

DATE: November 19, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-09793

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Jr., Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of financial irresponsibility, including at least two accounts totaling \$12,500.00 that are currently delinquent. Although she has the financial ability to either satisfy or bring those accounts current, she has failed to do so. Applicant has failed to mitigate the security concern caused by her financial irresponsibility. Clearance is denied.

STATEMENT OF THE CASE

On August 4, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F (financial considerations). Applicant submitted a response to the SOR, dated August 28, 2003, and requested a clearance decision based on the written record without a hearing. In her response to the SOR, Applicant denied all but one of the SOR allegations. She attempted to provide justification for the sole allegation that she admitted.

Department Counsel prepared a File of Relevant Material (FORM) on September 11, 2003, that was mailed to Applicant the same day. The cover letter to the FORM instructed Applicant she was to file objections to information contained in the FORM, or supply additional information she wanted considered within 30 days of receipt. Applicant acknowledged receipt of the FORM on October 3, 2003. Applicant did not file any objections or submit any additional information within the time allotted. The case was assigned to me November 6, 2003.

FINDINGS OF FACT

Applicant's admission to one allegation contained in the SOR is incorporated herein. In addition, after a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is a 35-year-old woman who has never been married. She served on active duty with the United States Army from April 1987 to April ⁽²⁾

1992, and attained the paygrade of E-4. She has maintained steady employment since being discharged , and is presently employed by a defense contractor.

Applicant has approximately \$9,879.00 in student loans, listed as two accounts, with some balance remaining unpaid. Her credit report dated July 23, 2001 indicates those accounts were opened in March 2001. Her credit report dated March 22, 2003 indicates those accounts have been more than 90 days past due on six occasions. The 2003 credit report also reflects that Applicant is paying combined payments totaling \$115.00 on the two accounts, and the current rating on the accounts is "As Agreed," indicating Applicant was, as of March 22, 2003, making the required payments on those accounts. (3) Applicant admitted she is indebted to this creditor, but asserted that as of August 28, 2003 repayment had been deferred.

The 2003 credit report discloses a charged off account in the amount of \$135.00. Applicant denied being indebted to this creditor or having any knowledge of the account. However, she also submitted a receipt indicating this account had been paid-in-full as of January 7, 2002. Department Counsel does not oppose a favorable finding for Applicant as to this debt based upon submission of the paid-in-full receipt.

Applicant has a charged off revolving credit account in the amount of \$500.00 reflected in her 2003 credit report. The 2001 credit report listed this account as a "bad debt" opened in May 2000. Applicant denies that she is indebted to this creditor because she, "did not agree to the terms of this secured credit card and notified them as such." However, she does not deny incurring the debt that is owing.

Applicant owes \$12,000.00 (4) on a charged off account that resulted from the voluntary repossession of an automobile. Although Applicant denies this debt, she does acknowledge returning the automobile because she could not make the required payments and that she was then unable to reach a "mutual agreement" with the dealer.

Applicant submitted personal financial statements on January 14, 2002 and again on March 27, 2003. Both statements disclose a monthly gross salary of approximately \$6,500.00. The 2002 financial statement also discloses a net salary of \$3,155.00, and a net remainder, after deducting monthly living expenses and other monthly debts, of \$1,773.00. Applicant did not disclose her net pay in the 2003 statement, but her monthly living expenses and other monthly debts are approximately the same as those listed in the 2002 financial statement. Accordingly, and despite her denial that she has monthly remaining disposal income of approximately \$1,400.00, I find she does have approximately that amount of income that could be applied to satisfy her delinquent accounts.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline F, pertaining to financial considerations, with its respective DC and MC, is most relevant in this case.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. (5) The government has the burden of proving controverted facts. (6) The burden of proof in a security clearance case is something less than a preponderance of evidence, (7) although the government is required to present substantial evidence to meet its burden of proof. (8) "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence." (9) Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. (10) Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. (11)

No one has a right to a security clearance (12) and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." (13) Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security. (14)

CONCLUSIONS

Under Guideline F, a security concern exists when a person has significant unpaid debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Applicant's credit reports indicate she has been more than 90 days past due in making payments on her student loans on six occasions since March

2001. Although she was apparently making the agreed upon payment of \$115.00 per month on those accounts as of March 2003, for some unknown reason she had the accounts placed in a deferred payment status as of August 2003.

Applicant has done nothing to satisfy the charged off account that resulted from the repossession of an automobile. Instead she indicates she is just waiting for seven years to pass by so the account will no longer appear on her credit report, obviously unconcerned that she will still remain liable for the amount owing. Likewise, she has done nothing to resolve the charged off revolving charge account debt, but instead relies upon her assertion that she did not agree to the credit terms, after incurring \$500.00 in charges on the account.

Disqualifying Condition (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debts* apply in this case. While Applicant has made some efforts to pay the once delinquent student loans, she has made no effort to pay the other delinquent accounts and has now had the student loan accounts placed in a deferred payment status. She has failed to make a reasonable effort to satisfy those accounts despite having substantial disposable income each month to apply to the accounts. I have considered all Mitigating Conditions (MC) under Guideline F and cannot find that any apply. I specifically find, under these circumstances, that MC 6: *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* does not apply.

After considering the evidence, I find that Applicant has failed to mitigate the security concern caused by her financial irresponsibility. She has failed to overcome the case against her or satisfy her ultimate burden of persuasion.

FORMAL FINDINGS

SOR ¶ 1-Guideline F: Against the Applicant

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: 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 grant or continue a security clearance for Applicant.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. In the Security Clearance Application (SF 86) she submitted on September 15, 1999, Applicant listed steady uninterrupted employment from the time she enlisted in the Army at the age of 18 until that submission. In her SOR response, Applicant claimed the debt alleged in SOR subparagraph 1d was incurred during a period of unemployment. I am accepting her employment history listed in the SF 86, made prior to the filing of the SOR, to be true.
3. Contrary to Department Counsel's assertion, the 2003 credit report does not indicate the same balance owing on the accounts as did the 2001 report. What they both do reflect is the same "High Credit Amount" of \$9,879.00.
4. The SOR and Department Counsel allege the amount owing is \$22,000.00. The 2001 credit report discloses the "\$HI CRDT" amount as \$22,000.00, and the "PAST DUE" amount as \$12,000.00.
5. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
6. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
7. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

8. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
9. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
10. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
11. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
12. *Egan*, 484 U.S. at 528, 531.
13. *Id* at 531.
14. *Egan*, Executive Order 10865, and the Directive.