

DATE: December 3, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-20579

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of financial irresponsibility, and currently has more than \$25,000.00 in delinquent accounts. He also failed to disclose his delinquent accounts, as required, in a Security Clearance Application, Standard Form 86, he executed on June 23, 1999. Applicant has failed to mitigate the security concern caused by his financial irresponsibility and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On October 10, 2002, 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) and Guideline E (personal conduct). Applicant submitted a response to the SOR, dated December 31, 2002, and requested a clearance decision based on the written record without a hearing. In his response to the SOR, Applicant denied all of the SOR allegations.

Department Counsel prepared a File of Relevant Material (FORM) on July 30, 2003, that was mailed to Applicant the same day. Applicant was outside the continental United States at the time the FORM was mailed, and did not actually receive it until August 27, 2003. Applicant submitted a response to the FORM, dated September 24, 2003. Applicant's response was forwarded to Department Counsel on October 6, 2003. Department Counsel indicated he did not object to Applicant's response. The case was assigned to another administrative judge on October 31, 2003, and reassigned to me on November 17, 2003, due to case load considerations.

FINDINGS OF FACT

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

Applicant is 48 years old, single, and the father of a sixteen-year-old child. He was married on December 14, 1986 and divorced on April 4, 1994. He served on active duty with the United States Navy as a disbursing clerk from December 1976 to December 1996. He was a petty officer first class, paygrade E-6, when he presumably retired. From the time of his retirement until April 1998 he worked for a number of different employers as

a cable technician. Since May 1998 he has been employed by a defense contractor as an electronics technician.

The FORM contains four different credit reports issued between December 3, 1999 and July 29, 2003. Those reports contain multiple entries verifying the following debts listed in the SOR: 1.a., a collection account in the amount of \$9,856.00⁽²⁾; 1.b., a charged off account in the amount of \$6433.00⁽³⁾; 1.c., a charged off account in the amount of \$2,733.00⁽⁴⁾; 1.d., a charged off account in the amount of \$2,123.00⁽⁵⁾; 1.e., a paid account/zero balance, account closed at consumers request⁽⁶⁾; 1.f., a bad debt in the amount of \$8,513.00⁽⁷⁾; 1.g., a bad debt in the amount of \$2,234.00; and 1.h., this is the same account listed under subparagraph 1.e. and described in footnote 5.

Applicant executed a Security Clearance Application (SF 86) on June 23, 1999. In the SF 86, he answered "No" to question 38: *Your Financial Delinquencies - 180 Days - In the last 7 years, have you ever been over 180 days delinquent on any debt(s)?* and question 39: *Your Financial Delinquencies - 90 Days - Are you currently over 90 days delinquent on any debt(s)?* As disclosed by the information contained in the credit reports included with the FORM, those answers were false.

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.⁽⁸⁾ The government has the burden of proving controverted facts.⁽⁹⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁽¹⁰⁾ although the government is required to present substantial evidence to meet its burden of proof.⁽¹¹⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽¹²⁾ 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.⁽¹³⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁴⁾

No one has a right to a security clearance⁽¹⁵⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁶⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹⁷⁾

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.

The multiple credit reports included as parts of the FORM disclose that Applicant has over \$25,000.00⁽¹⁸⁾ in delinquent accounts, which have been delinquent for many years. Disqualifying Condition (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debts* apply in this case.

Applicant submitted a sworn statement to a special agent of the Defense Investigative Service on February 25, 2000 in which he indicated that most of the accounts were unknown to him, but that if he did owe them he would arrange payment plans. He thus was clearly aware these accounts created a security concern, and he indicated that he would investigate and take whatever steps were required to alleviate that concern.

Thirty-four months later, in the response he provided to the LOI, Applicant again denied knowledge of most of the accounts. However, he provided no documentation to support his denials or any evidence that he had done anything to resolve the accounts, except the credit report entries that indicated two of the accounts were pending dispute resolution as of June 24, 2002. Ten months after responding to the LOI, Applicant, in the response he submitted to the FORM, again failed to submit any documentation or other evidence in support of his claims of non liability for the multiple delinquent accounts. Most significantly, he did not even submit evidence of the outcome of the disputes noted in the June 24, 2002 credit report⁽¹⁹⁾.

The government having met its burden in this case, the burden shifted to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. Further, it is Applicant who has the ultimate burden of persuasion to obtain a favorable clearance decision. Despite having almost four years to gather evidence and/or documentation to support his claim that he is not liable for the accounts, he submitted nothing. Accordingly, he has failed to present any evidence upon which to find the existence of any mitigating condition(s).

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

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. Applicant had numerous long-standing delinquent accounts at the time he submitted the SF 86 in 1999, which he failed to disclose. His denial of knowledge of those accounts is refuted by his failure to provide any support for those denials, despite having literally years to gather and submit such evidence.

Applicant's lack of candor in failing to disclose his financial condition when he submitted the SF 86 and the statements he has provided by way of explanation severely undermine the ability to place such trust and confidence in Applicant at the present time. His false and/or misleading answers and explanations raise significant security concerns. DC 2: *The deliberate omission, concealment, or falsification of relevant and material 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.*

I have considered all mitigating conditions under Guideline E and do not find any apply in this case. After considering the evidence, I find that Applicant has failed to mitigate the security concern caused by his personal conduct. He has failed to overcome the case against him or satisfy his ultimate burden of persuasion on that issue.

FORMAL FINDINGS

SOR ¶ 1-Guideline F: Against the Applicant

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: For the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: For the Applicant

SOR ¶ 1-Guideline E: Against the Applicant

Subparagraph a: Against the Applicant

Subparagraph b: 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. The June 24, 2002 credit report discloses that a dispute resolution was pending concerning this debt.
3. Applicant claims this account is a duplicate of the account listed in subparagraph 1.a. A review of the credit reports discloses it may be a duplicate entry, although no positive determination can be made.
4. The SOR alleges an approximate amount of \$3,000.00. The September 5, 2002 credit report discloses a high credit amount of \$3,000.00 and a balance of \$2,733.00.
5. The SOR alleges an approximate amount of \$2,800.00. The June 24, 2002 credit report discloses a high credit amount of \$2,800.00 and a balance of \$2,123.00.
6. The SOR alleges this account had not been paid as of September 5, 2002. This account appears twice on the September 5, 2002 credit report. There is an entry under the name of the creditor listed in the SOR that discloses the account was transferred or sold. A second entry under the name of another creditor, but with the same account number, discloses the account is paid with a zero balance and has been closed at the consumers request.
7. This debt is listed in all credit reports, which read together disclose it was a bad debt that was transferred to the same creditor listed in SOR subparagraph 1.h. and then disputed by Appellant. Appellant claims this account was satisfied in 1997, which is apparently the basis for the dispute.
8. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
9. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
10. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
11. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
12. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
13. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
14. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
15. *Egan*, 484 U.S. at 528, 531.
16. *Id* at 531.
17. *Egan*, Executive Order 10865, and the Directive.
18. I have excluded the amount listed in SOR subparagraph 1.b. in arriving at this amount because it is uncertain whether or not that allegation is a duplicate of the account that forms the basis for subparagraph 1.a.
19. One of those accounts was still listed as a dispute resolution pending in the July 29, 2003 credit report.