

DATE: July 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-13879

DECISION OF ADMINISTRATIVE JUDGE

MARY E. HENRY

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a long history excessive debt, which he has not attempted to resolve. He intentionally falsified his answers on his security clearance in a attempt to hide his indebtedness. Applicant has not mitigated the government's security concerns regarding his finances, his personal conduct and his criminal conduct. Clearance is denied.

STATEMENT OF THE CASE

On January 27, 2006, 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), Guideline E (Personal Conduct), and Guideline J (Criminal 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. On March 10, 2006, Applicant submitted a notarized response to the allegations. He elected to have his case decided on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and provided Applicant with a complete copy on April 19, 2006. Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit a response or additional evidence. This case was assigned to me on June 14, 2006.

FINDINGS OF FACT

Applicant admitted all the allegations of the SOR. [\(U\)](#) Those admissions are incorporated as findings of fact. After a complete review of the evidence in the record and upon due consideration, I make the following findings of fact.

Applicant is a 43-year-old aircraft mechanic for a defense contractor.⁽²⁾ He has worked for this contractor for more than eight years.⁽³⁾ He served seven years in the United States Air Force.⁽⁴⁾ He completed a security clearance application (SF 86) in January 2003.⁽⁵⁾

Financial Considerations

Applicant married in 1984.⁽⁶⁾ He and his wife have lived apart since 1988, but have not divorced.⁽⁷⁾ He has one child, age unknown, for whom he was paying \$550.00 a month in child support in 2003.⁽⁸⁾ He occasionally goes to Las Vegas or local casinos to play the slots or blackjack, where he has lost between \$50 and \$400 gambling during a weekend or in an evening.⁽⁹⁾ He does not believe he has a gambling problem.⁽¹⁰⁾

In September 2003, Applicant's gross monthly income totaled \$3,813, and his net monthly income totaled \$2,309.⁽¹¹⁾ His monthly expenses totaled \$1,315.⁽¹²⁾ His excess income each month was \$994.⁽¹³⁾ He states that he does provide some financial help to his mother and that his financial problems are the result of job lay offs.⁽¹⁴⁾

Applicant has 17 debts, which total \$20,645.⁽¹⁵⁾ These debts are for unpaid rent, utilities, cable, car loan, utilities, personal loans, and court judgments.⁽¹⁶⁾ He acknowledges that he had not paid any of these debts or the judgment entered against him.⁽¹⁷⁾ He has not developed a re-payment plan for his debt, nor does he intend to does so.⁽¹⁸⁾ He has not shown any present intent to resolve his debts.⁽¹⁹⁾

Personal conduct and criminal conduct

On January 16, 2003, Applicant completed and signed his security clearance application.⁽²⁰⁾ He answered "no" to each of the following questions:⁽²¹⁾

Question 35. Your Financial Record - Repossessions

In the last 7 years, have you had any property repossessed for any reason?

Question 37. Your Financial Record - Unpaid Judgments

In the last 7 years, have you had any judgments against you that have not been paid?

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?

Applicant has admitted that he intentionally falsified his answers to these questions.⁽²²⁾ He has not provided any explanation for his conduct.⁽²³⁾

Question 4 directs him to list all his residential addresses.⁽²⁴⁾ When he answered this question, he failed to provide one residential address, although he provided his other addresses.⁽²⁵⁾ He has admitted that he failed to provide this information, without further explanation.⁽²⁶⁾

During his interview with the investigator, Applicant initially told the investigator that he resided at one address. However, when presented with evidence that he resided at a different address, he admitted that he lied about his current

residence. (27)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative 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. 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. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, and 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. (28)

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. (29) The government has the burden of proving controverted facts. (30) The burden of proof is something less than a preponderance of the evidence. (31) 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. (32) Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. (33)

No one has a right to a security clearance, (34) and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." (35) Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. (36) 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. (37) 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

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

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, including car repossessions and a court judgment, which have not been paid. Applicant's financial problems clearly fall within the 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*). Although Applicant admits gambling and losing small amounts of money each time he gambles, FC DC E2.A6.1.2.5. (*financial problems that are linked to gambling, drug abuse, alcoholism, or other issues of security concern*) does not apply in this case because his outstanding debts did not arise because of his gambling and are not directly related to his recreational gambling.

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 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*). He has not talked with creditors about a payment plan; he has not presented clear indications that his financial problems are being resolved; and he has not made a good faith effort to resolve his debt problems. Thus, 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 creditors or otherwise resolve debts*) do not apply. He has chosen to use his excess funds to amuse himself, in this case at the casinos, rather than resolve his excess debt. His debt has existed for many years and continues to increase. He has not made any good faith efforts to pay his debts; rather, he has actively chosen not resolve his outstanding debt problems. Applicant has not mitigated the government's security concerns. Guideline F is decided against him.

Under Guideline E, the government alleges that Applicant deliberately falsified material facts on her security clearance application when he answered "no" to Questions 35, 37, 38, and 39. It also alleges that he falsified material facts when he failed to provide complete information in response to Question 4 and provided incorrect information during his interview. 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 has acknowledged that he intentionally falsified his answers Questions 35, 37, 38, and 39, and provided inaccurate information during his interview and in response to Question 4. His decision to omit a prior address and provide a current address is material because the lack of correct information can interfere with the investigation into his credit history. Thus, the government has established its case under Guideline E. He has provided no explanation for his conduct. He has not been forthright about his debt problems. His lack of candor and dishonesty raises questions about his trustworthiness, judgment, and reliability. He has failed to mitigate the government's concerns. Guideline E is found against Applicant.

Finally, by falsifying his answers on his security clearance application, Applicant knowingly and willfully violated 18 U.S.C. §1001, a felony offense. Thus, the government has established its case under Guideline J. His criminal conduct raises Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1. (*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*).

He has not mitigated the government's concerns because his falsification of his security clearance application and his deliberate lie to the investigator occurred recently and are not an isolated incident. Criminal Conduct Mitigation Conditions (CC MC) E2.A10.1.3.1. (*The criminal behavior was not recent*) and CC MC E2.A10.1.3.2. (*The crime was an isolated incident*) do not apply. There is no evidence that he has changed his conduct or behavior, thus, CC MC E2.A10.1.3.6. (*There is clear evidence of successful rehabilitation*) does not apply. Guideline J is found against 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 : 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: Against Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m: Against Applicant

Subparagraph 1.n: Against Applicant

Subparagraph 1.o: Against Applicant

Subparagraph 1.p: Against Applicant

Subparagraph 1.q: Against Applicant

Subparagraph 1.r: Against Applicant

Paragraph 2, Guideline E: 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

Subparagraph 2.f: Against Applicant

Paragraph 3, Guideline G: AGAINST APPLICANT

Subparagraph 3.a: Against 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. Item 3 (Applicant's response to the SOR, dated March 10, 2006) at 1-4.
2. Item 4 (Applicant's security clearance application, dated January 16, 2003) at 2.
3. *Id.*
4. *Id.* at 3.
5. Item 4, *supra* note 2, at 1.
6. *Id.* at 3.
7. Item 5 (Applicant's signed statement, dated September 19, 2003) at 3.
8. *Id.*; Applicant does not indicate whether this amount is automatically deducted from his pay or he pays this amount out of his monthly net pay.
9. *Id.*
10. *Id.*
11. *Id.* at 5.
12. *Id.* at 3, 5.
13. Note, *supra* footnote 9. Since he is current in his child support payments, I have assumed his payments are deducted from his pay.
14. *Id.* at 3.
15. Item 6 (Credit Report, dated April 28, 2003) at 5.
16. *Id.*
17. Item 3, *supra* note 1, at 1-3.
18. *Id.*
19. *Id.*
20. Item 4, *supra* note 2, at 1, 7.
21. Item 4, *supra* note 2, at 1, 10-11.

22. Item 3, *supra* note 1, at 3-4.

23. *Id.*

24. Item 4, *supra* note 2, at 1.

25. *Id.*

26. Item 3, *supra* note 1, at 3-4.

27. Item 3, *supra* note 1, at 3; Item 5, *supra* note 7, at 4.

28. Directive, Enclosure 2, ¶ E2.2.1.1. through E2.2.1.9.

29. ISCR Case No. 96-0277 at 2 (App. Bd., July 11, 1997).

30. ISCR Case No. 97-0016 at 3 (App. Bd., December 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

31. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

32. ISCR Case No. 94-1075 at 3-4 (App. Bd., August 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

33. ISCR Case No. 93-1390 at 7-8 (App. Bd. Decision and Reversal Order, January 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

34. *Egan*, 484 U.S. at 531.

35. *Id.*

36. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

37. Executive Order No. 10865 § 7.