

DATE: December 1, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 06-12650

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 currently has a significant amount of outstanding debt which he has not yet 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. Mitigation has not been shown. Clearance is denied.

STATEMENT OF THE CASE

On July 15, 2006, 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 September 19, 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 September 20, 2006, and the hearing was held on October 25, 2006.

At the hearing, Department Counsel offered seven documentary exhibits (Government Exhibits 1 through 7), and no witnesses were called. Applicant offered one documentary exhibit, (Applicant Exhibit A) and offered his own testimony. He also offered two post hearing documents which have been entered without objection (Applicant Exhibits B and C). The transcript (Tr) was received on November 13, 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.

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 Findings of Fact:

Applicant is a 40 year old employee of a defense contractor who seeks access to classified information. He is married and has three children. He served for twenty years in the United States Navy.

Paragraph 1 (Guideline F - Financial Considerations)

The SOR contains 14 allegations, 1.a. through 1.n., under Guideline F regarding debts owed by Applicant. In his Response to the SOR (RSOR) and during his testimony, Applicant admitted all of the SOR allegations, and he confirmed that none of these debts had been paid at the time of the hearing. The table below presents details about each debt as they were listed in the SOR:

Debt	Amount Owed	Current Status	Record
1.a	\$321	unpaid	RSOR, (Tr at 46)
1.b.	\$216	unpaid	RSOR, (Tr at 46)
1.c.	\$1,908	unpaid	RSOR, (Tr at 46)
1.d.	\$642	unpaid	RSOR, (Tr at 46)
1.e.	\$ 971	unpaid	RSOR, (Tr at 46)
1.f.	\$784	unpaid	RSOR, (Tr at 46)
1.g.	\$139	unpaid	RSOR, (Tr at 46)
1.h.	\$751	unpaid	RSOR, (Tr at 46)
1.i.	\$237	unpaid	RSOR, (Tr at 46)
1.j.	\$3,300	unpaid	RSOR, (Tr at 46)
1.k.	\$689	unpaid	RSOR, (Tr at 46)
1.l.	\$883	unpaid	RSOR, (Tr at 46)
1.m.	\$836	unpaid	RSOR, (Tr at 46)
1.n.	\$9,674	unpaid	RSOR, (Tr at 46)

In addition to these debts listed on the SOR, Applicant testified at the hearing that he owes his brother and sister-in-law \$5,000 on a personal loan that was made to Applicant in approximately Jan 2003 (Tr at 26-27).

Applicant testified that he started making payments to a credit counseling company in August 2006. Exhibit B shows that Applicant has \$345 available for settlement and that he has made two payments of \$224 to one of his creditors.

Applicant cited several reasons for his history of failure to resolve his debts. These included: his youth and immaturity when he first received credit cards at 19 years of age, that he had to pay \$1,200 for his mother-in-law's funeral, and that he had to pay additional money to aid his father-in-law. Finally, he was involved in an automobile accident, wherein he had to pay \$8,000 to the other driver's insurance company. However, this occurred because of his less than responsible financial behavior, as he was driving his vehicle without current automobile insurance.

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 Guideline F, the Government has established that Applicant has had a long history of financial difficulties. The evidence has shown that Applicant has only recently started to take action to pay off these debts. Clearly, he has a long way to go before his debts are resolved. Based on his tenuous financial situation and his history of financial irresponsibility, it is too soon to determine that Applicant has demonstrated 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 and unwillingness 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.: Against Applicant

Subparagraph 1.k.: Against Applicant Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: Against Applicant

Subparagraph 1.n.: Against Applicant

DECISION

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

Martin H. Mogul

Administrative Judge