

DATE: October 30, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-28870

**DECISION OF ADMINISTRATIVE JUDGE**

**HENRY LAZZARO**

**APPEARANCES**

**FOR GOVERNMENT**

Juan R. Rivera, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's financial problems include \$5,793.00 in delinquent credit card debt, and \$17,532.00 in delinquent medical bills. A hospital excused more than \$10,000.00 of the debt as a *Charity Care/Indigent Care adjustment*, and Applicant has paid several small medical bills. However, he has done little to satisfy the remaining creditors or otherwise mitigate the security concerns caused by his financial considerations. Clearance is denied.

**STATEMENT OF THE CASE**

On June 3, 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 two delinquent accounts and eleven collection accounts, totaling \$23,325.00 of bad debt.

Applicant submitted an answer to the SOR that was received by DOHA on July 3, 2003, and requested a hearing. Applicant admitted all of the allegations contained in the SOR, with the exception of the \$212.00 collection account alleged in subparagraph 1.j.

The case was assigned to me on August 14, 2003. A notice of hearing was issued scheduling the hearing for August 19, 2003. The hearing was conducted as scheduled. The government submitted four documentary exhibits at the hearing that were marked as Government Exhibits (GE) 1-4 and admitted into the record without an objection. The Applicant testified at the hearing and submitted eight exhibits that were marked as Applicant's Exhibits (AE) A-H, and admitted into the record. Department Counsel's objection to AE B was overruled. The remaining AEs were admitted without an objection. Applicant called one witness who testified to Applicant's reputation and good character. The transcript was received by DOHA on September 15, 2003.

## FINDINGS OF FACT

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

Applicant is 39-years-old, unmarried, and has been employed by a defense contractor as a master plumber since March 11, 2003. He earns \$11.44 an hour, and is presently assigned to a location outside the United States. He was self-employed as a plumber from April 4, 1995 until he accepted the job with the defense contractor.

Applicant earned \$42,461.00 in 1994, the year before he decided to start his own business. His income fell dramatically the next two years, however, he was able to survive by living and sharing expenses with another person. His income improved from 1997 to 1999, fell significantly from 2000 to 2002, and then returned to a modest level in 2002.

Applicant's efforts at starting a business were substantially hampered by medical and dental problems, including an injured finger that required two surgeries, and two heart attacks. Those medical problems not only affected his ability to earn a living, but also account, either directly or indirectly, to the financial difficulties with which he is now beset.

SOR subparagraphs 1.c. through 1.m. allege unpaid medical bills, totaling \$17,532.00, that have been submitted for collection. The \$10,057.00 hospital bill alleged in subparagraph 1.m. has been forgiven by the creditor as a *Charity Care/Indigent Care adjustment*. As a result of that action, Applicant no longer is liable for that expense. Applicant has paid the debts alleged in subparagraphs 1.c., 1.d., and 1.e., that total \$136.00. He credibly testified that he previously paid the \$212.00 debt alleged in subparagraph 1.j. The remaining medical collection accounts, totaling \$7,127.00 remain unpaid. Applicant contacted the physician's office alleged in subparagraph 1.l., to whom he owes \$4,820.00, inquired if they would accept less than the full amount owing, and was informed they would not. He has made no further effort to satisfy that account or any of the other remaining delinquent medical accounts.

SOR subparagraphs 1.a. and 1.b. allege delinquent credit card debt totaling \$5,793.00. Applicant has not made any payments on either of those debts, although he does intend to begin making payments on the larger of the two debts once he completes paying off an automobile loan, which he anticipates will occur in August 2004. He did at one time contact the credit card company on the larger debt in an attempt to negotiate a payment plan to satisfy that debt, but was unsuccessful in his effort.

Applicant owns two vehicles that he keeps in the United States. He has paid off the loan on one of the vehicles and is making payments on the second. He does not require an automobile at his place of employment and only uses one of the two vehicles he owns on those occasions when he returns to the United States. When he found himself without sufficient income to pay his credit card debt, medical expenses, and vehicle loans, he opted to make payments on the vehicle loans and allow the other debt to become further delinquent. He is unable to sell the vehicle that he is presently making payments on because he owes more on the vehicle than it is worth. He has not sold the vehicle that has been paid-in-full and applied the proceeds to satisfy some or all of his debt because he did not think about that option that is available to him.

## 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 F, pertaining to financial considerations, 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.<sup>(2)</sup> The government has the burden of proving controverted facts.<sup>(3)</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence<sup>(4)</sup>, although the government is required to present substantial evidence to meet its burden of proof.<sup>(5)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>(6)</sup> 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.<sup>(7)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(8)</sup>

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

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

### 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 has substantial delinquent debt, vis-a-vis his income, that remains outstanding. He was successful in persuading his largest creditor to forgive more than \$10,000.00 of his delinquent debt, and has satisfied several small accounts in-full. However, he has made virtually no effort to satisfy his remaining creditors. 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.

Applicant's financial woes arise from his effort to start his own plumbing business, and the multiple medical emergencies he experienced that not only deprived him of income, but also account for the majority of his debt. Mitigating Condition (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)* applies in this case.

While Applicant's effort to start his own business is commendable and the source of the debt understandable, his failure to make adequate attempts to resolve his debt situation is what creates the security concern in this case. He has not sought out the assistance of any debt counseling service, nor has he sold an unneeded and fully paid for vehicle to apply the proceeds to his debts. He has totally ignored his credit card debt and the larger of his unexcused medical bills, and instead opted to make payments on a vehicle that he only uses for pleasure trips while back in the United States.

Considering all relevant and material facts and circumstances present in this case, including Applicant's character references and the highly complimentary information contained in the performance and development summary he submitted, 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 is unable to mitigate this security concern. He has failed to overcome the case against him or satisfy his ultimate burden of persuasion. Guideline F is decided against Applicant.

### FORMAL FINDINGS

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

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

Subparagraph j: For the Applicant

Subparagraph k: Against the Applicant

Subparagraph l: Against the Applicant

Subparagraph m: Against 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.

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.