

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is unable to successfully mitigate the security concern raised by his history of financial problems. Clearance is denied.

CASENO: 02-03883.h1

DATE: 09/16/2004

DATE: September 16, 2004

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-03883

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Juan J. Rivera, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is unable to successfully mitigate the security concern raised by his history of financial problems. Clearance is denied.

STATEMENT OF THE CASE

On July 17, 2003, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating the reasons why DOHA proposed to deny or revoke access to classified information for Applicant.⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline F for financial considerations and Guideline E for personal conduct. Concerning Guideline F, the SOR alleges 12 delinquent debts owed by Applicant as well as a Chapter 13 bankruptcy case that was dismissed. Concerning Guideline E, the SOR alleges Applicant falsified his security-clearance application by failing to disclose three delinquent debts in response to a question asking whether he had any debts more than 180-days past due within the last seven years.

In his answer to the SOR, dated August 8, 2003, Applicant requested a clearance decision based on a written record in lieu of a hearing. Concerning Guideline F, he admitted the allegations in subparagraphs 1.d, 1.f, 1.g, 1.l, and 1.m, and he denied the allegations in subparagraphs 1.a, 1.b, 1.c, 1.e, 1.h, 1.i, 1.j, and 1.k. Concerning Guideline E, he denied the falsification allegation in subparagraph 2.a.

On January 19, 2004, Department Counsel prepared and submitted his written case.⁽²⁾ The File of Relevant Material

(FORM) was mailed to Applicant on or about January 27, 2004, and it was received by Applicant February 4, 2004. Applicant's written response to the FORM was due March 5, 2004. No response was received, and the case was assigned to me March 25, 2004.

RULINGS ON PROCEDURE

Department Counsel requested that subparagraphs 1.a and 1.b be consolidated, as the two allegations concern the same debt. That requested is granted and the two subparagraphs are consolidated to read as follows:

You are indebted to VA Power Systems in the approximate amount of \$958.00 for a delinquent debt that was referred to collection to NCO Financial. As of approximately January 1999, this debt had not been paid.

FINDINGS OF FACT

Applicant's admissions are incorporated into my findings, and after a thorough review of the record, I make the following essential findings of fact:

Applicant, a 49-year-old man, is employed as an information technology specialist. He has worked for this employer since March 2001. The character of Applicant's work performance has not been developed in the record. He has been married to the same woman since 1972 and has seven children from that marriage.

In conjunction with his employment, Applicant completed a security-clearance application in April 2001. In response to Question 38, Applicant responded "No" thereby denying that he had been over 180-days delinquent on any debt in the last seven years. Applicant did, however, disclose an automobile repossession within the last seven years as required by Question 35 and provided details about it in the general remarks section of his application.

As part of the background investigation concerning Applicant, a credit report was obtained in April 2001 (Item 9). In

summary, the credit report revealed two accounts 30-days past due, four accounts 90-days past due, and one account 120-days past due. The report also revealed one repossession and five accounts in a collection/charge off status.

In November 2001, Applicant was interviewed as part of the background investigation. The interview produced a sworn statement of seven pages (Item 5). He explained he experienced financial problems after his retirement from the U.S. Army in 1998 when he had difficulty finding employment in his field of telecommunications. He elected to use his GI Bill benefits to study computers to earn a certificate as a system engineer. He also worked part-time until obtaining full-time employment in June 1998 while still attending school. Applicant and his spouse bought a home in September 1998 and were able to manage until his wife's work hours were reduced in January or February 1999. Combined with expensive auto repairs (this vehicle was eventually repossessed) and homeowner expenses, Applicant became delinquent on several accounts.

In addition, Applicant addressed approximately 11 delinquent accounts. He also indicated he failed to disclose all delinquent debts on his security-clearance application, because he did not read the form with sufficient care. He did not intend to omit the information. Applicant added that his financial situation was improving and he had a plan to be current with his financial obligations by Spring 2002.

In approximately February 2002, Applicant filed a Chapter 13 bankruptcy petition seeking the bankruptcy court's approval of a plan for payment to creditors. On June 19, 2002, the bankruptcy court ordered Applicant to file an amended plan by June 30, or to dismiss or convert his case to another chapter. Applicant did not do so, and the court dismissed Applicant's Chapter 13 case on July 12, 2002.

SOR subparagraphs 1.a and 1.b concern the same debt owed to a power company in the approximate amount of \$958.00. Applicant does not deny receiving the service, but disputes the amount owed. Attached to his Answer to the SOR is a letter of dispute, undated and lacking a mailing address, wherein Applicant disputes the amount owed. This debt remains unpaid or otherwise resolved.

SOR subparagraph 1.c. concerns an account with a bank credit services with an overdue balance of \$220.00. He denies this allegation and explains it is a open checking account that has not been in a collection status. One document submitted by Applicant shows the account is in collection status with a balance of \$703.11 as of May 2003 (Item 3, Attachment 9). Another document submitted by Applicant, purporting to be a page from an account statement, contains a different account number (Item 3, Attachment 8). The precise status of this account is at best unresolved and unclear.

SOR subparagraph 1.d concerns an unpaid debt owed to a bank for \$601.00. In his Answer, Applicant claims he sent the creditor a payment and set up a payment plan. He has not, however, provided supporting documentation of his claim. This debt remains unpaid or otherwise unresolved.

SOR subparagraph 1.e concerns a debt for \$1,150.00 that originated with an electronics store, was placed for collection, and was taken over by a bank. The account was settled in full in August 2001 (Item 3, Attachment 11).

SOR subparagraph 1.f concerns an unpaid charged off bad debt for \$557.00. In his Answer, Applicant claims he contacted the creditor and set up a payment plan to satisfy the debt. He has not, however, provided supporting documentation of his claim. This debt remains unpaid or otherwise unresolved.

SOR subparagraph 1.g concerns an account with a finance company with Applicant being 120-days delinquent in the amount of \$169.00. In his Answer, Applicant indicated he started making payments to the creditor and does not recall the account being delinquent. He has not, however, provided supporting documentation of his claim. This debt remains unpaid or otherwise unresolved.

SOR subparagraphs 1.h, 1.i, 1.j, and 1.k concern four student loans accounts totaling more than \$11,000.00, and all four loan accounts were delinquent in various amounts. Applicant was able to participate in a loan rehabilitation program by agreeing to timely make 12 monthly payments of \$118.00 to rehabilitate the loan with the first payment due September 2003 (Item 3, Attachments 15, 16, 17, 18, 19, and 20). There is no supporting documentation showing Applicant made any of the 12 monthly payments or the current status of the four student loans.

SOR subparagraph 1.l concerns an unpaid judgment obtained against Applicant for \$8,702.00. The basis for judgment was a deficiency balance Applicant owed on a car that was voluntarily repossessed. In his Answer, Applicant claimed he would start making payments as soon as possible. He has not, however, provided supporting documentation of his claim. The judgment remains unpaid or otherwise unresolved.

SOR subparagraph 1.m concerns Applicant's Chapter 13 bankruptcy case in 2002. The case history was discussed above, including its dismissal in July 2002 due to Applicant's failure to amend the repayment plan or convert to another chapter.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security-clearance eligibility,

including disqualifying conditions (DC) and mitigating conditions (MC) 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.

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⁾ There is no presumption in favor of granting or continuing access to classified information.⁽⁴⁾ The government has the burden of proving controverted facts.⁽⁵⁾ The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than the preponderance of the evidence.⁽⁶⁾ The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.⁽⁷⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁸⁾ 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.⁽⁹⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁰⁾

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."⁽¹¹⁾ Under *Egan*, Executive Order 10865, and the Directive, any 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,⁽¹²⁾ 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 his obligation to protect classified information.

Here, based on the record as a whole, the government has established its case under Guideline F. Applicant's financial history includes a dismissed Chapter 13 bankruptcy case in 2002, an unpaid money judgment for about \$8,700.00, four

delinquent student loan accounts, and various other delinquent accounts. These facts and circumstances demonstrate a history of not meeting financial obligations as well as inability or unwillingness to pay one's just debts.⁽¹³⁾ The same facts and circumstances also demonstrate financial irresponsibility.

I have reviewed the mitigating conditions under Guideline F and conclude none apply. Given Applicant's Chapter 13 bankruptcy case was dismissed in July 2002, the unpaid money judgment, and the other debts that remain both delinquent and unpaid, I cannot conclude his financial problems are not recent,⁽¹⁴⁾ nor are his financial problems an isolated incident.⁽¹⁵⁾ And I cannot apply MC 3⁽¹⁶⁾ because the evidence is insufficient to prove that an event beyond his control was the chief factor leading to his financial problems. Given that the two largest debts (the unpaid money judgment and the four delinquent student loans) remain unpaid or unresolved, I cannot conclude that Applicant has made a good-faith effort to get his financial ship back on course, and so, MC 6⁽¹⁷⁾ does not apply.

Time will tell if Applicant can establish and maintain a track record of financial responsibility and stability. At this point, the record is insufficient to conclude he has successfully mitigated the security concern. Guideline F is decided against Applicant.

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 thought the arrest had been expunged from the record and did not need to be reported.

Here, based on the record as a whole, the government has not established its case. I am not convinced Applicant deliberately provided a false response when he answered no in response to Question 38 concerning financial delinquencies. Indeed, the fact he fully reported the repossession in response to Question 35 undercuts the implicit claim that Applicant was trying to hide his derogatory financial history. Guideline E is decided for Applicant.

FORMAL FINDINGS

As required by ¶ E3.1.25 of Enclosure 3 to the Directive, below are my conclusions as to the allegations in the SOR:

SOR ¶ 1-Guideline F: Against the Applicant

Subparagraphs a & 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: Against the Applicant

Subparagraph i: Against the Applicant

Subparagraph j: Against the Applicant

Subparagraph k: Against the Applicant

Subparagraph l: Against the Applicant

Subparagraph m: Against the Applicant

SOR ¶ 2-Guideline E: For the Applicant

Subparagraph a: For the Applicant

DECISION

In light of all the circumstances presented by the record, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Michael H. Leonard

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. The FORM includes several documents for consideration and they are described as Items 1 - 9. Item 8 contains four pages, however, not the two pages as described.
 3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
 4. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
 5. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
 6. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).
 7. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
 8. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
 9. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
 10. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.
 11. *Egan*, 484 U.S. at 528, 531.
 12. Directive, Enclosure 2, Attachment 6, at pp. 29-30.
 13. DC 1 ("A history of not meeting financial obligations;") and DC 3 ("Inability or unwillingness to satisfy debts;").
 14. MC 1 ("The behavior was not recent;").
 15. MC 2 ("It was an isolated incident;").
 16. 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;").
 17. MC 6 ("The individual initiated a good-faith effort to repay or overdue creditors or otherwise resolve debts.").