

DATE: November 14, 2003

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-04017

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL H. LEONARD**

**APPEARANCES**

**FOR GOVERNMENT**

Eric H. Borgstrom, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 25-year-old never married man employed as a mail clerk for a governmental contractor. He is unable to mitigate the security concerns under Guideline E based on using a false address to obtain lower college tuition. Likewise, under Guideline F, he is unable to mitigate the security concerns based on the deceptive financial practice as well as his longtime delinquent student loan, which he has only recently started to repay. It is too soon to tell if Applicant has truly reformed his financial practices. Clearance is denied.

**STATEMENT OF THE CASE**

On July 14, 2003, 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. [\(U\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline E for personal conduct (using a false address to obtain lower college tuition) and Guideline F for financial considerations (failure to pay a student loan).

Applicant answered the SOR on July 28, 2003, wherein he admitted to the single allegation under Guideline F, but denied the single allegation under Guideline E. He also requested a clearance decision based on a hearing record.

On September 24, 2003, DOHA assigned this case to another administrative judge to conduct a hearing and issue a written decision. Subsequently, the case was reassigned to me due to caseload considerations. On October 1, 2003, a notice of hearing was issued to the parties scheduling the hearing for October 30, 2003. Applicant appeared without counsel and the hearing took place as scheduled. The record was left open to allow Applicant to submit additional documentary evidence concerning his financial situation. Government counsel having no objection, those documents are admitted into the record as Applicant's Exhibits F, G, H, I, J, and K. DOHA received the hearing transcript on November 10, 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 25-year-old never married man. He is a high-school graduate who has attended some college, although he has not earned a degree. He is employed by a governmental contractor as a mail clerk where his duties consist of processing mail, including classified mail, to various governmental departments. He has worked for this company since April 1998.

According to his security-clearance application, Applicant has lived at the same address in State 1 since January 1993. On or about August 1997, Applicant decided to attend a nearby community college located in State 2. He started attending class in September 1997, but continued to live at his State 1 residence, which required a 30-minute one-way drive to reach the community college. Since he lived in State 1, Applicant was charged out-of-state tuition.

In January 1998, at a friend's suggestion, Applicant moved into the friend's apartment located near the community college in State 2. On or about January 14, 1998, Applicant submitted a change of address form to the community college. The form was specially designed for students to declare their domicile for tuition purposes. Applicant declared, under penalties of perjury, that he lived in the county where the community college was located, and that he had lived at that address for one year and one month. Applicant attended classes until the spring semester concluded during May 1998. Applicant was charged in-state or resident tuition for the spring semester.

Other than the community college, Applicant did not change his address with any other person or institution. He lived at the State 2 address three to four days per week and spent the rest of his time at his State 1 address. He received all mail, except for mail from the community college, at his State 1 address. He was not listed on the lease for the apartment, nor was he listed on any account associated with the apartment (e.g., utilities). Applicant had clothes and personal items at the State 2 address, but otherwise his possessions remained at the State 1 address. When the spring semester concluded in May 1998 and Applicant decided not to attend the college, Applicant returned to the State 1 address where he has continued living to the present.

To attend the community college, Applicant obtained a loan from the college, which has not been repaid and has been delinquent for sometime. When Applicant completed his security-clearance application in September 2000, he disclosed that he owed about \$3,000 for the student loan and that payment arrangements were being made.

As part of the background investigation, Applicant was interviewed in February 2001 by an agent of the Defense Security Service (DSS). Applicant indicated in his sworn statement that he had yet to start making payments on the outstanding student loan.

Applicant was interviewed by the DSS a second time in April 2003. Applicant indicated he had made a one-time payment of \$200 sometime in 2002, but had not made other payments as he had some unexpected medical bills arise that required payment. He also indicated he would submit a payment the next day, April 11, 2003, when he received his paycheck.

During the hearing, Applicant submitted proof that he has entered into a payment plan with the collection agency now handling the student loan account, which now has a current balance of more than \$4,000.00. The payment plan was established on July 24, 2003, and requires Applicant to make \$100.00 monthly payments starting August 1, 2003, until March 2007. Applicant made payments in August and September, but as October 30<sup>th</sup>, he was late making his October payment.

## POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security-clearance eligibility, including the disqualifying and mitigating conditions for each applicable security 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 E for personal conduct and 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.<sup>(2)</sup> The government has the burden of proving controverted facts.<sup>(3)</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>(4)</sup> The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.<sup>(5)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>(6)</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>(7)</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(8)</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>(9)</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-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 and handle classified information. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate a person may not properly safeguard or handle classified information.

Here, considering the record evidence as a whole, the government has established its case under Guideline E. Notwithstanding his assertions to the contrary, Applicant deliberately falsified the January 1998 domicile declaration by claiming that he was a resident of the county where the community college was located in State 2. The falseness of his declaration is evidenced by (1) his untrue claim on the form that he had lived in the county for one year and one month, (2) he changed his address with no other person or institution other than the college, (3) he received all mail, except college mail, at his State 1 address, and (4) his part-time living arrangement in State 2. Applicant provided the false address to obtain a benefit (lower tuition) for himself. Although Applicant may have lived at the State 2 address a few days a week while attending classes, he did not in fact change his domicile or permanent home, which was and is in State 1. These facts and circumstances invoke Disqualify Condition (DC) 4<sup>(10)</sup> under Guideline E. DC 4 applies because this is the type of questionable, dishonest, or untrustworthy conduct that could increase a person's vulnerability to coercion, exploitation, or duress.

I have reviewed the mitigating conditions (MC) under Guideline E and conclude none apply. Although his conduct took place during January 1998 through ay 1998, Applicant's current position is he did nothing wrong in using the State 2 address. Accordingly, MC 5<sup>(11)</sup> does not apply because Applicant has not taken positive steps to reduce or eliminate the vulnerability to coercion, exploitation, or duress. Guideline E is decided against Applicant.

#### ***Section 2-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 his 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, [\(12\)](#) (2) deceptive financial practices, [\(13\)](#) and (3) inability to satisfy debts. [\(14\)](#) Using a false address to obtain lower tuition combined with a longtime delinquent student loan support these conclusions. The same facts also support a conclusion of financial irresponsibility. Since Applicant last attended the community college in question in May 1998, he has made only token, irregular payments on the loan. After disclosing the delinquent student loan on his security-clearance application in September 2000, Applicant failed to make regular payments until August 2003, some months after he received the SOR. To date, he has made only two payments per the payment plan and his third payment in October is past due. At bottom, Applicant has displayed an irresponsible, negligent, or indifferent attitude toward his student loan debt.

I have reviewed the mitigating conditions under Guideline F and conclude none apply. Applicant's continuing assertions that he did nothing wrong by using the State 2 address to obtain lower tuition prevents me from excusing this incident as not recent [\(15\)](#) or as an isolated incident. [\(16\)](#) Moreover, although Applicant entered into a payment plan to resolve the delinquent student loan, he has made only two payments and he was late with the third. While Applicant is commended for his recent actions, given the facts and circumstances here, I cannot characterize his actions as a "good-faith effort" to repay the student loan. [\(17\)](#) In other words, it is too soon to tell if Applicant has truly reformed his financial practices to the extent necessary to mitigate the security concerns. Guideline F is decided against Applicant.

## FORMAL FINDINGS

SOR ¶ 1-Guideline E: Against the Applicant

Subparagraph 1.a: Against the Applicant [\(18\)](#)

SOR ¶ 2-Guideline F: Against the Applicant

Subparagraph 2.a: Against the Applicant

Subparagraph 2.b: Against the Applicant [\(19\)](#)

## 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. Clearance is denied.

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. 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 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. Paragraph E2.A5.1.2.4 of Guideline E.

11. Paragraph E2.A5.1.3.5 of Guideline E.

12. Paragraph E2.A6.1.2.1 of Guideline F.

13. Paragraph E2.A6.1.2.2 of Guideline F.

14. Paragraph E2.A6.1.2.3 of Guideline F.

15. Paragraph E2.A6.1.3.1 of Guideline F.

16. Paragraph E2.A6.1.3.2 of Guideline F.

17. Paragraph E2.A6.1.3.6 of Guideline F.

18. This subparagraph was amended to conform to the record evidence by deleting "September 1997" and substituting therefor "January 1998." Transcript at pp. 116-119.

19. This subparagraph was added to the SOR during the hearing; it is simply a cross-allegation of SOR subparagraph 1.a. Transcript at pp. 119-134.