

DATE: July 10, 1997

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0217

DECISION OF ADMINISTRATIVE JUDGE

JOHN R. ERCK

APPEARANCES

FOR THE GOVERNMENT

William S. Fields, Esquire

Department Counsel

FOR THE APPLICANT

Pro Se

STATEMENT OF THE CASE

On March 19, 1997, the Defense Office of Hearings and Appeals (DOHA), 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 Personnel Security Clearance Review Program" (Directive) dated January 2, 1992, as amended by Change 3, dated February 13, 1996, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make a preliminary determination that it was clearly consistent with the national interest to grant or continue a security clearance for him.

A copy of the SOR is attached to this Decision and included herein by reference.

The Applicant responded to the SOR in writing on April 9, 1997, and requested a hearing before a DOHA Administrative Judge. The case was assigned to this Administrative Judge on ay 12, 1997, and on June 27, 1997, a hearing was convened for the purpose of considering whether it was clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. The Government's case consisted of seven exhibits and no witnesses; Applicant relied on his own testimony and on two exhibits. A transcript of the proceedings was received on July 7, 1997.

FINDINGS OF FACT

Applicant has admitted all of the factual allegations set forth in the SOR, except for the factual allegation set forth under subparagraph 1.j., which he has denied. I have accepted Applicant's admissions and incorporate them as part of my findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is 27 years old and has been employed by his current employer since March 1996. In his first attempt to obtain a security clearance, he is applying for a clearance at the secret level. A favorable preliminary determination could not be made because of financial considerations.

In his signed, sworn statement to the Defense Investigative Service (Govt. Exh. 2) and in his answer to the SOR, Applicant has admitted incurring the indebtedness alleged in the SOR over a period of years through a variety of means:

- In 1990, he was issued a credit card by Bank A. This account became delinquent in September 1994. When the account was charged off in March 1995, Applicant owed \$1,260.87.
- He opened an account with Bank B in February of 1992 in order to pay off college debt. This account became delinquent in July 1994; Applicant still owes \$738.74 to Bank B.
- In July 1994, Applicant borrowed money from Bank C for the purchase of an automobile. He made his last payment on this account in February 1995; the automobile has since been repossessed.
- Applicant owes an agency of State X--\$12,999.00 plus interest--for the education loans he obtained between October 1988 and June 1992.
- Applicant owes Insurance Company Z \$31.21 for premiums which were due in 1993.
- He owes the telephone company \$403.04 for services provides provided prior to 1995.
- He owes a grocery store \$242.20 as a result of checks which were returned (bounced) because he did not have sufficient funds in his account.
- Applicant owes Insurance Company Y \$937.01 as a result of an automobile accident in July 1993.
- Finally, an apartment complex has obtained a judgment against Applicant in the amount of \$1,070.12 for unpaid rent.

In the same signed, sworn statement which Applicant made to the DIS on June 5, 1996 (Govt. Exh. 2), Applicant promised that he would begin making payments on all of the delinquent accounts by the end of that month. However, as of the date of the hearing, June 27, 1997, Applicant had not made a single payment on any of these accounts. He did not take advantage of Bank B's offer to accept a 50% payment in full satisfaction of Applicant's obligation to them. Instead of paying down his indebtedness as promised, Applicant has incurred additional debt by purchasing a new car in November 1996 (Tr. 36).

At his hearing, Applicant proffered two exhibits to establish that he had sought the services of a financial counselor two weeks before the hearing (Tr. 34). The counselor had worked out a payment schedule for Applicant, but as of the date of the hearing, Applicant had not made any payments in accordance with that schedule (Tr. 34).

POLICIES

The Adjudicative Guidelines of the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations with reasonable consistency that are clearly consistent with the interests of national security. In making those overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines but in the context of the factors set forth in section F.3. of the Directive as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate that the facts proven have a nexus to an applicant's lack of security worthiness.

The following Adjudicative Guidelines are deemed applicable to the instant matter.

FINANCIAL CONSIDERATIONS

(Criterion F)

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

(1) A history of not meeting financial obligations;

(3) Inability or unwillingness to satisfy debts;

Conditions that could mitigate security concerns:

None

Burden of Proof

The Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government establishes its case, the burden of persuasion shifts to the applicant to establish his security suitability through evidence which refutes, mitigates, or extenuates the disqualifying conduct and demonstrates that it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the 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 is nonetheless security worthy. As noted by the United States Supreme Court in *Department of 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." As this Administrative Judge understands that Court's rationale, doubts are to be resolved against an applicant.

CONCLUSIONS

Having considered the record evidence in accordance with the appropriate legal precepts and factors, this Administrative Judge concludes that the Government has established its case with regard to Criterion F. In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in Section F.3, as well as those referred to in the section dealing with the Adjudicative Process, both in the Directive.

The Government has met its burden with respect to Criterion F. In his answer to the SOR, Applicant admitted that he was delinquent on financial obligations totaling more than \$21,000.00. This indebtedness has been incurred through various expenditures over the past seven years. There is no evidence that Applicant's financial problems have been caused by uninsured medical expenses for Applicant or his family, that Applicant has been unemployed, or that he has experienced a catastrophic loss.

Applicant's overdue financial obligations would not of themselves bar him from holding a security clearance if he had made a reasonable and consistent effort during the past year to pay down those obligations. The indebtedness at issue--\$21,845.12--is not an overwhelming sum of money; in fact it is less than the price of many new cars. The indebtedness is of concern because Applicant has done nothing in the past twelve months to address the problem. Even after promising the DIS one year ago that he would begin making payments on each delinquent account, he has not made a single payment on any of the accounts. And Applicant does not explain why he has not made at least a token payment on one or more obligation--when he appears to have had income left over each month after paying all of his other expenses.

Against this background, Applicant's efforts to mitigate his prior neglect are inadequate to their task. His visit to a financial counselor shortly before the hearing and his proffer of a payment schedule for his delinquent obligations--prepared by that counselor--does not satisfy any of the mitigating conditions under Criterion F. Applicant's last minute effort to appear concerned about his financial problems does not constitute a good faith effort "to repay overdue

creditors or otherwise resolve debts." Nor are Applicant's efforts sufficient to demonstrate "clear indications that the problem is being resolved or is under control." Because Applicant had failed to honor his previous promise to make payments on delinquent obligations, his proffered financial plan is not persuasive in the absence of some demonstrated payment history. Criterion F is concluded against Applicant.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 (Criterion F) AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. Against the Applicant

Subparagraph 1.h. Against the Applicant

Subparagraph 1.i. Against the Applicant

Subparagraph 1.j. 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 continue Applicant's security clearance.

John R. Erck

Administrative Judge