

DATE: August 14, 1997

In Re:

Applicant for Security Clearance

ISCR Case No. 96-0769

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR THE GOVERNMENT

Barry M. Sax, Esquire

Department Counsel

FOR THE APPLICANT

Pro Se

STATEMENT OF THE CASE

On 28 October 1996, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 27 November 1996, Applicant answered the SOR and requested an administrative decision on the record. Applicant did not respond to the Government's File of Relevant Material (FORM)--issued 22 April 1997; the record in this case closed 21 June 1997, the day the response was due at DOHA. The case was assigned to me on 25 July 1997. I received the case on 30 July 1997 to determine whether clearance should be granted, continued, denied or revoked.

The SOR is attached to this Decision and incorporated by reference.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR, except for subparagraphs 1. n. and o., 2.j and m., and 3. a., b., c.; accordingly, I incorporate those admissions as findings of fact.

Applicant--a 40-year old employee of a defense contractor--seeks to retain a secret clearance.

Applicant has a recent history of financial irresponsibility. The SOR alleges 20 debts--totaling nearly \$59,000.00--falling past due since 1995.⁽²⁾ Although Applicant apparently had some financial difficulty before 1995,⁽³⁾ he never felt the impact of those problems until he married his second wife in May 1995. After he remarried, he bought a house. In January 1996, the IRS levied his salary for the unpaid taxes, interest, and penalties from 1990, 1991, and 1992. His first wife went to court to get custody of their children and child support.⁽⁴⁾ In March 1996, Applicant was ordered to pay \$600.00 per month child support. In July 1996--as part of corporate downsizing--Applicant changed from being a salaried employee to a wage employee, at a lower pay rate. These events adversely affected Applicant's ability to pay his debts. He had two cars repossessed in 1996, both eventually resulting in deficiencies.

At the time of Applicant's sworn statement to the DIS in August 1996, Applicant expressed an intent to pay these debts, but he had no clear picture of his financial situation because of the recent changes to his income and garnishments. However, in the nearly eleven months between that statement and the closing of the record in this case, Applicant has provided no evidence that shows his financial situation, or any efforts to deal with his acknowledged indebtedness.

A Personal Financial Statement (PFS)(DIS Form 154) prepared 2 August 1996 shows Applicant with a net monthly income of \$184.00--after deductions for child support and the IRS levy. Nine of the debts alleged in the SOR are less than \$850.00, seven less than \$300.00.

Applicant also has an extensive history of alcohol abuse. Although he began to drink in 1975, his heaviest abuse appears to have been between 1989 and 1995. From 1989 to May 1993, Applicant drank 8-10 beers daily, and sometimes as much as 12 beers on Saturday or Sunday. After his May 1993 DUI, Applicant began attending Alcoholics Anonymous (AA) meetings and decreased his alcohol consumption--6-12 beers on the weekend; occasionally 2-4 beers a week twice monthly--from May 1993 to September 1994. In September 1994, Applicant stopped drinking altogether as part of his counseling program.⁽⁵⁾ He left the program in April 1995.⁽⁶⁾ He stopped attending AA meetings in July 1995.

In August 1995, Applicant relapsed into alcohol abuse. He was involved in an alcohol-related incident on 11 August 1995, and in several distinct incidents on 30 August 1995. After the 11 August 1995 incident, Applicant began additional treatment and evaluation for alcohol abuse and dependence.⁽⁷⁾ However, he left treatment against medical advice (Item 9) and relapsed on 30 August 1995; he was arrested for public intoxication early in the day and arrested for DUI in the afternoon. Applicant received treatment for his alcohol abuse in September and October 1995, during which time he did not drink. However, on one occasion in November 1995, he drank all evening, and on Christmas Eve 1995, he drank 6-8 beers. He has not consumed alcohol since then. Although he acknowledges that he is an alcoholic, there is no evidence in the record to suggest that he is now involved in any form of rehabilitation program or participates in AA or similar organization.

Applicant deliberately failed to file his federal income tax returns in 1990, 1991, and 1992, in violation of federal law. He knew he was required to file the returns but did not get around to doing it. The IRS levied his wages in January 1996. There is no evidence in the record that Applicant has ever filed these returns.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. 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.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

FINANCIAL CONSIDERATIONS (CRITERION 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.

Conditions that could raise a security concern and may be disqualifying include:

- (1) a history of not meeting financial obligations;
- (3) inability or unwillingness to satisfy debts;
- (5) financial problems that are linked to . . . alcoholism. . . .

Conditions that could mitigate security concerns include:

(3) the conditions that resulted in the behavior were largely beyond the person's control (e.g, loss of employment. . . divorce).

ALCOHOL CONSUMPTION (CRITERION G)

Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

Conditions that could raise a security concern and may be disqualifying include:

(1) alcohol-related incidents away from work, such as driving while under the influence, . . . or other criminal incidents related to alcohol use;

(3) diagnosis by a credentialed medical professional of alcohol abuse or alcohol dependence;

(5) consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program.

Conditions that could mitigate security concerns include:

(4) following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional.

CRIMINAL CONDUCT (CRITERION J)

A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Conditions that could raise a security concern and may be disqualifying include:

(1) any criminal conduct, regardless of whether the person was formally charged;

Conditions that could mitigate security concerns include:

None.

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 the 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.

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

The Government has established its case under criterion F. The record evidence clearly establishes Applicant's indebtedness and his irresponsible handling of that indebtedness. While changes in Applicant's financial situation in 1995 provides some explanation for the debts, the record does not clearly establish the connection between the changes in financial condition and the indebtedness; nor does the change in financial condition explain Applicant's failure to file income tax returns for 1990, 1991, and 1992. Further, even assuming that Applicant's inability to pay his debts is due to circumstances beyond his control, that fact does not explain his inaction in dealing with the indebtedness. Nearly a year has elapsed since Applicant's PFS suggested he had \$184.00 a month--\$2,208.00 a year--available for debt reduction; that amount would have nearly satisfied the principal amount due on all nine debts of less than \$850.00. Yet, the record contains no evidence of any attempt by Applicant to satisfy these debts or communicate with the creditors in any way. I conclude from Applicant's inaction that he has no real intent to deal with his indebtedness, either by paying the debts or by discharging them in bankruptcy. I find criterion F. against Applicant.

The Government has established its case under criterion G. At a minimum, Applicant abused alcohol heavily between 1989 and 1993, culminating in his DUI arrest in May 1993. While his alcohol consumption decreased after 1993, and stopped altogether for some time between 1994 and August 1995, he had a major relapse in August 1995--culminating in another DUI arrest--that continued until December 1995. While Applicant has not consumed alcohol since December 1995, that abstinence, standing alone, is insufficient to lead me to conclude that Applicant's alcohol abuse is behind him. Applicant has been diagnosed by competent medical authority as alcohol dependent, and the medical records support that diagnosis. The record contains no evidence that Applicant has successfully completed a rehabilitation program after his 1995 relapse, nor is there any evidence of participation in Alcoholics Anonymous or similar program. Because Applicant had a significant period of sobriety before his relapse in August 1995, I conclude that this most recent period of sobriety must be accompanied by some other indications that Applicant has learned to maintain sobriety. Applicant has not provided any evidence to suggest he has developed the necessary framework to maintain sobriety. I find criterion G. against Applicant.

The Government has established its case under criterion J. Applicant knew he was required to file his federal income tax returns and deliberately failed to do so. Applicant's explanations provide no mitigation for his failure to file, and the record does not establish that Applicant has rehabilitated himself, or that the conduct is unlikely to recur. I find criterion J. against Applicant.

FORMAL FINDINGS

Paragraph 1. Criterion F: Against THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

Subparagraph j: Against the Applicant

Subparagraph k: Against the Applicant

Subparagraph l: Against the Applicant

Subparagraph m: Against the Applicant

Subparagraph n: Against the Applicant

Subparagraph o: Against the Applicant

Subparagraph p: Against the Applicant

Subparagraph q: Against the Applicant

Subparagraph r: Against the Applicant

Subparagraph s: Against the Applicant

Subparagraph t: Against the Applicant

Subparagraph u: Against the Applicant

Paragraph 2. Criterion G: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

Subparagraph j: Against the Applicant

Subparagraph k: Against the Applicant

Subparagraph l: Against the Applicant

Subparagraph m: Against the Applicant

Paragraph 3. Criterion J: Against THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against 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 Applicant.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996 (Directive).
2. Applicant generally admits the indebtedness, and those he disputes I find to be legally his responsibility. Although he challenges the amount of debt under subparagraph 1.i., record evidence clearly establishes two accounts at this creditor for the amount alleged. And while Applicant denies the debts at subparagraphs 1.n. and m.--claiming them to be the responsibility of his wife (now separated from Applicant)--record evidence establishes Applicant as legally responsible for the accounts.
3. For example, Applicant failed to file his federal income tax returns for 1990, 1991, and 1992 because he never took the time to file.
4. Previously, they had joint custody and no formal child support agreement.
5. Applicant had been referred by his employer because of his tardiness at work. Applicant was seen weekly from August 1993 to April 1995 (Applicant reports his attendance from September 1994) for problems relating to a sleep disorder, alcohol, children, and his ex-wife.
6. Applicant denies leaving the program against medical advice, and the medical record (FORM, Item 7) does not conclusively establish that the termination of counseling was against medical advice, particularly where Applicant's prognosis was noted as "excellent." Accordingly, I conclude that Applicant did not leave this counseling against medical advice.
7. SOR paragraph 1.l. alleges--and Applicant admits--treatment at a hospital from 27-29 September 1995; however, careful reading of Items 8 and 9 reveal the correct dates to be 27-29 August 1995. Item 8 contains typewritten treatment dates of September, however, the text refers to other evaluations done in August 1995 (consistent with the psychiatric evaluation of Item 9 and other handwritten admission notes contained in Item 9). Further, Item 8 indicates that it was dictated on 20 September 1995--a date before the nominal treatment dates reported. I conclude that the correct dates of treatment for this episode are 27-29 August 1995. This is also consistent with Applicant's stated chronology in his sworn statement, and the medical treatment received at a different facility 31 August-5 September 1995 after his 30 August 1995 relapse (SOR, subparagraph 1.k.)