

DATE: September 23, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-22072

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Juan R. Rivera, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial problems, including a Chapter 7 bankruptcy, originated from his failure to properly pay estimated federal income taxes when he attempted to operate a franchise janitorial service, and his 1998 divorce and the resultant inability to satisfy his creditors because of the loss of his former wife's income. Subsequent child support issues, a poor business decision, and several relatively small delinquent accounts prolonged his financial concerns. He has now mitigated those concerns by his successful efforts to either satisfy his creditors or demonstrating the ability to do so if his efforts to sell the real estate he acquired in an attempt to convert it to income producing property fail. Clearance is granted.

STATEMENT OF THE CASE

On March 25, 2003, 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 a security concern under Guideline F, financial considerations, based upon a 1999 discharge in bankruptcy and the accumulation of five subsequent delinquent accounts.

Applicant submitted an answer to the SOR that was sworn to on April 10, 2003, and requested a hearing. Applicant admitted he was responsible and still owed the debt alleged in subparagraph 1a of the SOR, denied the allegations of subparagraphs 1b to 1e because of recent payments to those creditors, and made no mention of the bankruptcy alleged in subparagraph 1f.

The case was assigned to another administrative judge on May 29, 2003 and reassigned to me on May 30, 2003 because of caseload concerns. A notice of hearing was issued scheduling the hearing for June 24, 2003. The hearing was conducted as scheduled. The government submitted six documentary exhibits at the hearing that were marked as Government Exhibits (GE) 1-6 and admitted into the record without an objection. The Applicant testified at the hearing and submitted three exhibits that were marked as Applicant's Exhibits (AE) A-C, and admitted into the record. Department Counsel's objection to AE A was overruled. The remaining AEs were admitted without an objection. Applicant submitted one additional exhibit post-hearing through Department Counsel that was marked as AE D and admitted into the record without an objection. The

transcript was received by DOHA on July 1, 2003.

FINDINGS OF FACT

Applicant's admission to the allegation contained in subparagraph 1a of the SOR is incorporated herein. In addition, after a thorough review of the pleadings, exhibits and testimony, I make the following findings of fact:

Applicant is 41-years-old, divorced, and the father of two children, ages 12 and 13. He has worked as pipe-fitter for the same defense department contractor since 1987. Applicant began operating a franchise janitorial company in the mid-1990s and incurred delinquent federal income tax payments of approximately \$7,000.00 because of his inability to keep up with the necessary paperwork aspects of the business. He satisfied the delinquent taxes several years ago by making payments directly to the internal revenue service and through the confiscation of what would have otherwise been tax refunds owing to him in subsequent years.

Applicant and his wife divorced in December 1998 and he was ordered to pay \$800.00 per month as child support. Because he was still living in the marital home, caring for his children in the home, and paying the mortgage he did not remain current on his support payments. His wife petitioned the court and obtained an order that increased the monthly payment to \$1,200.00 per month until the arrearage was liquidated and then reduced the payment to \$600.00 per month. Applicant found himself unable to remain current on child support, mortgage payments, past due federal income taxes and his other bills and filed for Chapter 7 bankruptcy protection in 1998. He received a discharge in bankruptcy on February 18, 1999.

Subsequent to the discharge in bankruptcy, Applicant became delinquent on a credit card in the amount of \$228.00. Applicant settled that account in full as of April 8, 2003 (GE 6 & AE B). He incurred two hospital charges in the amounts of \$148.00 and \$172.00 that were placed for collection, and subsequently satisfied in full (GE 6). He also had another medical bill that was placed for collection and then satisfied in full (AE D).

The only other delinquent account alleged in the SOR is a mortgage payment on a building Applicant purchased for investment purposes. Applicant purchased a building for \$30,000.00 with the intention of converting it into a boarding house that would have rooms for nine persons. He had been led to believe he could put the property to that use by the real estate agent he dealt with. Once he purchased the property, a building code inspector informed him that he would only be able to rent space to three persons who were not his family members. Realizing that he would have to spend more than \$10,000.00 to make the necessary improvements to permit the building to be used for that limited purpose, and upset that he had been misled into purchasing the property, he stopped making the payments that came due on the mortgage. He is now attempting to dispose of the property and submitted AE C as evidence of his current financial ability to bring the mortgage payments current if he is otherwise unable to rid himself of this debt.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chiefs 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 J, pertaining to criminal conduct, 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.⁽²⁾ The government has the burden of proving controverted facts.⁽³⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence⁽⁴⁾, although the government is required to present substantial evidence to meet its burden of proof.⁽⁵⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁶⁾ 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.⁽⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

No one has a right to a security clearance⁽⁹⁾ and "the clearly consistent standard indicates that

security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹¹⁾

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 attempt to operate a franchise business in the mid-90s began his financial woes because of his inability to understand and/or remain current with payments owing to the internal revenue service. A failed marriage and a resulting dispute over child-support payments left him strapped for several years, until he received a Chapter 7 bankruptcy discharge in February 1999. Since that time he has accumulated three medical bills and one credit card debt, totaling \$585.00, that became delinquent. Once the security significance of those delinquent accounts was brought to his attention, he satisfied them in full.

Appellant needs to pay approximately \$7,000.00 to bring the sole remaining delinquent account, owing on real estate he purchased as an investment, current. He has the financial ability to do so, but has decided, in what may or may not be a wise business decision, to allow the account to remain unpaid, pending either disposal of the property or his acceptance that he has no other option but to satisfy the delinquent mortgage payments. While I might not personally agree that it is an intelligent decision to allow the interest and penalties to continue to accrue on the delinquent mortgage account while Appellant is trying to rid himself of the property, I do believe he is proceeding in what he believes is a good-faith effort to resolve this debt.

Based on all the evidence presented in this case, I find that Disqualifying Condition (DC) 1: *A history of not meeting financial obligations*: and DC 3: *Inability or unwillingness to satisfy debts* apply in this case. I also find that Mitigating Conditions (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)*: and DC 6: *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* apply in this case.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find that Applicant has mitigated this security concern. He has overcome the case against him and satisfied his ultimate burden of persuasion. Guideline F is decided for Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline F: For the Applicant

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

Subparagraph f: 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.

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. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

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