

DATE: May 18, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-11366

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 long history of financial difficulties. He has filed for bankruptcy and discharged his debts on two previous occasions. He currently has a significant amount of outstanding debt, and he once again plans to file for bankruptcy. Based on his tenuous financial situation and his history of financial irresponsibility, Applicant has failed to demonstrate a stable and mature outlook about his finances. Mitigation has not been shown. Clearance is denied.

STATEMENT OF THE CASE

On December 12, 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 December 20, 2005, Applicant responded in writing to the SOR allegations. He requested a clearance decision based on a hearing record.

On February 2, 2006, this case was assigned to this Administrative Judge to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on February 16, 2006, and the hearing was held on March 16, 2006.

At the hearing, Department Counsel offered seven documentary exhibits (Government Exhibits 1 through 7), and no witnesses were called. Applicant offered 31 documentary exhibits, (Applicant Exhibits A through EE), and offered his own testimony and that of four additional witnesses. The transcript (TR) was received on March 23, 2006.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline F (Financial Considerations) of the Directive. The SOR contains 11 allegations, 1.a. through 1.k., under Guideline F. In his Response to the SOR (RSOR), Applicant admitted all of the SOR allegations except 1.j. The admitted allegations are incorporated herein as Findings of Fact.

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

Applicant is a 43 year old software engineer for a defense contractor who seeks access to classified information. He is married and has four children.

Paragraph 1 (Guideline F - Financial Considerations)

The SOR alleges that Applicant filed a bankruptcy in 1997, 1.a., and currently has ten overdue debts that are owed by Applicant, 1.b. through 1.k., under Adjudicative Guideline F.

1.a. Applicant filed a Chapter 13 Bankruptcy on March 21, 1997, and it was converted to a Chapter 7 Bankruptcy on July 24, 1997. Applicant's debts were discharged on November 12, 1997.

1.b. This overdue debt to the Internal Revenue Service (IRS) is in the amount of \$75,668 for failing to pay his past Federal taxes. Applicant admitted this debt is currently due and owing. While Applicant plans to file an additional bankruptcy, to discharge his debts, he had not done so at the time of the hearing. Applicant also testified that he believed some of this debt would be discharged in the bankruptcy, but there is no evidence that will happen. I find that he owes the entire amount stated.

1.c. This overdue debt to the IRS is in the amount of \$1,286. Applicant admitted that this debt is due and owing, and I find that he owes the entire amount stated.

1.d. This overdue debt to Creditor 2 is listed in the SOR in the amount of \$352. Applicant admitted that this debt is due and owing, and I find that he owes the entire amount stated.

1.e. This overdue debt to Creditor 3 is in the amount of \$389. Applicant admitted that this debt is due and owing, and I find that he owes the entire amount stated.

1.f. This overdue debt to Creditor 4 is in the amount of \$2,151. Applicant admitted that this debt is due and owing, and I find that he owes the entire amount stated.

1.g. This overdue debt to Creditor 5 is listed in the SOR in the amount of \$2,183. Applicant admitted that this debt is due and owing, and I find that he owes the entire amount stated.

1.h. This overdue debt to Creditor 6 is listed in the SOR in the amount of \$1,411. Applicant admitted that this debt is due and owing, and I find that he owes the entire amount stated.

1.i. This overdue debt to Creditor 7 is listed in the SOR in the amount of \$1,298. Applicant admitted that this debt is due and owing, and I find that he owes the entire amount stated.

1.j. This overdue debt to Creditor 8 is listed in the SOR in the amount of \$10,882. In his RSOR and during his testimony, Applicant denied that this debt is due and owing. In a signed, sworn statement made by Applicant on May 13, 2005, Applicant acknowledged that he was overdue on this home equity debt (Exhibit 2). This overdue debt is also listed on two credit reports (Exhibits 5 and 6). However, Applicant testified that this debt had been resolved when his home was foreclosed. Exhibits AA and BB show that this debt is no longer owed. I find that Applicant does not owe anything on this debt.

1.k. This overdue debt to Creditor 9 is listed in the SOR in the amount of \$19,022. Applicant admitted that this debt is

due and owing, and I find that he owes the entire amount stated.

In addition to these debts listed, Applicant's stepmother testified at the hearing that she had made a personal loan to Applicant in the amount of \$100,000 in 2001. Applicant was to make monthly payments of \$9,000 until the loan was paid off. Applicant made two payments of \$9,000, and he has made no payments since that time. He still owes his stepmother \$82,000 (Tr at 106-109).

Applicant testified that previous to his bankruptcy in 1997, he had filed for bankruptcy sometime in 1988 or 1989 to discharge his debts, which included very large medical bills (Tr at 83-84).

Finally, Applicant's wages are being garnished in the amount of \$1,040 a month for child support. This includes \$200 a month for his being in arrears in the amount of \$10,000 (Tr at 75-79).

Applicant cited several reasons for his history of bankruptcy and failure to resolve his debts. These included dissolution of his marriage, unsuccessful business ventures and the illness of his son.

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 respect to guidelines F:

With respect to Guideline F, the Government has established that Applicant has had a long history of financial difficulties including filing two previous bankruptcies. The evidence has shown that Applicant has taken far too little action to pay off these debts. Based on his extremely large debt to the IRS, and his substantial additional debts, he has a long way to go before his debts are resolved. Based on his tenuous financial situation and his history of financial irresponsibility, Applicant has failed to demonstrate a stable and mature outlook about his finances. I, therefore, resolve Guideline F against Applicant.

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 inability to satisfy his debts. I find that none of the Mitigating Conditions (MC) apply.

FORMAL FINDINGS

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

Financial Considerations, Guideline F: Against Applicant

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: For Applicant

Subparagraph 1.k.: Against Applicant

DECISION

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

Martin H. Mogul

Administrative Judge