

KEYWORD: Financial

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

CASENO: 02-07235.h1

DATE: 08/30/2004

DATE: August 30, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-07235

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Esq., Department Counsel

FOR APPLICANT

SYNOPSIS

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

STATEMENT OF THE CASE

On July 1, 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.

In her answer to the SOR, dated July 28, 2003, Applicant requested a clearance decision based on a written record in lieu of a hearing. She admitted to the SOR allegations except for subparagraph 1.d, which she said she was disputing.

On December 17, 2003, Department Counsel prepared and submitted their written case. The File of Relevant Material (FORM) was mailed to Applicant on or about January 5, 2004, and it was received by Applicant January 14, 2004. Applicant's written response to the FORM was due February 13, 2004. No response was received, and the case was assigned to another administrative judge on March 12, 2004, for decision. The case was reassigned to me March 22, 2004.

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 53-year-old woman, is employed by a major defense contractor as a repair person. She has worked for this employer since November 1991. The character of Applicant's work performance has not been developed in the record. She has never married, and she has one child, born in 1963.

Since 1992, Applicant has filed three Chapter 13 bankruptcy petitions wherein she sought the bankruptcy court's approval of a plan to repay her creditors. The first two Chapter 13 cases were ultimately dismissed. The third Chapter 13 case was subsequently converted to a Chapter 7 case. Details about the three bankruptcy cases are discussed below.

SOR subparagraph 1.a concerns the first Chapter 13 case filed in September 1992. It appears the bulk of the debt was due to (1) a home mortgage loan for \$89,000, and (2) a car loan for \$4,300, both debts being secured. A repayment plan was apparently approved and Applicant paid about \$3,679 until her attorney requested the Chapter 13 be voluntarily dismissed. The motion mentioned that a stay had been vacated making the Chapter 13 plan no longer feasible and Applicant no longer needed Chapter 13 protection. The motion was made in June 1994, and the case was closed in September 1994.

SOR subparagraph 1.b concerns the second Chapter 13 case filed in August 1994. The summary of schedules listed \$127,800 in assets and \$94,400 in liabilities. Again, the bulk of the debt consisted of the home mortgage loan for \$89,000, and the car loan for \$4,300. The Chapter 13 plan called for Applicant to pay \$507 per month for 60 months. In January 1995, the bankruptcy court dismissed the case due to Applicant's failure to make all required pre-confirmation payments. The case was closed on February 7, 1995.

SOR subparagraph 1.c concerns the third Chapter 13 case filed on or about March 1, 1995. The summary of schedules listed \$123,525 in assets and \$90,200 in liabilities. Nearly all the debt was based on the home mortgage loan for \$89,000. On or about July 5, 1995, the court confirmed a Chapter 13 plan calling for Applicant to pay \$532 per month for 60 months. Subsequently, Applicant moved to convert her Chapter 13 case to a Chapter 7 case, as she was unable to make the trustee and mortgage payments. The Chapter 13 case was concluded in January 1996, and it was converted to a Chapter 7 case in February 1996. The court granted Applicant a discharge releasing her from all dischargeable debts, including the home mortgage loan, in March 1996. The Chapter 7 case was closed on March 14, 1996.

In her sworn statement (Item 5), Applicant explained she experienced financial problems in the early 1990's due to her home purchase and resulting mortgage, taxes, utilities, and other payments that caused her to fall behind. Concerned about the matter, Applicant consulted an attorney to explore bankruptcy. She said the first two Chapter 13 cases were dismissed because she fell behind in her payments. Concerning her living situation, Applicant explained since December 1999 she moved in with a friend and paid \$400 per month for rent. Since then, she asserted she was able to

meet her bills and address some delinquent accounts.

In her Answer to the SOR, Applicant explained she sought Chapter 13 protection because she fell behind in her home mortgage loan and car loan payments when she became very ill. Other than her statement, Applicant has provided no information concerning the diagnosis, nature, or duration of the illness, or how it limited her ability to manage her financial affairs. She did not mention the illness when she twice provided sworn statements to the Defense Security Service (Items 5 and 6).

SOR subparagraph 1.d concerns an unpaid credit card account for about \$1,534. Applicant is disputing the amount of this debt and submitted a letter to that effect with her Answer to the SOR. The crux of her dispute is the credit card account was secured and had a \$300 limit, and the remaining balance is due to excessive fees and late charges. Other than her letter of July 25, 2003, Applicant has provided no information showing the account has been paid or otherwise resolved.

SOR subparagraph 1.e concerns an unpaid judgment taken against Applicant for \$183. This allegation is based on a credit report (Item 7). Applicant has provided no information showing the judgment has been paid or otherwise resolved.

SOR subparagraph 1.f concerns an unpaid medical bill for \$187. In her Answer to the SOR, Applicant stated she would pay this account per a payment plan once she contacted the creditor and made arrangements. Applicant has provided no information showing the medical bill has been paid or otherwise resolved.

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.⁽²⁾ There is no presumption in favor of granting or continuing access to classified information.⁽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 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,⁽¹¹⁾ 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 two dismissed Chapter 13 bankruptcy cases, a Chapter 7 bankruptcy case where her home mortgage loan for \$89,000 was discharged, one unpaid money judgment, one unpaid credit card account, and one unpaid medical bill. These facts and circumstances demonstrate a history of not meeting financial obligations as well as inability or unwillingness to pay one's just debts.⁽¹²⁾ The same facts and circumstances also demonstrate financial irresponsibility.

I have reviewed the mitigating conditions under Guideline F and conclude none apply. Although Applicant's three bankruptcy cases concerned essentially the same major debt (the home mortgage loan), and her last trip to bankruptcy court ended in March 1996, I cannot conclude her financial problems are not recent, ⁽¹³⁾ nor are her financial problems an isolated incident, ⁽¹⁴⁾ given the money judgment, the delinquent credit card account, and the delinquent medical bill remain unpaid or otherwise resolved. Had Applicant presented a track record of financial stability and responsibility after her last bankruptcy case, I would be inclined to apply both MC 1 and MC 2. And I cannot apply MC 3 ⁽¹⁵⁾ because the evidence is insufficient to prove that serious illness was the chief factor leading to her financial problems and three bankruptcy cases. Lacking any specifics about the diagnosis, nature, or duration of the illness, Applicant's statement that she was very ill receives little, if any, weight.

Time will tell if Applicant can establish and maintain a post-bankruptcy track record of financial responsibility and stability free from unpaid, delinquent debts, which are indicative of continued financial irresponsibility. The record is insufficient to conclude she has successfully mitigated the security concern. Guideline F is decided against 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

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against 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. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
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. Directive, Enclosure 2, Attachment 6, at pp. 29-30.
12. DC 1 ("A history of not meeting financial obligations;") and DC 3 ("Inability or unwillingness to satisfy debts;").
13. MC 1 ("The behavior was not recent;").
14. MC 2 ("It was an isolated incident;").
15. 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);").