

DATE: June 30, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-03712

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Sabrina E. Redd, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has not mitigated the security significance of his past due indebtedness. In addition, he falsified a security clearance application in 2003 concerning his marital status. Finally, his conduct in falsifying official Government records in 2000 concerning his marital status has also not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On September 23, 2005, 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on October 18, 2005, and requested that the Decision be made without a hearing. The Department Counsel submitted the File of Relevant Material (FORM) to the Applicant on February 2, 2006. The Applicant was given 30 days after receipt of the FORM on February 8, 2006, to submit any additional information to the Administrative Judge. The Applicant elected not to submit any additional information. The case was received by the undersigned for Decision on March 28, 2006.

FINDINGS OF FACT

The Applicant is 35 years old and married. He is employed by a defense contractor, and he seeks to obtain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR.

They are based on the Applicant's Answer to the SOR and the exhibits.

Paragraph 1 (Guideline F - Financial considerations). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts in order to generate funds.

1.a. In his Answer of October 2005 the Applicant admits that the debt of \$10,399.98 for a credit card charged off as a bad debt is his, but further states it is in dispute. The Applicant claimed in October 2004 that this credit card belonged to his first wife and that he is not responsible for the debt. (Government Exhibit 8 at 4-5.) He subsequently submitted a letter he allegedly forwarded to this creditor in 2005 stating, "[T]his debt was paid in full July 1999." (Government Exhibit 5 at 5-6.) The most recent credit report submitted by the Government dated January 19, 2006, does not show this debt. (Government Exhibit 6.)

1.b. In his Answer of October 2005 the Applicant admits that the debt of \$188.26 for a bad debt placed in collection by a public utility is his, but further states it is in dispute. The Applicant claimed in October 2004 to have no knowledge of this debt, but that he would conduct research to determine whether it is his debt. (Government Exhibit 8 at 6.) The most recent credit report submitted by the Government dated January 19, 2006, does not show this debt. (Government Exhibit 6.)

1.c. In his Answer of October 2005 the Applicant admits that the debt of \$3,543.36 for an account placed in collection by a department store is his, but further states it is in dispute. The Applicant claimed in October 2004 that he was "currently attempting to negotiate a lower debt (eliminating late fees and interest penalties)." (Government Exhibit 8 at 4.) He subsequently submitted a letter he allegedly forwarded to this creditor in 2005 stating, "[T]his debt was paid in full July 1999." (Government Exhibit 5 at 8-9.) A credit report submitted by the Government dated May 27, 2005, shows that the Applicant did dispute this debt. (Government Exhibit 7 at 2.)

Paragraph 2 (Guideline E - Personal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process, and again while previously a member of the United States military.

The Applicant married his first wife (Wife 1) on March 10, 1990. They had a child during their marriage. The Applicant and Wife 1 separated without benefit of a formal separation agreement sometime in 1998. According to the Applicant, he consulted with an attorney in his state of residence at that time (North Carolina). This attorney allegedly told the Applicant that six months after separating from Wife 1, North Carolina would consider them divorced without doing anything more.

According to the Applicant, based on these representations, he married Wife 2 on February 16, 2000. A child was born of this relationship. The Applicant was not divorced from Wife 1 at that time and his second marriage was, therefore, illegal. In his sworn statement, the Applicant states that Wife 1 found out about the remarriage in March 2000 and initiated the investigation of the Applicant at that time. (Government Exhibit 8 at 9.) Military records show that the formal investigation was not started until January 2001. (Government Exhibit 10.)

The Applicant and Wife 1 entered into a formal "Property Settlement Agreement" on October 10, 2000. (Government Exhibit 10 at 12-20.) The Applicant states that he and Wife 1 were divorced in May 2001. (Government Exhibit 4 at question 8.)

During Wife 1's marriage to the Applicant, she had been enrolled with the Defense Eligibility Enrollment Reporting System (DEERS) as his spouse. "DEERS is a computerized database of military sponsors, families and others worldwide who are entitled under the law to TRICARE benefits. DEERS registration is required for TRICARE eligibility." (Government Exhibit 11 at 1.) Sometime after marrying Wife 2, the Applicant dropped Wife 1 from DEERS. Wife 1 complained. (Government Exhibit 10 at 6.) The Applicant admitted that on December 29, 2000, he falsified a document to a DEERS official by stating in writing that Wife 1 was his only spouse and denying any knowledge of Wife 2. (Exhibit 10 at 30.) It was this event that began the investigation which led to the Applicant leaving the military with a General Discharge. (Government Exhibit 1 at question 17.)

On November 3, 2003, the Applicant completed an official DoD questionnaire. (Government Exhibit 4.) Question 9 of that questionnaire asks for the Relatives and Associates of the Applicant. The Applicant put down his parents and brother, but failed to list either of his children. The Applicant denied that this failure was intentional, stating in his Answer, "The only failure on my part may have been that I misread the Entry List Options for this particular question." (Government Exhibit 3 at 1.)

Question 8 of Government Exhibit 4 asks the Applicant for his marital details. He stated that he was divorced effective May 1, 2001, from Wife 1. He does not state anywhere that he is currently married to Wife 2. He also did not use the entry option from question 9, "Adult Currently Living With You" to state that he was remarried. The Applicant in his Answer states that he did not deliberately fail to reveal his second marriage.

In the General Remarks section, Question 43 of Government Exhibit 4, the Applicant states:

In reference to misconduct while on active duty at [a Military] School. Prior to transferring from Fort Bragg, North Carolina to Fort Belvoir, Virginia. I seeked (*sic*) legal advice from a lawyer in Fayetteville, North Carolina on how I need to proceed to seek a divorce. In time for my transfer to Virginia, my ex-wife and I separated where she moved to Florida and I proceeded to my new duty station. I followed the advice of the lawyer and discovered that it was false when my JAG council (*sic*) at Fort Belvoir, Virginia showed me North Carolina's divorce law. It was highly suggested by my JAG council (*sic*) and my chain of command to accept a General Discharge due to my excellent service record than possibly be dishonorably discharged.

In the same questionnaire (Government Exhibit 4) at questions 38 and 39, the Applicant denied having any debts that were either 180 days delinquent within the previous seven years, or that were currently 90 days delinquent. These were both false answers to relevant questions concerning the Applicant's financial situation.

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. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case will be set forth under CONCLUSIONS, below.

In addition, 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 financial irresponsibility, and falsification of Government documents 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."

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 granting 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.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has several bad debts that he has not resolved; that he engaged in poor judgment in marrying Wife 2 before divorcing Wife 1; and that he intentionally made false material statements to DoD on two different occasions (Guideline E). The Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him.

Turning to Guideline F, the Applicant indicates that he has disputed all three of these debts. However, the Applicant has not shown that he has done anything other than write a letter over one year ago to two of the creditors. The FORM gave him notice of all of the evidence the Government was using against him. If he had any additional evidence to show that these debts were not his, or had been paid, he should have submitted it. Based on all of the evidence available to me, I cannot find that the Applicant has sufficiently mitigated the allegations of this paragraph.

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*) apply to the facts of this case. None of the mitigating Conditions apply. Paragraph 1 is found against the Applicant.

There are two parts to the Guideline E allegations. Subparagraphs 2.c. and 2.d. concern the Applicant's conduct in the years 1999 and 2000. The Applicant did not show good judgment during this time. His act of marrying Wife 2, while not officially divorced from Wife 1, may have been a mistake, albeit one of such monumental proportions as to call his judgment into question. Once he was informed of this mistake, his conduct was wrongful and deceitful when he lied on the application form for DEERS, denying any knowledge of Wife 2. I have considered the fact that the act occurred over five years ago. However, given the discussion immediately below, it is my opinion that this conduct has continuing security significance. Disqualifying Condition E2.A5.1.2.4. applies to this case (*Personal conduct or concealment of*

information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail). Subparagraphs 2.c. and 2.d. are found against the Applicant.

The Applicant submits that his failure to list his children and Wife 2 on his questionnaire was a mistake as opposed to an intentional falsification. Considering the fact that the Applicant had consciously denied knowledge of Wife 2 to the Federal Government earlier, he has a heavy burden to meet in this respect. He has not met it. In his questionnaire the Applicant discusses a repossession, his discharge from the military, previous addresses and friends at great depth. He obviously knew what he was filling out and how to do it. The information that the Applicant omitted was the most relevant, that about his children and his second wife. Viewed on its own, the questionnaire did not, in my opinion, put the Government on sufficient notice that the Applicant had remarried or that he had children. In this regard, it is noteworthy that in his General Remarks the Applicant discusses his ex-wife and a divorce, but he does not mention his new wife. Subparagraphs 2.a. and 2.b. are found against the Applicant.

In looking at all the available evidence, there is some question as to whether the Applicant had knowledge of the status of his debts at the time he filled out the questionnaire. I cannot find that his answers to those questions were intentionally false. Subparagraphs 2.e. and 2.f. are found for the Applicant.

The Government relies heavily upon the integrity and honesty of clearance holders, and it is a negative factor for security clearance purposes where an Applicant has deliberately provided false information about material aspects of his or her personal background. Disqualifying Condition E2.A5.1.2.2. applies to this case (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*). Guideline E is found against the Applicant.

On balance, it is concluded that the Applicant has failed to overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: Against the Applicant.

Subparagraph 1.a.: Against the Applicant.

Subparagraph 1.b.: Against the Applicant.

Subparagraph 1.c.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subparagraph 2.a.: Against the Applicant.

Subparagraph 2.b.: Against the Applicant.

Subparagraph 2.c.: Against the Applicant.

Subparagraph 2.d.: Against the Applicant.

Subparagraph 2.e.: For the Applicant.

Subparagraph 2.f.: For the 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 the Applicant.

Wilford H. Ross

Administrative Judge