



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
-----) ISCR Case No. 07-15372
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Braden Murphy, Esquire, Department Counsel
For Applicant: David Heyboer, Esquire

December 8, 2008

Decision

HOWE, Philip S., Administrative Judge:

On December 22, 2004, Applicant submitted his Security Clearance Application (SF 86). On March 18, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines F, E, and J. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on April 8, 2008. He answered the SOR in writing on April 25, 2008, and requested a hearing before an Administrative Judge. DOHA received the request on April 28, 2008. Department Counsel was prepared to proceed on June 17, 2008. The case was assigned to another administrative judge on June 18, 2008. It was later reassigned to me on the basis of caseload. DOHA issued a Notice of Hearing on June 25, 2008, setting the hearing for

July 14, 2008. Applicant moved to continue the hearing because his counsel had a jury trial scheduled the same week in a state court. The Government had no objection to the continuance. I granted Applicant's request for a delay in order for his counsel to be available. DOHA issued a second Notice of Hearing on September 16, 2008, and I convened the hearing as scheduled on October 15, 2008. The Government offered Exhibits (Ex.) 1 through 9, which were received without objection. Applicant testified. DOHA received the transcript of the hearing (Tr.) on October 22, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated April 25, 2008, Applicant denied all of the factual allegations in the SOR, with explanations He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 55 years old, divorced, and was born in a Middle Eastern country. He has two children who attend college. He immigrated to the United States and became a U.S. citizen in 1976. He is currently in a common law relationship with a woman he considers his wife. He lives in her house. In 1997, Applicant was diagnosed with leukemia. He has been on Social Security disability since 1998 for this condition. His last chemotherapy treatment was in 2003, and his illness is in remission. He is currently unemployed. Previously, he was unemployed from 1996 to 2004. He did travel for a bank overseas to Africa and Asia in 1998 for which his expenses were paid. (Tr. 20, 21, 30-32, 42, 55, 61, 62, 68, 88, 102, 116, 120; Exhibits 1, 3, 8)

Applicant was the president of a family-owned supermarket corporation in 1981. The business failed in 1992, and a receiver was appointed. After that business was sold, Applicant entered the potato chip distribution business from 1994 to 1996. He stopped working when he became ill with leukemia. He has not filed a state or federal income tax return since 1995 because his income is too low to be required to do so, he claims. In December 2007, his monthly income was \$1,394, consisting of his Social Security income. He did earn \$7,200 monthly for each of four months in 2008 working for a defense contractor, along with another \$1,300 for part-time contractor work. In 2008, his annual income should exceed \$30,000 with his contractor work and his Social Security payments. He seeks a security clearance so that he can be a translator for a defense contractor, making in excess of \$200,000 annually. (Tr. 22-25, 31, 63-67, 78, 116, 119; Exhibits 1, 3, 8)

Applicant has 19 unpaid delinquent debts totaling \$127,334. These debts include tax liens from the supermarket closure in 1992, various medical bills for co-payments related to his medical treatments, credit card purchases, which he has not paid, and loans. Applicant claims he does not owe these debts, denying each of them in his Answer, because the liens have expired under state or federal law, or the debts are uncollectible under state law as beyond the statute of limitations. Applicant did not know the term of the applicable statute of limitations. He does not intend to repay any

of these debts. He has not contacted the creditors since he received the SOR in March 2008. He has made no installment payment arrangements, nor has he entered any negotiations to compromise any debt listed in the SOR. (Tr. 23-27, 33, 38-49, 58-60, 66, 67, 75, 80-93, 101, 104-115, 117, 129-131; Exhibits 2, 4-5, 7-9)

Applicant owes \$43,711 to the Internal Revenue Service on a 1998 tax lien resulting from the failed supermarket business. Applicant also has a 1997 federal tax lien against him for \$43,727 for the same business. A state tax lien also is on file against Applicant for the same business taxes in the amount of \$17,209. These debts are listed in Paragraphs 1.a, 1.b, and 1.c of the SOR. His December 2004 credit report shows two federal tax liens and two state tax liens for individual accounts, which could include personal income tax owed for the 1995 tax year as Applicant told the Government investigator in 2007. Applicant claims some of these liens were filed against him as an officer of the supermarket corporation, and he has no obligation to pay these amounts, in part now because the liens are not enforceable under state law. Applicant denied knowledge of the federal liens, but also testified he learned about them in 1996 or 1997, though not the amounts until 2004. His October 8, 2008 credit report shows the two federal tax liens as still current. Previously, while seeking a translator's job with a defense contractor, Applicant contacted an attorney and accountant in 2004 to get his tax liens removed from his credit reports. All of these remain unresolved. (Tr. 22-27, 53, 66, 67, 73, 106-115; Exhibits 2, 4, 5, 7, 8 at pages 2, 11, 12, and 39, and Exhibit 9)

Applicant owes \$119 to a medical provider (Paragraph 1.d), \$8,643.66 on a judgment from August 2000 in favor of a hospital for treatment rendered to Applicant (Paragraph 1.e), \$1,153 to a collector for a medical account from 2003 (Paragraph 1.g), another account for \$3,636 owed to a medical provider from 2003 (Paragraph 1.h), \$227 on a medical account from 2004 (Paragraph 1.i), \$943 for medical services in 2005 (Paragraph 1.l), another \$252 owed to the same hospital from 2006 (Paragraph 1.o), a debt for \$1,635 owed to another medical provider from 2006 (Paragraph 1.p), \$1,635 owed to a dentist for a crown replacement on one of his teeth in 2006 which he refuses to pay because the crown was defective (Paragraph 1.q), another account from 2006 for \$1,404 owed to a medical provider (Paragraph 1.r), and the last medical debt owed listed in the SOR is for \$251 from 2007 (Paragraph 1.s). Applicant claims his medical insurance should have paid all these amounts as a result of his leukemia treatments. Applicant also claims Social Security was supposed to pay all his medical bills while he received disability. He relies on his state's statute of limitations for contractual disputes in refusing to repay any of these debts. These debts are unresolved. (Tr. 32-87, 101; Exhibits 2, 4-9)

Applicant also owes five delinquent debts to non-medical creditors. He owes \$175 to a collector for a telephone bill from 2001 he disputes because the company allegedly overcharged him on the minute rate (Paragraph 1.f). The next debt is owed to a bank for a bad debt in the amount of \$1,389 owed since 2005 (Paragraph 1.j). Applicant claims there was a \$300 limit on the card, but if he paid late or spent beyond that amount, the extra fees would be imposed and those actions made the amount

climb to \$1,389. Applicant does not intend to pay that debt. Applicant owes a department store \$177 on a charge card, but claims the debt is really owed by his common-law wife since 2005 (Paragraph 1.k). He spoke with her about the debt, but it has not been paid. He owes a collector \$933 on a delinquent account (Paragraph 1.m) owed since 2005. Applicant's final debt is owed to collector on a credit card, in the amount of \$570 (Paragraph 1.n). Applicant disclaims any knowledge of this debt or the creditor. Applicant relies on his state's statute of limitations for contractual disputes in refusing to repay any of these debts. None of these debts are resolved. (Tr. 38, 45, 59, 60, 75, 81, 83-86; Exhibits 2, 4-9)

Applicant worked for a defense contractor for a while in 2007 and 2008 until his interim security clearance application was cancelled. He earned about \$7,200 gross monthly from April 2008 to August 2008. In 2007, he earned \$1,300 gross monthly income for working two weeks one month, and two weeks the next month. He worked in 1998 as a favor to a banker friend of his by traveling to Africa and Asia researching possible investment opportunities for the banker in the mineral exploration business. He also traveled to Canada in 2004, and to the Dominican Republic in 2006 on his own seeking business opportunities. He spent his own money on a vacation trip to Mexico in 2001. (Tr. 78, 88, 95, 96-98, 116, 129, 130; Exhibit 8)

Applicant completed an initial security clearance application on December 22, 2004. He had to complete another one on March 9, 2005. After completing the first SF-86, Applicant knew the questions which were on the form, and had until March 2005 to research and prepare his second set of answers. In answer to Question 36 regarding tax liens filed against him in the past seven years, Applicant answered "no." His home state filed a tax lien for \$17,209 in May 1999. On the same SF-86, Applicant answered Question 38 about being over 180 days delinquent on any debt in the previous seven years with a negative answer. Applicant did not list the delinquent debts in SOR Paragraphs 1.d (\$117), f (\$175), g (\$1,153), and h (\$3,636), which he should have done. On the March 2005 SF-86, Applicant did not list all his delinquent debts on which he was then more than 90 days delinquent in answer to Question 39. He answered with a "yes" response, and stated "medical bills" owed to one collector, which is listed at SOR Paragraph 1.i for \$227. He also listed the judgment in Paragraph 1.e in response to Question 37. He did not list the two federal tax liens, and the debts in Paragraphs 1.d (\$117), f (\$175), g (\$1,153), h (\$3,636), j (\$1,389), and k (\$177), which he should have done. Applicant claimed he did not know the debts were on his credit report, and that he never got notice of the liens because he does not own any real estate. Applicant admitted he learned of the tax liens in 1996. Applicant received the medical treatment and knew he had co-payments due. He knew about his tax liens and his credit card debts because of the monthly statements the banks send. Applicant's statements about a lack of knowledge of any debts he should have disclosed is not credible. Applicant signed his name on the SF-86 stating his answers were "true, complete, and correct." He also acknowledged that a "knowing and willful false statement on this form can be punished" pursuant to 18 U.S.C. 1001. (Tr. 26, 32-35, 47, 50, 65-69; Exhibits 8, 9)

Applicant opened several charge accounts between 1997 and 2001 while he was unemployed and being treated for leukemia. Several of those accounts became delinquent. He closed some of the accounts. Others were referred for collection action. (Exhibits 2, 4, 5, and 9)

Policies

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "the applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion as to obtaining a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated significant delinquent debt and has been unable and unwilling to pay these obligations. He has taken no action to resolve these 19 delinquent debts totaling \$127,334. He now refuses to repay any part or all of these debts, citing the expiration of the tax liens and the state statute of limitations on contractual breaches. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.” Applicant’s delinquent debt arose between 1995 and the present time. He accumulated delinquent debt due to his medical issues and chronic unemployment. I find the behavior occurred under circumstances that are likely to recur and continue, and it does raise concerns about his current reliability, trustworthiness, or good judgment. The evidence raises this potentially mitigating condition in a very limited way, but it is more than offset by his actions of incurring debt while on disability, and engaging in business activities while undergoing leukemia treatments. He has done nothing in the past nine years to resolve these debts, or to earn himself a reasonable income. Now he wants a security clearance to work as a translator, earn a large income, but refuses to repay these debts because he seeks to use state laws barring the collection of these accounts, but ignoring the Government’s security concerns about his substantial unresolved debts..

Under AG ¶ 20(b), it may be mitigating where “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances.” As noted above, some of the financial problems arose from his medical problems, including the substantial medical bills and his lengthy periods of unemployment. He has not acted responsibly in identifying and resolving these debts during the past years. He traveled to different parts of the world on business and opened a variety of charge accounts or incurred debt which became delinquent while unemployed and on disability pay. Although some of the debts occurred as a result of Applicant’s illness, I do not find that this potentially mitigating condition can be given full application, because he has not acted responsibly under the circumstances.

Evidence that “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant has not exercised either of these courses of action. I conclude these potentially mitigating conditions do not apply.

AG ¶ 20 (e) posits that “an individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem, and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.” Applicant offered no documentary evidence to show he disputed any debt, particularly the medical co-payments, or took any actions to resolve them. He let them accumulate and waited for them to be charged off, barred by state law, or otherwise hide behind some barrier.

AG ¶ 20 (f) concerning affluence from a legal income source is not applicable in this case.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and,

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes one condition that could raise a security concern and may be disqualifying:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

AG ¶ 16 (a) is applicable. Applicant did not disclose his state tax lien, which was filed against him in the previous seven years. Nor did he disclose delinquent debts, which were unpaid more than 180 days, or were currently in 2005 more than 90 days past due. Applicant knew he had medical treatments, and knew he had co-payments due. Any adult in the United States who has medical insurance knows about co-payments, and receives statements from their insurance companies concerning payments for their treatments. Applicant also opened charge accounts from 1995 to 2001, at least, and had only his Social Security income to make payments. Either he kept track of his debts, or did not, but he knew he had them. His statements that he lacked knowledge about his debts are not believable.

AG ¶ 17 provides conditions that could mitigate security concerns:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors,

circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and,

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant took none of the actions necessary to correct his deliberate falsification on his SF-86. He knew he had debts, even listed some on his SF-86, and he knew what information the Government sought on the SF-86 because he completed one in 2004. He should have researched and amplified his answers for full disclosure on his 2005 SF-86, rather than answering in the negative, which he did. Under these facts, I find his explanation for non-disclosure non-credible, and a deliberate falsification. None of the above conditions are supported by the record evidence.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes two conditions that could raise a security concern and may be disqualifying:

(a) a single serious crime or multiple lesser offenses;

(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;

The deliberate falsification of the information entered on an SF-86 is a violation of 18 U.S.C. Section 1001. It is punishable by a fine of \$10,000 or more, and more than a year in prison, making it a felony offense. Applicant does not have to be formally charged for this disqualifying condition to be applicable. AG ¶ 31 (a) and (c) are applicable here.

AG ¶ 32 provides conditions that could mitigate security concerns under this guideline:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) evidence that the person did not commit the offense;

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement; and,

(e) potentially disqualifying conditions (b) and (f) above, may not be mitigated unless, where meritorious circumstances exist, the Secretaries of the Military Departments or designee; or the Directors of Washington Headquarters Services (WHS), Defense Intelligence Agency (DIA), National Security Agency (NSA), Defense Office of Hearings and Appeals (DOHA) or designee, has granted a waiver.

Based on the evidence, none of the above mitigating conditions are applicable here. Applicant deliberately omitted disclosing required information to the Government upon which it could make an informed decision on his security clearance application.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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." Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature adult businessman who knew he had debts, and deliberately avoided resolving them. He falsified his SF-86 to hide the magnitude of the debts. His explanations of what he knew about his debts and when he knew the information were not credible or persuasive. He traveled on business while on Social Security disability to foreign lands,

and opened charge accounts during the same period when his income was limited to those disability payments. He has isolated himself from any ownership responsibilities, and his testimony demonstrated his avoidance of any obligation to repay debts, including those for his medical treatments. Applicant appeared adamant that he would never repay any of the listed debts, nor expend any effort to resolve them except by the passage of time. \$127,334 of delinquent debt is a large amount to ignore.

While the Government is not a collection agency, the issue in this case is whether Applicant acted responsibly under the events as they occurred, or did he show poor self-control, lack of judgment, or unwillingness to abide by rules and regulations which can raise questions about his reliability, trustworthiness, and ability to protect classified information. Applicant's irresponsible and lackadaisical attitude toward these debts shows he is not reliable or trustworthy. He has done nothing since 1995 to resolve any of the debts, while actually opening accounts and incurring further debt. He did nothing about his co-payments during his medical treatments, and so that problem is now compounded.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his financial considerations, personal conduct, and criminal conduct. I conclude the "whole person" concept against Applicant.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a to 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f to 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j to 1.s:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Paragraph 3, Guideline J:	AGAINST APPLICANT

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

PHILIP S. HOWE
Administrative Judge