

DATE: January 2, 1998

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0281

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

William S. Fields, Esquire, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On 15 April 1997, 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 7 July 1997, Applicant answered the SOR and requested an administrative decision on the record. On 1 December 1997, Applicant responded to the Government's File of Relevant Material (FORM)--issued 29 October 1997; the record in this case closed 1 December 1997, the day the response was received at DOHA. The case was assigned to me because on 8 December 1997. I received the case on 10 December 1997 to determine whether clearance should be granted, continued, denied or revoked.

FINDINGS OF FACT

Applicant admitted all the allegations of the SOR, except for subparagraphs l.i., p. and q.; accordingly, I incorporate those admissions as findings of fact.⁽²⁾

Applicant--a 37-year old employee of a defense contractor--seeks access to classified information.

The SOR alleges 17 debts⁽³⁾--totaling nearly \$23,000.00--falling past due between approximately December 1993 and January 1996. The bulk of indebtedness--over \$18,000.00--is attributable to Applicant's failed business attempt in mid-1994; the balance of indebtedness is fallout from that failed business venture, Applicant's move to another state looking for work, and his later unemployment from November 1994 to September 1995.

Applicant's financial difficulties began in February 1994. Applicant's employer of 17 years informed him that due to downsizing in the company, Applicant would have to become a subcontractor to the company or be laid off. Applicant was the only source of family income at the time,⁽⁴⁾ so Applicant chose to become a contractor. Applicant took out a number of business loans to start up his company (and comply with local business regulations as well as his prime

contractor's business requirements), which were personal loans because the company was too new to borrow in its own name. Applicant's last day of work as an employee of the prime contractor was 31 March 1994; on 1 April 1994, he became a subcontractor of his former employer.

Applicant's venture was not a success. The prime contractor was slow to pay Applicant on his subcontracts,⁽⁵⁾ and the prime contractor was apparently not entirely pleased with Applicant's performance on the contracts.⁽⁶⁾ Applicant's agreement with the prime contractor required Applicant to do business only with the prime contractor. When the prime contractor canceled its contract with Applicant, he became unemployed. Applicant moved to another state with the promise of a new job with a different company, but the job never materialized. Applicant's spouse obtained employment, but at much lower wages than she had made during the periods of time she had been employed by the federal government.

In July 1995, Applicant and his spouse moved again, back to an area where they had both been employed before. In September 1995, Applicant got a job (ironically, with his old employer, albeit at a lower pay scale) and moved to his present employer in November 1995; Applicant's spouse got another job with the federal government. On 18 March 1996, Applicant applied for a security clearance (Item 4), disclosing his failed business venture on the financial disclosure question.

Applicant's credit bureau report of 11 July 1996 (Item 6) showed 17 collection/charge off accounts totaling \$25,887.00 and 4 judgments totaling \$8,473.00. In a sworn statement to the DIS on 14 November 1996 (Item 5), Applicant claimed to be making payment arrangements with his creditors, but provided no corroboration of his efforts.⁽⁷⁾ in without corroboration of any efforts actually undertaken to satisfy creditors or establish a repayment schedule.

In his 7 July 1997 answer to the SOR,⁽⁸⁾ Applicant continued his claim that he is working with his creditors, but again provided no corroboration.⁽⁹⁾ Applicant's 1 December 1997 response to the FORM contained some corroboration of Applicant's efforts.

Applicant's documentation establishes that the debt in subparagraph 1.i was paid in 1995. Otherwise, his documentation corroborates that he has contacted the creditors in subparagraphs 1.b. through 1.h. In some instances he has negotiated payment schedules (subparagraphs 1.b., c., d.); in others, the creditor has indicated that they will not accept the offered monthly payment or has not responded to Applicant's disputed amount (subparagraphs e., h.); still another indicated they are not pursuing the charged off amount (subparagraph 1.g.). Unfortunately, these corroborative letters establish Applicant's actions taken in October 1997, and do not establish actual payment on any of these accounts. Only one creditor (subparagraph 1.f) indicates that Applicant has been making payments on the account.⁽¹⁰⁾ Applicant's documentation shows he went to his spouse's EAP for financial counseling and agreed to see a consumer credit counseling service. He also had a follow up appointment scheduled for 9 October 1997.

Applicant is apparently current on his expenses since becoming reemployed in September 1995. He and his spouse are current on their rent payments. Applicant is a valued employee of his company--and the company's principal customer--and does very good work. However, except as noted above, there is no proof of payments claimed, nor is there any financial statement demonstrating that Applicant is financially able to make the negotiated payments and still stay current on his living expenses.

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;

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, a business turndown. . .);

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. Although the problems may have been precipitated by Applicant's forced conversion to an independent subcontractor of his former employer and subsequent unemployment, Applicant's handling of the indebtedness raises serious concern about his fitness for access to classified information. With the exception of one creditor, the record evidence reflects that Applicant did not take any meaningful action to address his indebtedness until after October 1997, nearly six months after he received the SOR and over two years since he became reemployed. Even then, he has contacted only eight of the seventeen creditors listed in the SOR. ⁽¹¹⁾ Under these circumstances, his efforts at resolving his financial situation does not appear to be a good faith effort to resolve his debts. Similarly, although Applicant obtained some initial financial counseling in approximately summer 1997, and has recently received more counseling and agreed to go to a consumer credit counsel, these October 1997 efforts do not provide clear indications that the financial situation is being resolved or under control.

Applicant may fully intend to resolve his indebtedness with these creditors. The actions he has taken represent a belated start--but only a start--to do so. It remains to be seen whether Applicant will be successful in doing so, and given the lateness of the start it is too early to conclude that Applicant will be successful. Until it is clear that Applicant's financial difficulties are behind him, he remains potentially subject to influence or coercion. I find criterion F. 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: For 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: For the Applicant

Subparagraph q: For 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 provided proof that the debt in subparagraph 1.i. was paid 15 September 1995. Applicant states that the debt in subparagraph 1.p. was for failing to return a cable box after moving--since returned. Applicant states that he does not know what the debt in subparagraph 1.q. is for. I accept Applicant's explanation for subparagraph 1.p., and, given the inherent potential for erroneous information in credit bureau reports, I am unwilling to find subparagraph 1.q. against Applicant in the face of his denial. Accordingly, I find subparagraphs 1.i., p., and q. for Applicant.
3. Including four judgments.
4. Applicant's job with his company had previously taken him to job sites where Applicant's spouse held employment with the federal government. However, this particular job site was in a region with no federal presence.

5. Indeed, Applicant's finances were so perilous during this period that two of his business loans were delinquent, if not charged off, in August and September 1994.

6. On 31 October 1994, the prime contractor canceled Appellant's subcontract, citing unspecified problems which remained uncorrected from an earlier correspondence. Whatever the source of the prime contractor's disaffection with Applicant's business operation, I do not consider these problems to change the character of Applicant's financial problems as being caused by circumstances beyond his control--business downturn/loss of employment.

7. However, Applicant only claimed payments to the creditor in subparagraph 1.f. (balance paid down to \$1,700.00) and negotiations with the creditor in subparagraph 1.d.

8. Which is essentially the same letter as formed the bulk of his statement to the DIS, expanded to include the creditors not discussed in the statement.

9. He claimed the balance on subparagraph 1.f was now \$1,300.00; he was still in negotiations with the creditors in subparagraph 1.d. He also claimed to have contacted the Family Services Center at his spouse's employer for credit advice.

10. That creditor reports that Applicant has paid the balance in the account down to \$1,247.85, having paid \$720.00 on the account. While this corroborates Applicant's earlier claims in his answer and sworn statement that he has been making payments on this account, the letter suggest that Applicant has overstated the progress he was making. Applicant's 7 July 1997 answer claimed the balance was approximately \$1,300.00, yet the creditor's 29 September 1997 letter shows the balance as stated above.

11. And while I have found two of those allegations for the Applicant, that leaves five debts entirely unaddressed.