

DATE: June 28, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-02797

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has had a history of financial difficulties. He has paid off the majority of his debts, and he has a legitimate dispute with four of his remaining overdue debts. His financial situation is now stable and current. Applicant reasonably believed that the financial information that he provided to the Government on a Security Clearance Application (SCA), regarding his overdue debts was materially correct, and the evidence has not established that he was wrong. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

On September 15, 2005 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, issued a Statement of Reasons (SOR) to 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 clearance should be denied or revoked.

In a signed and sworn statement, dated October 22, 2005, Applicant responded in writing to the SOR allegations (RSOR), and he requested a clearance decision based on a hearing record.

The case was assigned to this Administrative Judge on April 24, 2006. A Notice of Hearing was issued to the parties on May 4, 2006, and the hearing was held on May 23, 2006.

At the hearing, Department Counsel offered 10 documentary exhibits (Exhibits 1-10) and one witness was called. Applicant appeared without counsel, offered seven documentary exhibits (Exhibits A through G) and offered his own testimony. All documentary evidence was entered into evidence without objection. After the hearing, the record was left open for Applicant to offer additional documentary exhibits regarding his alleged payment of other debts. Applicant offered additional timely documents, which have been marked collectively as Exhibit H (1-20). This final exhibit was not objected to by Department Counsel and has been entered into evidence. The transcript (Tr) was received on June 6,

2006.

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 21 allegations, 1.a. through 1.u., under Guideline F, and four allegations, 2.a. through 2.d., under Guideline E. Applicant admitted SOR allegations 1.a. through 1.u., with some explanations, and he denied allegations 2.a. through 2.d. The admitted allegations are incorporated herein as Findings of Fact.

At the hearing, Department Counsel indicated that the Government would be offering no evidence in support of allegation 2.c. Allegation 2.c. is found in favor of Applicant.

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

Applicant is 57 years old. He is married and has two daughters. He has a Master's Degree in System Engineering. Applicant is employed as an Engineering Specialist by a defense contractor, and he seeks to retain a DoD security clearance in connection with his employment in the defense sector.

Paragraph 1 (Guideline F - Financial Considerations)

The SOR lists 20 debts that Applicant owed as of January 17, 2005, 1.a. through 1.t under Adjudicative Guideline F. The debts will be discussed in the order that they were listed in the SOR:

1.a. This debt to Creditor 1 is listed in the SOR in the amount of \$5,607. At the hearing, Applicant contended that this debt was paid in June 2005. Exhibit A is a final statement of a new loan that Applicant received on his home with a summary of payments from the proceeds made to outstanding creditors. Exhibit A and H1 show that a payment of \$2,804 was paid to resolve this debt. I find that the current balance on this debt is \$0.

1.b. This debt to Creditor 2 is in the amount of \$12,917. At the hearing, Applicant contended that this debt was paid in June 2005. Exhibit A and H2 show that a payment of \$6,500 was paid to resolve this debt. I find that the current balance on this debt is \$0.

1.c. This debt to Creditor 3 is in the amount of \$160. Applicant testified that he disputes this bill, because his medical insurance carrier explained to him that this amount would not be covered under his policy, because this was in excess of a reasonable charge for the medical service rendered by this health care provider. While he testified that he could resolve this debt easily, he believes that since this debt is for an excessive charge, he should not be required to pay the amount in excess of what this creditor received through Applicant's insurance carrier. I find that it is reasonable for Applicant to dispute this medical bill.

1.d. -1.g. These four debts to Creditor 4 are listed in the SOR in the amounts of \$102, \$124, \$67, and \$87, respectively. Applicant also disputes these bills, because his insurance carrier explained to him that these amounts also would not be covered under his policy, because the charges for the medical service rendered are excessive. I find that it is reasonable for Applicant to dispute these medical charges.

1.h. This debt to Creditor 5 is listed in the SOR in the amount of \$12,119. At the hearing, Applicant contended that this debt was paid in June 2005. Exhibit A and H3 show that a payment of \$9,089 was paid to resolve this debt. I find that the current balance on this debt is \$0.

1.i. This debt to Creditor 6 is listed in the SOR is in the amount of \$12,250. At the hearing, Applicant contended that this debt was paid in June 2005. Exhibit A and H4 show that a payment of \$6,125 was paid to resolve this debt. I find that the current balance on this debt is \$0.

1.j. This debt to Creditor 7 is listed in the SOR in the amount of \$11,933. At the hearing, Applicant contended that this debt was paid in June 2005. Exhibit A and H5 show that a payment of \$11,890 was paid to resolve this debt. I find that the current balance on this debt is \$0.

1.k. This debt to Creditor 8 is listed in the SOR in the amount of \$8,740. At the hearing, Applicant contended that this debt was paid in June 2005. Exhibit A and H6 show that a payment of \$4,370 was paid to resolve this debt. I find that the current balance on this debt is \$0.

1.l. This debt to Creditor 9 is listed in the SOR in the amount of \$3,585. At the hearing, Applicant contended that this debt was paid in June 2005. Exhibit A and H7 show that a payment of \$2,448 was paid to resolve this debt. I find that the current balance on this debt is \$0.

1.m. This debt to Creditor 10 is listed in the SOR in the amount of \$39. At the hearing, Applicant contended that this debt was paid in June 2005. Exhibit A and H8 show that a payment of \$811 was paid to resolve this debt. I find that the current balance on this debt is \$0.

1.n. This debt to Creditor 11 is listed in the SOR in the amount of \$1,565. At the hearing, Applicant contended that this debt was paid in June 2005. Exhibit A and H9 show that a payment of \$750 was paid to resolve this debt. I find that the current balance on this debt is \$0.

1.o. This debt to Creditor 12 is listed in the SOR in the amount of \$11,741. At the hearing, Applicant contended that this debt was paid in June 2005. Exhibit A and H10 show that a payment of \$5,877 was paid to resolve this debt. I find that the current balance on this debt is \$0.

1.p. This debt to Creditor 13 is listed in the SOR in the amount of \$5,572. At the hearing, Applicant contended that this debt was paid. However, in his post hearing submission, he indicated that he could not find the documentation to establish that this debt had been resolved. At the hearing, Applicant testified that there were two debts that he had paid before he refinanced his mortgage, because the creditor had given him a deadline, but he was not sure which debts they were. While this may have been one of those debts, I can not find that this debt has been paid, and therefore the current balance on this debt is \$5,572. Unless Applicant can find documentation to show that this debt was resolved, he is required to pay this debt.

1.q. This debt to Creditor 14 is listed in the SOR in the amount of \$14,118. At the hearing, Applicant contended that this debt was paid in June 2005. Exhibit A and H11 show that a payment of \$9,100 was paid to resolve this debt. I find that the current balance on this debt is \$0.

1.r. This debt to Creditor 15 is listed in the SOR in the amount of \$9,208. At the hearing, Applicant contended that this debt was paid in June 2005. Exhibit A and H12 show that a payment of \$5,900 was paid to resolve this debt. I find that the current balance on this debt is \$0.

1.s. This debt to Creditor 16 is listed in the SOR in the amount of \$12,035. At the hearing, Applicant contended that this debt was paid in June 2005. Exhibit A and H13 show that a payment of \$10,250 was paid to resolve this debt. I find that the current balance on this debt is \$0.

1.t. This debt to Creditor 17 is listed in the SOR in the amount of \$7,767. At the hearing, Applicant contended that this debt was paid in June 2005. Exhibit A and H14 show that a payment of \$4,370 was paid to resolve this debt. I find that the current balance on this debt is \$0.

1.u. The Government alleges that Applicant has a net remainder of \$775 a month and \$18,000 in an account in India, yet he has made little attempt to make any payments on his overdue debts. Based on paragraphs 1.a through 1.t., as discussed above, I find that Applicant has now made payments on the majority of his overdue debts.

Applicant gave an explanation as to why he had incurred these overdue debts. His daughter attended five years of college from 2000 to 2005, and Applicant and his wife took loans in the form of a line of credit on his home to pay for her education. He also lost approximately \$200,000 in the stock market from 2000 to 2004.

Applicant currently has one credit card in his wife's name and four in his daughter's name that he is able to use. He is not overdue on any of these cards, and he now pays off the credit card in a timely fashion. Applicant's wife, who was unemployed for many years due to serious illness, has become employed full time in 2005, and she contributes approximately \$30,000 in additional family income. Applicant now has approximately \$16,000 invested in the stock market, and he does not plan to increase that amount. Applicant also has some additional assets. He has a checking account with \$13,000, and an account to pay for his second daughter's college education in the amount of \$25,000. Finally, Applicant testified that in the 401ks and IRAs owned by him and his wife, he has \$500,000, and he is fully vested in his company's pension plan.

Applicant submitted his 2004 Salary Notice (Exhibit C) which showed that his 2004 Performance Evaluation rated his performance as "Exceeded expectations" and awarded him a \$5,000 raise.

Paragraph 2 (Guideline E - Personal Conduct)

The Government alleges that when Applicant completed a signed, sworn Security Clearance Application (SCA) on December 10, 2002, (Exhibit 1), he did not furnish truthful, complete answers.

2.a. Question #38 asks, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" "No" was checked off for this question and no debts were listed.

2.b. Question #39 asks, "Are you currently over 90 days delinquent on any debt(s)?" "No" was checked on this question and again no debts were listed (Exhibit 4).

At the time Applicant completed the SCA, he was aware that he was delinquent on some of the debts listed on the SOR. However, Applicant testified that although he was paying his debts late, he was still making payments on these debts, so he did not believe he was currently over 90 days overdue nor did he believe that he had been over 180 days overdue within the last 7 years. Since Applicant was disputing the debts to the medical providers, as alleged in 1.c. through 1.g., he did not believe these debts should be included. The Government has shown that Applicant was overdue on his debts, but not that he was overdue for more than 90 days at the time he completed the SCA or over 180 days for the 7 years before he completed the SCA. I cannot find that Applicant gave false information on questions 37 and 38 on his SCA.

2.c. As stated above, the Government did not introduce any evidence to establish this allegation. I find 2.c. for Applicant.

2.d. The Government alleges in this paragraph that Applicant stayed in the United States on an expired student visa from 1975 to 1977. Applicant denied this allegation and introduced his former Indian passport (Exhibit B) and a Federal Bureau of Investigation (FBI) investigation report (Exhibit 6) to establish that he left the United States in 1975. While evidence was introduced to establish that Applicant did not comply with the requirement to notify the Immigration and Naturalization Service (INS) when he became employed after he was a student, the evidence is clear that he did not remain in the United States on an expired visa. I find that Applicant's failure to notify the INS regarding his employment did show poor judgement. However, this occurred more than 30 years ago, and there has been no evidence introduced to suggest that Applicant has had any other lapses in judgement in this regard or violated any other rules or regulations.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (See Directive, Section E2.2.1. of Enclosure 2).

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 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. Assessment of Applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

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

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following with regarding Guidelines F and E:

(Guideline F - Financial Considerations)

With respect to Guideline F, the Government has established that Applicant has had a history of financial difficulties. The evidence shows that Applicant has made recent good faith efforts to pay these debts. While he has not satisfied all of his overdue bills, he has resolved the vast majority of his debts, and he does not appear to be overdue on any of his current debts.

Regarding the Disqualifying Conditions (DC) under Guideline F, I conclude both DC E2.A6.1.2.1., and DC E2.A6.1.2.3 apply, because of Applicant's history of not meeting financial obligations and his former unwillingness to satisfy his debts. However, I now find that Mitigating Condition (MC) E2.A6.1.3.6. applies because Applicant has initiated a good-faith effort to repay his overdue creditors and resolve his debts. He is exhibiting a serious approach so that he will avoid falling into these financial difficulties in the future. I, therefore, resolve Guideline F for Applicant.

(Guideline E - Personal Conduct)

With respect to Guideline E, the evidence did not establish that Applicant provided inaccurate information to the Government in response to questions, #38 and #39, on the SCA. I conclude that Applicant was overdue on the payment of some of his debts at the time he completed and executed his SCA on December 10, 2002. However, based on the way he was paying his debts, he did have a reasonable basis for believing he was not overdue for the time periods requested by these questions, and the evidence has not proven that he was overdue for 90 or 180 days.

Additionally, while Applicant did not notify the INS when he became employed, he did not remain in the United States on an expired visa, and there has been no other example of a violation of any rules or regulations in more than 30 years.

I conclude that no DC applies under Guideline E. I resolve Guideline E for Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1, Financial Considerations, Guideline F: For Applicant

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: For Applicant

Subparagraph 1.j.: For Applicant

Subparagraph 1.k.: For Applicant

Subparagraph 1.l.: For Applicant

Subparagraph 1.m.: For Applicant

Subparagraph 1.n.: For Applicant

Subparagraph 1.o.: For Applicant

Subparagraph 1.p.: For Applicant

Subparagraph 1.q.: For Applicant

Subparagraph 1.r.: For Applicant

Subparagraph 1.s.: For Applicant

Subparagraph 1.t.: For Applicant

Subparagraph 1.u.: For Applicant

Paragraph 2, Personal Conduct, Guideline E: For Applicant

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

DECISION

In light of all the circumstances and facts presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Martin H. Mogul

Administrative Judge