

STATEMENT OF THE CASE

On May 11, 2007 , the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) (Exhibit 1) to the 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 a clearance should be denied or revoked.

In a signed and sworn statement, dated June 1, 2007, Applicant responded to the SOR allegations (RSOR) (Exhibit 2). He requested that his case be decided on the written record in lieu of a hearing.

On June 20, 2007, Department Counsel prepared the Department's written case. A complete copy of the File of Relevant Material (FORM) was provided to Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due by July 28, 2007, but no response to the FORM was filed. The case was assigned to another Administrative Judge on September 10, 2007, but it was reassigned to this Administrative Judge on September 14, 2007.

Department Counsel offered eight documentary items (Exhibits 1-8), which have been admitted without objection. Applicant offered no documentary evidence into the record.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline F (Financial Considerations) of the Directive. The SOR contains eleven allegations, 1.a., through 1.k., under Guideline F. In the FORM, Department Counsel included a Motion to Amend the SOR. Specifically, the Government moves to delete allegation 1.b. from the SOR, as they received evidence that this debt had been resolved as of April 5, 2006. Through the FORM, Applicant received notice of this motion, and no objection was filed by Applicant. Allegation 1.b. has now been stricken from the SOR.

Applicant has admitted SOR allegations 1.a. through 1.k., with the exception of 1.d., which he denies. The admitted allegations are incorporated herein as findings of fact.

Since this matter is being decided without a hearing, my evaluation is necessarily limited to the contents of the various documents that are found in the case file. After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the FORM, and the

admitted documents, and upon due consideration of that evidence, I make the following Additional findings of fact:

Applicant is 52 years old. He is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Paragraph 1 (Guideline F - Financial Considerations)

The Amended SOR lists 10 allegations of overdue debts, 1.a. through 1.k, under Adjudicative Guideline F. These debts will be discussed in the order that they were listed in the SOR:

1.a. This overdue debt to Creditor 1 is cited in the SOR in the amount of \$650. In his RSOR (Item 3), Applicant admits this debt is owed, but he avers that he plans to have this debt “corrected” by September 2007. No evidence was introduced to show that this debt has been paid. I find that this debt is still due and owing.

1.b. As discussed above, this allegation has been deleted from the SOR.

1.c. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$265. In Item 3, Applicant admits this debt is owed, but he avers that he plans to resolve this debt. No evidence was introduced to show that this debt has been paid. I find that this debt is still due and owing.

1.d. This overdue debt to Creditor 3 is cited in the SOR in the amount of \$13,494. In Item 3, Applicant denies that he owes this debt for an automobile that was repossessed in 2006. He has furnished no evidence to support his allegation that he does not owe this debt. Therefore, I find that this debt is still due and owing.

1.e. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$34. In Item 3, Applicant admits this debt is owed, but he avers that he plans to resolve this debt. No evidence was introduced to show that this debt has been paid. I find that this debt is still due and owing.

1.f. This overdue debt to Creditor 5 is cited in the SOR in the amount of \$35. In Item 3, Applicant admits this debt is owed, but he avers that he plans to resolve this debt. No evidence was introduced to show that this debt has been paid. I find that this debt is still due and owing.

1.g. This overdue debt to Creditor 6 is cited in the SOR in the amount of \$1,013. In Item 3, Applicant admits this debt is owed, but he indicates that he was advised by an attorney that, since this debt was old and had been written off, he should simply take no action and wait for the debt to be removed from his credit report. I find that this debt is still due and owing.

1.h. This overdue debt to Creditor 7 is cited in the SOR in the amount of \$2,023. In Item 3, Applicant admits this debt is owed, but he indicates that he was advised by an attorney that, since this debt was old and had been written off, he should simply take no action and wait for the debt to be removed from his credit report. I find that this debt is still due and owing.

1.i. This overdue debt to Creditor 8 is cited in the SOR in the amount of \$2,941. In Item 3, Applicant admits this debt is owed, but he indicates that he was advised by an attorney that, since this debt was old and had been written off, he should simply take no action and wait for the debt to

be removed from his credit report. I find that this debt is still due and owing.

1.j. This overdue debt to Creditor 9 is cited in the SOR in the amount of \$100. In Item 3, Applicant admits this debt is owed, but he avers that he plans to resolve this debt. No evidence was introduced to show that this debt has been paid. I find that this debt is still due and owing.

1.k. This overdue debt to Creditor 10 is cited in the SOR in the amount of \$1,565. In Item 3, Applicant admits this debt is owed, but he indicates that he was advised by an attorney that, since this debt was old and had been written off, he should simply take no action and wait for the debt to be removed from his credit report. I find that this debt is still due and owing.

Applicant indicates that his financial problems began when he purchased a home in 2001, which combined with his wife's ill health, caused him to become overextended. He claimed that because of his wife's infirmities, including being wheelchair bound which was why they had to purchase a new home, and her medical bills, his finances continued to deteriorate. However, Applicant submitted no evidence that he will be able to manage his finances better in the future.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case.

As set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility guidelines established in the DoD Directive identify personal characteristics

and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future."

The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

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

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant her a security clearance. This the Applicant has not done.

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following with respect to Guidelines F:

The Government has established its case under Guideline F. The record evidence clearly establishes Applicant's long history of indebtedness, and there is no evidence that Applicant has resolved these overdue debts.

Regarding the Disqualifying Conditions (DC) under Guideline F in the Adjudicative Guidelines, I conclude both DC 19 (a) and (c) apply, because of Appellant's "history of not meeting financial obligations" and his apparent "unwillingness to satisfy his debts."

In considering the Mitigating Conditions (MC) 20, MC (b) could be argued to apply since part of Applicant's financial difficulties occurred because of his wife's illness. However, no evidence was introduced to establish that Applicant "acted responsibly under the circumstances." Also MC (e) does not apply because while Applicant has indicated that he does dispute his largest debt, \$13,494 in allegation 1.d., he has provided no evidence to substantiate the basis of the dispute.

Until Applicant makes a good-faith effort and can prove that he has resolved his overdue debts, and he can establish a record of financial responsibility and stability, security concerns will continue to exist under Guideline F. I resolve Guideline F against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: 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

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.

Martin H. Mogul
Administrative Judge