

DATE: November 27, 2007

In re:)
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 -----) ISCR Case No. 06-26733
 SSN: -----)
)
 Applicant for Security Clearance)
)
)

**DECISION OF ADMINISTRATIVE JUDGE
MARY E. HENRY**

APPEARANCES

FOR GOVERNMENT

James F. Duffy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

For the last 11 years, Applicant has had significant debt problems. Twice he has resolved his old debts through bankruptcy. Since his last bankruptcy discharge 18 months ago, he has again incurred significant unpaid debt. He has not mitigated the government's concerns about his finances. Clearance is denied.

STATEMENT OF THE CASE

On April 27, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, 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 Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR 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. Specifically, the SOR sets forth security concerns arising under Guideline F (Financial Considerations) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005 and implemented by the Department of Defense, effective September 1, 2006. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. On May 29, 2007, Applicant submitted a notarized response to the allegations. He requested a hearing. He submitted a second notarized response on August 17, 2007.

This matter was assigned to another administrative judge on September 19, 2007. DOHA issued a notice of hearing on September 21, 2007. Due to a personal emergency, DOHA reassigned this case to me on October 10, 2007. I held a hearing on October 16, 2007. The government submitted government exhibits (GE), 1 through 7, which were marked and admitted into evidence. Applicant did not submit any documents into evidence at the hearing, although he testified. The hearing transcript (Tr.) was received on October 24, 2007. I held the record open until October 31, 2007 for the submission of additional evidence by Applicant. He timely submitted 10 documents, which were marked and admitted into evidence as Applicant Exhibits (AE) A through J.

PROCEDURAL ISSUES

The government filed a Motion to Amend the SOR on September 13, 2007 to include additional allegations (1.g through 1.m) under Guideline F. Applicant responded to the allegations in writing on September 26, 2007. He did not object to the government's request to amend the SOR in his response or at the hearing. I granted the motion and amended the SOR to include allegations 1.g through 1.m under Guideline F.¹

FINDINGS OF FACT

Applicant admitted the allegations under Guideline F, subparagraphs 1.a through 1.i, 1.k and 1.m of the SOR.² Those admissions are incorporated as findings of fact. He denied the amount owed in allegation 1.j.³ He denied the remaining allegations.⁴ After a complete review of the evidence in the record and upon due consideration, I make the following findings of fact.

¹Applicant's response to the Motion to Amend the SOR, dated September 26, 2007; Tr. at 8-9.

²Applicant's response to the SOR, dated May 23, 2007, at 1-2; Applicant's supplemental response dated August 17, 2007 at 1.

³Response to Motion to Amend, *supra* note 1, at 1.

⁴*Id.*

Applicant, who is 44 years old, works as an associate designer for a Department of Defense contractor and has since May 2004. He is married and has two children, a son age 17 and a daughter age 12. He received an associate of arts degree in computer electronics. He completed his security clearance application (SF-86) on December 6, 2005.⁵

After the birth of his daughter in 1995, Applicant's wife did not return to work. The loss of her income caused a strain on their finances. On the advice of a friend, he and his wife decided to file for Chapter 13 bankruptcy in 1997. Shortly after filing, they concluded that they made a bad decision and decided not to proceed with the bankruptcy. The court closed its case on July 15, 1997. They worked out their debt issues with their creditors. They paid most of their debts. They voluntarily returned one car. He acknowledged at the hearing that a balance remained after the sale of the car.⁶

In May 1999, Applicant sustained an on-the-job injury. He did not return to work until September 1999. Although he received worker's compensation benefits until September 1999, he again encountered financial difficulties. By early 2000, his financial situation forced him to file for Chapter 7 bankruptcy. In an Order dated October 12, 2000, the court discharged his debts of \$27,000, including the remaining deficiency on the car he voluntarily returned to the dealer.⁷

Between January and June 2003, Applicant experienced problems with delayed electronic deposit of his paycheck by his employer, causing his automatic check payments to be returned, which caused several hundred dollars in bank fees. In July 2003, Applicant and his wife filed for Chapter 13 bankruptcy protection. For the next three years under the auspices of the bankruptcy trustee, they paid their debts through monthly payments, which ultimately totaled \$24,000. The court entered a discharge order on May 16, 2006 and closed its file on July 24, 2006.⁸

Since his last bankruptcy discharge, Applicant has incurred more unpaid debt. Most importantly, he is behind in his payments on his mortgage and his second mortgage. He is one month behind in his car payment. His total debt on these bills is approximately \$5,700. In addition, he owes several smaller bills totaling approximately \$300. The primary mortgage holder on his property agreed to a forbearance plan, which required Applicant to pay \$1200 by the end of August 2007 and an additional \$460 a month for six months. Applicant has not provided any documentation which reflects that he has made these payments. Applicant provided information on obtaining a hardship withdrawal from his 401K plan as he intends to use these funds to repay his outstanding second mortgage debt. He intended to repay the remaining overdue car loan balance of \$380 at the end of October, but has not provided proof of the payment.⁹

⁵GE 1 (Applicant's security clearance application, signed December 6, 2005) at 2, 7, 8, 14, 17; Tr. at 17-18.

⁶GE 2 (1997 bankruptcy court docket sheet); Tr. at 19-21, 44-45.

⁷GE 3 (2000 bankruptcy petition, court docket sheet, and court order); Tr. at 23-24, 27-28, 44-46.

⁸GE 4 (2003 bankruptcy petition, court docket sheet, and court order); AE I (Copy of banking statements for 2003); Tr. at 28-30.

⁹SOR; AE B (Information of rights to withdraw funds from 401K); AE C (Unsigned 401K withdrawal form); AE F (unpaid medical bill); AE G (Unpaid medical bill); AE H (forbearance documents); Tr. at 32-39.

Applicant earns \$2,575 a month in base pay plus overtime. His net pay for the last six months (13 pay checks) averaged \$2,924. His wife works for a school system. As a result her monthly income decreases significantly in the summer months. Her average monthly income from May 2007 through September 30, 2007 was \$576. During the school year, his wife's monthly income increases approximately \$450. Their monthly expenses total approximately \$3,950. With his overtime and when his wife receives her full pay, their monthly income averages approximately \$4,000.¹⁰

Applicant's wife is looking for a better paying position. He is also considering selling his house or refinancing his mortgage to reduce monthly living expenses.¹¹

POLICIES

The revised Adjudicative Guidelines set forth disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. An administrative judge need not view the revised adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are intended to assist the administrative judge in reaching fair and impartial common sense decisions. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the revised AG should be followed whenever a case can be measured against this policy guidance. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in the Directive. Specifically, these are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other 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.¹²

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.¹³ The government has the burden of proving controverted facts.¹⁴ The burden of proof is something less than a preponderance of the evidence.¹⁵ Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

¹⁰These income estimates are based on Applicant's leave and earnings statements from April 2007 through October 15, 2007, and his wife's leave and earnings statements from May 2007 through September 30, 2007. AE D (Applicant's earnings statement); AE E (Wife's earnings statement); AE J (monthly budget).

¹¹Tr. at 40, 50-51.

¹²Directive, revised Adjudicative Guidelines (AG) ¶ 2(a)(1)-(9).

¹³ISCR Case No. 96-0277 at 2 (App. Bd., July 11, 1997).

¹⁴ISCR Case No. 97-0016 at 3 (App. Bd., Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

¹⁵*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

him.¹⁶ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁷

No one has a right to a security clearance,¹⁸ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁰ Section 7 of Executive Order 10865 specifically provides industrial security clearance 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.” The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.²¹ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

Guideline F - Financial Considerations

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. (AG ¶ 18.) Applicant has new, significant unpaid debt, and a history of debt problems for the last eleven years. DC ¶ 19 (a) *inability ... to satisfy debts* and DC ¶ 19 (c) *a history of not meeting financial obligations* apply.

I have carefully reviewed the mitigating conditions under this guideline. MC ¶ 26 (b) *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* and MC ¶ 20 (d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* may have some applicability in this case. Applicant’s on-the-job injury in 1999 placed a financial

¹⁶ISCR Case No. 94-1075 at 3-4 (App. Bd., Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

¹⁷ISCR Case No. 93-1390 at 7-8 (App. Bd. Decision and Reversal Order, Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

¹⁸*Egan*, 484 U.S. at 531.

¹⁹*Id.*

²⁰*Id.*; Directive, revised AG ¶ 2(b).

²¹Executive Order No. 10865 § 7.

hardship on the family. Because his finances became unmanageable, he and his wife filed for bankruptcy in 2000. The court discharged all their debts, giving them a chance to start over. Within three years, they again had financial problems which necessitated a Chapter 13 bankruptcy filing. To their credit, they complied with the repayment plan developed. After three years of payments, the court entered a discharge order in May 2006. Just over a year after the completion of the latest bankruptcy repayment plan, Applicant again has unpaid bills. Although he encountered difficulties with timely electronic payment of his pay in 2003, this factor alone does not account for all his financial problems, particularly his most recent debts. He has not provided any reason for his current financial problems, except to state that his wife's income decreased during the summer months, a factor he knows will occur and for which they should plan, but don't.

Applicant contacted his primary mortgagor and made arrangements to repay his overdue mortgage debt of nearly \$4,000. He also plans to use money from his 401K to repay the monies owing on his second mortgage. The arrangements and plans are a step in the right direction. He is also working on bringing his car payments current. He, however, has not provided proof that he has actually made any of these payments. Thus, he is entitled to only partial credit for good faith efforts to resolve his largest debts.

Whole Person Analysis

Protection of our national security is of paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the adjudicative process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Thus, in reaching this decision, I have considered the whole person concept in evaluating Appellant's risk and vulnerability in protecting our national interests.

Applicant and his wife have encountered financial difficulties for the last 11 years. Twice they have filed for bankruptcy and eliminated their debt through this legal process, one time after making the required monthly payments for three years. Unfortunately, they have not learned how to manage their finances from this process and are again in debt, primarily as a result of financial mismanagement. Considering his age, circumstances beyond his control in the past, the circumstances surrounding his financial problems and his potential for rehabilitation, I find that Applicant has not mitigated the government's security concerns. Accordingly, I find against Applicant under Guideline F.

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:

SOR ¶ 1-Guideline F :
Subparagraphs a-m:

AGAINST APPLICANT
Against Applicant

DECISION

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

Mary E. Henry
Administrative Judge