

DATE: April 21, 2003

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-26479

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Marc Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 43-year-old married man employed by a defense contractor as a life support supervisor with a history of financial problems as evidenced by charged off bad debts, an automobile repossession, a paid money judgment, and approximately \$750,000 owed to more than 200 creditors stemming from the business activities of his corporation, of which he is the sole corporate officer. Given that Applicant has no realistic or firm plan to resolve any of the indebtedness, he is unable to mitigate the security concerns raised under Guideline F for financial considerations. Clearance denied.

STATEMENT OF THE CASE

On September 25, 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.

On October 14, 2002, Applicant answered the SOR, and he requested a clearance decision based on a hearing record. In his Answer, Applicant admits to the SOR allegations in subparagraphs 1.a, 1.b, 1.c, 1.d, 1.f in part, and 1.g; he denies the allegations in subparagraphs 1.e and 2.a.

On November 5, 2002, DOHA assigned this case to me to conduct a hearing and issue a written decision. Thereafter, on December 2, 2002, a notice of hearing was issued to the parties scheduling the hearing for December 19, 2002, at a location near Applicant's place of employment. Applicant appeared without 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 is a 43-year-old married man. He and his spouse have four children, all daughters.

He is employed by a defense contractor as life support supervisor in the aerospace industry. He's worked for this company since about September 1999. Previously, from 1981 to 1986, he worked at the same location, but for a different company, and he held a security clearance without incident. He was laid off in 1986 due to no fault of his own and was self-employed from then until September 1999. In conjunction with his current employment, Applicant has applied to obtain a security clearance.

Applicant is an honorably discharged veteran of the U.S. Air Force serving from June 1977 to June 1981. Applicant worked as a liquid fuel systems maintenance technician for the Titan II missile program and held a top-secret security clearance without incident. In September 1980, while working at a Titan II missile site, Applicant went above and beyond the call of duty when he volunteered with others to assess damage to a missile in the silo. The missile, which reportedly contained a nuclear warhead, exploded destroying the silo, causing damage to the surrounding area, killing one servicemember, and injuring many others, including Applicant. He received second-degree burns on his face and second- and third-degree burns on his hands and fractured his ankle. For his actions, Applicant was decorated with the Airman's Medal for heroism and valor, and the medal was presented personally by the Secretary of the Air Force. The Department of Veteran's Affairs (VA) has determined that Applicant's injuries justify a 50% disability rating. Applicant currently receives about \$870 per month in disability compensation from the VA.

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.e and 2.a. After both sides presented their cases, Department Counsel conceded on those allegations.⁽²⁾ Accordingly, those matters are resolved in Applicant's favor and will not be discussed further.

Concerning the indebtedness alleged in the SOR, the record evidence establishes Applicant is indebted to four creditors (three delinquent accounts charged off as bad debts and a balance due after a voluntarily repossession of a car) for a total of nearly \$17,000. It was also established that Applicant has made essentially no payments to these four creditors. Applicant also has a paid money judgment for about \$500 on his credit record.

In addition to the indebtedness alleged in the SOR, Applicant owes approximately \$750,000 in promissory notes to more than 200 creditors stemming from the business activities of his corporation from about June 1991 to September 1999. During this time, Applicant dedicated himself to launching and operating a business venture based on the idea of four dead palm trees that come to life as nonviolent action heroes and role models for children. The business has produced various projects, e.g., a television pilot, a book, toys, life-size figures, etc., and it also has a web site.

Although the business has enjoyed some success over the years, the present status is that it has no sales or marketing contracts in place, no operating capital, and the corporate checking account is depleted and shut down. The corporation was dissolved in 2000 for failure to pay annual fees, but was reinstated in 2001 when Applicant paid the fees from his salary. Applicant is still working to make the business a success and is paying business expenses from his personal accounts. Applicant is the president of the company and sole corporate officer. He acknowledges that he alone is responsible for corporate debt. His hope is that his business can achieve a significant breakthrough allowing him to pay off his personal and corporate debt.

Aside from the indebtedness discussed above, Applicant and his family appear to be living within their means.

Applicant presented a wealth of favorable character evidence from numerous people who vouch for his general character, trustworthiness, honesty, reliability, and security suitability.

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.

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.⁽³⁾ The government has the burden of proving controverted facts.⁽⁴⁾ The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than the preponderance of the evidence.⁽⁵⁾ The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.⁽⁶⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁷⁾ 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.⁽⁸⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

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."⁽¹⁰⁾ 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

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.

Here, based on the record evidence as a whole, the government has established its case under Guideline F. The record shows (1) a history of not meeting financial obligations, and (2) inability to satisfy debts.⁽¹¹⁾ The delinquent accounts resulting in charged off bad debt, the repossession, the money judgment, and the \$750,000 of debt stemming from his business support these conclusions. The same facts also show Applicant is overextended in the sense that, although living within his means, he is unable to make any progress on eliminating his overdue debt. At bottom, Applicant has no realistic or firm plan to resolve any of the indebtedness.

I have reviewed the mitigating conditions (MC) under Guideline F and, given the record evidence, conclude none apply. Applicant attributes his difficult financial situation due to his "very unique situation"⁽¹²⁾ involving his efforts to turn his idea of nonviolent action heroes for children into a viable and financially successful business. Although Applicant's idea is unique, it is not particularly new or novel for an individual to experience severe financial problems when attempting to own and operate their own business. And so, I cannot give Applicant's unique circumstances much weight in mitigation or extenuation.

Applicant also attempts to rely on the distinction between personal and corporate debt. Although it can be a valid distinction, it is not so here. The facts and circumstances show Applicant has effectively commingled his corporate operation with his personal finances rendering any distinction meaningless. This is especially true now since the business has no operating capital and he is financing any current operations from his personal funds. In short, it appears that "piercing the corporate veil"⁽¹³⁾ would not be a difficult task given Applicant's situation.

To sum up under Guideline F, I assess the likelihood that Applicant will experience continuing financial problems as probable. And I have weighed the record evidence--both favorable and unfavorable--and conclude the security concerns are not mitigated. Notwithstanding his honorable military service (notably, the Airman's Medal), and his other positive actions, attributes, and achievements, Applicant has not established, at this time, that it is "clearly consistent with the national interest" that he should be granted the privilege of a security clearance. Accordingly, Guideline F is decided

against Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline F: Against the Applicant

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: For the Applicant

Subparagraph 1.f: Against the Applicant

Subparagraph 1.g: Against 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 not 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. 112-15.
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
5. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).
6. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
7. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
8. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
9. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.
10. *Egan*, 484 U.S. at 528, 531.
11. DC 1 ("A history of not meeting financial obligations;"), and DC 3 ("Inability or unwillingness to satisfy debts.").
12. Transcript at p. 47.

13. Meaning "the act of disregarding the veil of incorporation that separates the property of a corporation from the property of its security holders." Bryan G. Garner, *A Dictionary of Modern Legal Usage*, at p. 660 (2d ed. 1995).