

DATE: April 25, 2003

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-18450

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL H. LEONARD**

**APPEARANCES**

**FOR GOVERNMENT**

Marc Curry, Esq., Department Counsel

**FOR APPLICANT**

Timothy J. McFarland, Esq.

**SYNOPSIS**

Applicant is a 32-year-old married man employed by a defense contractor as an aircraft washer with a history of financial problems (delinquent debts) attributed to two periods of significant health problems (encephalitis in 1997 and a stroke in 2000), both of which hospitalized him for a month as well as periodic unemployment in 1997 - 1999 through no fault of his own. He is now making good-faith efforts to resolve his past due indebtedness. The record evidence is insufficient to establish Applicant provided a deliberately false answer in response to a question on his security-clearance application about financial delinquencies. Clearance is granted.

**STATEMENT OF THE CASE**

On August 20, 2002, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(U\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F for financial considerations and Guideline E for personal conduct (falsification of a security-clearance application).

Applicant answered the SOR on September 6, 2002, and October 21, 2002. He requested a clearance decision based on a hearing record in his second answer, otherwise, the two answers are identical.

On November 7, 2002, DOHA assigned this case to me to conduct a hearing and issue a written decision. Thereafter, on December 3, 2002, a notice of hearing was issued to the parties scheduling the hearing for December 20, 2002, at a location near Applicant's place of employment. Applicant appeared with counsel and the hearing took place as scheduled. DOHA received the hearing transcript on January 2, 2003.

**FINDINGS OF FACT**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant testified during the hearing and I find his testimony was credible.

Applicant is a 32-year-old married man. He and his spouse have three children, ages 10, 4, and an infant. Applicant is an active participant in community activities as evidenced by his involvement in his church and several years of service as a volunteer fireman.

He is currently employed by a defense contractor as an aircraft washer working at a U.S. Air Force base. He's worked for this company since about March 1999. Applicant's employment history is relevant to the financial issues in this case, and so, it is discussed below.

Applicant served on active duty as an enlisted servicemember from about September 1989 to September 1993. His military occupational speciality was working as a technical aircraft maintenance specialist. Applicant held a security clearance during this time. He worked his way up to serving as crew chief for the F-15C fighter jet.

Upon his honorable discharge from the Air Force, Applicant went to work for a natural gas company working as a service man. He held that job from October 1993 to about January 1994 when he left to take a laborer position with a local paper mill. Applicant was a paper-mill employee from about February 1992 to August 1998, although his employment at the mill was not always continuous due to reasons beyond his control that eventually resulted in the mill ceasing all operations. Before August 1997, Applicant experienced short periods of unemployment. After August 1997, Applicant was out-of-work (but hoping to be called back) until the mill shut down in August 1998. From August 1998 to February 1999, Applicant was either unemployed or a student. Indeed, Applicant was enrolled in a job-related training program when he was hired for his current position.

In addition to his employment history, Applicant has also experienced two significant health problems that contributed to his financial problems. First, in April 1997, Applicant was diagnosed with encephalitis and he nearly died. He was hospitalized for about one month and out-of-work at the paper mill for about a month and a half. Although he received his full pay during his time, Applicant incurred numerous medical bills. Second, on September 18, 2000, Applicant suffered a stroke. The condition was serious as Applicant's heart stopped and he was revived by medical personnel. Again, Applicant was hospitalized for about one month and did not return to his current job until early November 2000. Applicant received about 37% of his pay during this time as well as incurring expenses for his hospital stay and his post-hospital care and treatment.

In general, I find that the record evidence as a whole is sufficient to establish, by substantial evidence, the occurrence of all the factual events alleged in the SOR, except for those set forth in subparagraphs 1.f, 1.i, and 2.a. After both sides presented their cases, Department Counsel conceded on subparagraphs 1.f and 1.i.<sup>(2)</sup> Accordingly, those matters are resolved in Applicant's favor and will not be discussed further. Concerning the falsification allegation in subparagraph 2.a, the record evidence as a whole is not sufficient to establish that Applicant deliberately falsified his answer in response to Question 38 on his security-clearance application (Exhibit 1).

In particular, concerning the remaining indebtedness alleged in the SOR ¶ 1, the record evidence establishes Applicant owed seven creditors on delinquent accounts for a total of about \$7,800. Nearly \$5,000, or more than 60%, of that total is for one creditor stemming from a credit card debt (subparagraph 1.d). Of the remaining six debts, five are medical bills stemming from Applicant's health problems, and the other debt is a credit card debt for less than \$400 (subparagraph 1.g).

Concerning the credit card debt alleged in subparagraph 1.d, Applicant has now resolved it through a settlement agreement and repayment plan. Applicant paid \$1,500 in about July 2002 thereby preventing the entry of a judgment. He's also agreed to pay off the balance by paying \$85 monthly, which he has done since August 2002. He has entered into repayment plans for the other debts agreeing to making monthly payments to resolve them over time.

In March 1999, Applicant executed a security-clearance application where he answered various questions about his background. In response to Question 38, Applicant answered "No," thereby denying having been over 180-days delinquent on any debts with the last seven years. That answer was incorrect because, as alleged in the SOR, Applicant's

two credit card debts (subparagraphs 1.d. and 1.g) fall into this category. Applicant testified credibly that he had no intention to lie or otherwise provide false information when answering this question or other questions on the security-clearance application.<sup>(3)</sup> His testimony is consistent with how he and his wife handle their personal finances. His wife, a stay-at-home mother, pays the bills and handles the related paper work. Applicant characterized the arrangement as "I bring the bacon in, and she sends it out."<sup>(4)</sup> He also testified credibly that he was essentially in the dark when it came to such matters.<sup>(5)</sup>

Concerning the credit card debt for nearly \$5,000, Applicant knew about it, but given that he and his spouse were paying on it in the past, he didn't think it needed to be reported in response to Question 38. Concerning the credit card debt for less than \$400, this account initially belonged to the paper mill credit union, which was sold to another credit union when the mill closed. In the process, this account got lost in the shuffle and Applicant was unaware of it when answering Question 38.

Applicant is a hands-on, hard-working, guileless individual. Several individuals, including the county chief administrator, his pastor, the fire chief, and his supervisors and coworkers have all vouched for his general character, integrity, trustworthiness, honesty, reliability, and security suitability. When assessing Applicant's credibility and overall security suitability, I gave these matters a fair amount of weight.

## **POLICIES**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security-clearance eligibility. Chief among them is the disqualifying and mitigating conditions for each applicable guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on 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 record evidence as a whole, the following adjudication guidelines are most pertinent here: Guideline F for financial considerations and Guideline E for personal conduct.

## **BURDEN OF PROOF**

The only 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.<sup>(6)</sup> The government has the burden of proving controverted facts.<sup>(7)</sup> The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than the preponderance of the evidence.<sup>(8)</sup> The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.<sup>(9)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>(10)</sup> Once the government meets its burden, an applicant has the burden of presenting evidence of refutation, extenuation, or mitigation sufficient to overcome the case against them.<sup>(11)</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(12)</sup>

As noted by the Court in *Egan*, "it should be obvious that no one has a 'right' to a security clearance," and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(13)</sup> Under *Egan*, Executive Order 10865, and the Directive, any reasonable doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

## **CONCLUSIONS**

### ***Section 1-Financial Considerations***

Under Guideline F, a security concern typically exists for two different types of situations--significant unpaid debts and unexplained affluence; this case involves the former. 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, negligent, or careless in their obligation to protect

classified information.

Here, based on the record evidence as a whole, the government has established its case under Guideline F. The record evidence shows (1) a history of not meeting financial obligations, and (2) inability to satisfy debts.<sup>(14)</sup> The record evidence also supports a conclusion of financial irresponsibility, which is a security concern because it raises the possibility Applicant may be irresponsible, unconcerned, negligent, or careless in his obligation to properly safeguard or handle classified information.

I have reviewed the mitigating conditions (MC) under Guideline F and, given the record evidence, conclude that two apply in Applicant's favor. First, MC 3<sup>(15)</sup> applies based on Applicant periodic unemployment during 1997 - 1999 and his serious medical problems in 1997 and 2000. Taken together, these conditions were a major factor in Applicant falling behind on the largest debt, the credit card account in subparagraph 1.d, and also generated numerous medical bills. Second, MC 6 applies<sup>(16)</sup> based on Applicant entering into a formal settlement agreement for the credit card account as well as repayment plans for the other debts. These actions constitute a good-faith effort to rectify his delinquent financial obligations. Accordingly, Applicant has met his burden in mitigation and Guideline F is decided in his favor.<sup>(17)</sup>

### ***Section 2-Personal Conduct***

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance or in other official matters is a security concern. It is deliberate if it is done knowingly and willfully. Omission of a past arrest or past drug use, for example, is not deliberate if the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or otherwise reasonably believed the arrest or drug use did not need to be reported.

Here, the record evidence fails to establish Applicant deliberately omitted or concealed information about the two credit card accounts when he answered no to Question 38. Although his answer to that question was mistaken, Applicant has successfully rebutted the allegations that he deliberately provided a false answer. Given the surrounding facts and circumstances, coupled with my assessment of Applicant's credibility on this matter, I'm persuaded Applicant reasonably believed his answer to Question 38 was true and correct. Accordingly, Guideline E is decided for Applicant.

### **FORMAL FINDINGS**

SOR ¶ 1-Guideline F: For the Applicant

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d: For the Applicant

Subparagraph 1.e: For the Applicant

Subparagraph 1.f: For the Applicant

Subparagraph 1.g: For the Applicant

Subparagraph 1.h: For the Applicant

Subparagraph 1.i: For the Applicant

SOR ¶ 2-Guideline E: For the Applicant

Subparagraph 2.a: For the Applicant

## DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Michael H. Leonard

Administrative Judge

1. This action was taken under Executive Order 10865, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Transcript at pp. 113.
3. Transcript at p. 110.
4. Transcript at p. 95.
5. Transcript at p. 97.
6. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
7. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
8. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).
9. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
10. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
11. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
12. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.
13. *Egan*, 484 U.S. at 528, 531.
14. DC 1 ("A history of not meeting financial obligations;"), and DC 3 ("Inability or unwillingness to satisfy debts.").
15. MC 3 ("The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation).").
16. MC 6 ("The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.").
17. This conclusion is consistent with the government's closing argument, wherein Department Counsel said, in part, that "the concerns that the [g]overnment had have been mitigated in this matter." Transcript at p. 114.