. (57) The government has the burden of proving controverted facts. (58) The burden of proof is something less than a preponderance of the evidence. (59) Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. (60) Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. (61)

No one has a right to a security clearance, (62) and "the clearly consistent standard indicates that security clearance (63)

determinations should err, if they must, on the side of denials." Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. (64) Section 7 of Executive Order 10865 specifically provides 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." The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant. (65) 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 a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Financial Considerations - Guideline F: 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.

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

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

The government has established its case under Guideline F. Applicant has a history of excessive debt, the major portion of which is education loans. Applicant's financial problems clearly fall within the Financial Considerations Disqualifying Conditions E2.A6.1.2.1. (*A history of not meeting financial obligations*) and E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*)

A security concern based on financial problems can be mitigated in several ways. Applicant's debt problems have been ongoing for a number of years, are not recent, and are not an isolated incident. Thus, he has not established a mitigating condition under Financial Considerations Mitigating Conditions (FC MC) E2.A6.1.3.1. (*The behavior was not recent*) and E2.A6.1.3.2. (*It was an isolated incident*).

Almost 90% of Applicant's debt listed in the SOR related to education loans. He did seek assistance to consolidate his debts. Since most of his debt was for low interest educational loans, he followed the consolidator's advice not to proceed with consolidation. Around the same time, the government garnished his salary. His garnishment has ended and his government education loans have been paid in full. He has worked out a payment plan to pay the remaining education debt, which is less than \$9,000. 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*) applies.

Since completing his security clearance application and meeting with the investigator, Applicant has reduced his education debt by over \$14,400 and paid several small debts. He recently formally agreed to a monthly payment, but has not provided requested documents establishing that he has actually made the payments as agreed. Likewise, he has not provided documentation which reflects payment of the smaller bills. Although he states that he made arrangements to pay his outstanding credit card debt, he has not provided documentation of either the arrangement of payment or actual payment. While he has reduced his outstanding debt in the last two years, he still owes a significant amount on education loans. He is not required to pay all his debt; only to make a good faith effort to reduce and manage his debt. He addresses his debt issues only when under pressure, not voluntarily. His failure to provide documentation reflecting that he has made the payments he claims, weighs heavily against him. He has not mitigated the government's concerns under FC MC E2.A6.1.3.6. (*The individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts.*).

Applicant is well-respected by his supervisors and co-workers. He is regarded as a reliable and dependable worker, who

was named employee of the year. His employer's belief in him is shown by its decision to provide him with the training necessary to become a mechanic. These favorable recommendations are entitled to some weight. His current financial resources are insufficient to meet his monthly obligations and pay his debt as agreed. Because he does not resolve his debts until pressed, his statements that he has paid his small debts and is making his monthly education loan payment, without more, are entitled to little weight. He has not overcome the government's case. Guideline F is found against Applicant.

Under Guideline E, the government alleges that Applicant deliberately falsified material facts on his latest security clearance application when he answered Questions 38 and 39, because he did not disclose the full extent of his debt. He denies that intentionally falsified his answers in his security clearance application. The government established that under Guideline E, Applicant admitted to an omission of material facts in her SF 86.

When a falsification allegation is controverted, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred. ⁽⁶⁶⁾ For Personal Conduct Disqualifying Conditions (PC DC) E2.A5.1.2.2. (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . .*) and PC DC E2.A5.1.2.3. (*Deliberately providing false or misleading information concerning relevant and material matters to an investigator . . .*) to apply, the government must establish that Applicant's omission, concealment or falsification in his answers related to a relevant and material fact and was deliberate.

Applicant readily admitted his school debt. He made no attempt to hide the existence of this debt. He simply did not know the full amount of the debt until presented with this information by the investigator. He accepted responsibility for all of it and acknowledged that he was responsible for payment. The lack of knowledge as to the extent of his debt does not show an intent to deliberately falsifying his answers to Questions 38 and 39. The government has not established that he intentionally falsified his answers to these questions under Guideline E, which is found for Applicant. Accordingly, for the reasons stated, I find that it is not clearly consistent with the national interest to grant a security clearance to Applicant.

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 F (Financial Considerations): 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: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: Against Applicant

Paragraph 2, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

DECISION

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

Mary E. Henry

Administrative Judge

1. Applicant's response to SOR at 1-2.

2. *Id.* at 2.

3. Government Exhibit 2 (Applicant's signed statement, dated September 2, 2004) at 1.

4. Tr. at 23; Applicant Exhibit B (Letter, undated) at 1; Applicant Exhibit C (Letter, dated February 6, 2006) at 1.

5. Government Exhibit 1 (Applicant's security clearance application, dated July 21, 2003) at 1.

6. *Id.*; Tr. at 27-28.

7. Tr. at 28, 35.

8. *Id.* at 35; Government Exhibit 1, *supra* note 5, at 2.

9. Tr. at 35.

10. *Id.*

11. Applicant Exhibit A (Letter, dated February 13, 2006); Applicant Exhibit B, *supra* note 4, at 1; and Applicant Exhibit C, *supra* note 4, at 1.

12. *Id.*

13. *Id.*

14. *Id.*

15. Tr. at 25.

16. *Id.* at 26.

17. *Id.* at 25.

18. *Id.* at 23-25, 36.

19. Government Exhibit 7 (Credit report, dated June 13, 2005) at 2.

20. *Id.*

21. Tr. at 17.

22. Government Exhibit 7, *supra* note 19, at 2; Tr. at 28.

23. Government Exhibit 7, *supra* note 19, at 2.

24. Applicant Exhibit F (Promissory note signed on April 15, 2006) at 1.

25. Government Exhibit 6 (Credit report, dated August 16, 2004) at 6.

26. *Id.*

27. Applicant Exhibit D (Applicant letter with notice of payment of education debt) at 1; Applicant Exhibit F, *supra* note 24, at 1.

28. Government Exhibit 7, *supra* note 19, at 2.

29. *Id.*

30. Tr. at 19.

31. Government Exhibit 7, *supra* note 19, at 3.

32. *Id.*

33. Tr. at 20; Applicant Exhibit D, *supra* note 27, at 1-2.

34. Government Exhibit 7, *supra* note 19, at 3.

35. *Id.*

36. Tr. at 20; Applicant Exhibit D, *supra* note 27, at 1-2.

37. Government Exhibit 7, *supra* note 19, at 2.

38. *Id.*

39. Tr. at 20.

40. *Id.* at 14, 17, 18, 27; Government Exhibit 8 (United States Government Wage Garnishment Order on Applicant, dated September 22, 2004) at 1.

41. Applicant Exhibit D, *supra* note 27, at 1-2.

42. Tr. at 23.

43. *Id.* at 21-22.

44. *Id.* at 37.

45. Applicant Exhibit F, *supra* note 24, at 1.

46. *Id.*

47. Applicant Exhibit D, *supra* note 27, at 2; Applicant Exhibit F, *supra* note 24, at 1.

48. Applicant Exhibit D, *supra* note 27, at 1; Applicant Exhibit G (Handwritten note from Applicant) at 1.

49. Applicant Exhibit G, *supra* note 48, at 1.

50. Applicant Exhibit D, *supra* note 27, at 1.

51. Government Exhibit 2, *supra* note 3, at 3.
52. Government Exhibit 1, *supra* note 5, at 1, 10-11.
53. Tr. at 21.
54. *Id.*
55. *Id.* at 31-32.
56. Directive, Enclosure 2, ¶ E2.2.1.1. through E2.2.1.9.
57. ISCR Case No. 96-0277 at 2 (App. Bd., July 11, 1997).
58. ISCR Case No. 97-0016 at 3 (App. Bd., December 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
59. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
60. ISCR Case No. 94-1075 at 3-4 (App. Bd., August 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
61. ISCR Case No. 93-1390 at 7-8 (App. Bd. Decision and Reversal Order, January 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
62. *Egan*, 484 U.S. at 531.
63. *Id.*
64. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
65. Executive Order No. 10865 § 7.
66. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov.17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).