

DATE: June 3, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30017

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Juan R. Rivera, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was granted three Chapter 7 bankruptcy discharges between 1988 and 2002. On each occasion, the circumstances that forced him to seek protection under the bankruptcy code were largely beyond his control. He took advantage of his last financial downturn by obtaining an education and now has well-paying employment with a defense contractor. Applicant has mitigated the security concern that arose from his financial instability. Clearance is granted.

STATEMENT OF THE CASE

On October 27, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline F, financial considerations, based upon Applicant having received three discharges in bankruptcy between 1988 and 2002. Applicant submitted an answer to the SOR that was received by DOHA November 3, 2003, and requested a hearing. Applicant admitted all SOR allegations.

The case was assigned to me on March 12, 2004. A notice of hearing was issued March 16, 2004, scheduling the hearing for April 6, 2004. The hearing was conducted as scheduled. The government submitted six documentary exhibits that were marked as Government Exhibits (GE) 1-6 and admitted into the record without an objection. Applicant testified at the hearing, and submitted seven documentary exhibits that were marked as Applicant's Exhibits (AE) 1-7 and admitted into the record. Department Counsel's objection to AE 6 was overruled. The remaining AEs were admitted without an objection. DOHA received the transcript April 14, 2004.

FINDINGS OF FACT

Applicant's admission to the allegations contained in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, exhibits and testimony, I make the following findings of fact:

Applicant is a 39-year-old man who has been employed as a flight simulator technician by a defense contractor since July 2002. He works full-time and earns slightly more than \$16.00 per hour. The performance appraisal he submitted covering 2003 (AE 7) attests to his honesty, dependability, and overall exemplary performance. Applicant was previously employed as a truck driver from September 1997 to March 2000, and as a line operator from June 1984 to September 1997. He was unemployed from March 2000 to July 2002 due to a reduction-in-workforce by his employer and his inability to find employment in the rural area where he has resided his entire life.

Applicant first married in March 1987, and obtained a divorce in August 1987. When he married, both he and his wife were employed. They purchased a mobile home and two automobiles and incurred approximately \$2,000.00 in credit card debt. Although he was only earning about \$8.00 per hour, Applicant was satisfied they would be able to handle the debt with their combined incomes. However, he returned home shortly after they were married to discover his wife had left him, taking their joint possessions and the contents of their savings account, and leaving him with responsibility for all their outstanding debt. He unsuccessfully attempted to negotiate a reduction in monthly payments with his creditors and obtain a debt consolidation loan before deciding he had no alternative but to seek bankruptcy protection. Applicant filed for Chapter 7 bankruptcy protection on November 15, 1988, and obtained a discharge on March 10, 1998.

Applicant married a second time in August 1994. The woman he married this time was a divorcee who brought a significant amount of debt into the marriage. Once again, Applicant believed they would be able to handle the debt with their combined incomes. However he experienced several financial setbacks, including his wife being out of work because of health problems and him being injured and off work for three months. He again unsuccessfully attempted to negotiate reduced payments to his creditor. He filed for joint Chapter 7 bankruptcy protection with his wife on May 12, 1995, and received a discharge on January 4, 1996. A large portion of the debt discharged was credit card debt his wife had brought into the marriage. Applicant obtained a divorce from his second wife in April 1998.

Applicant drew unemployment compensation and attempted to find work in a broad area around his residence after he was laid-off in March 2000. Having previously worked as a propane gas delivery driver, he unsuccessfully applied for work with every gas company in the region and with his former employers. He sought and was unable to find work as a laborer at cotton mills in the area. Applicant once again found himself in a position where his only alternative was to seek Chapter 7 bankruptcy protection. He filed for bankruptcy on April 18, 2002, and obtained a discharge on or about June 17, 2002.

After his unemployment compensation entitlement expired and he expended all his savings, Applicant moved in with his mother and qualified for a job training program that allowed him to attend a state technical college from the fall of 2000 until December 2002. He maintained a straight "A" average and obtained a degree in industrial electricity in May 2002, and a second degree industrial electronics in December 2002. (AE 2)

Although Applicant has never sought formal debt counseling assistance, he has obtained the advice and assistance of his uncle, a man he describes as a self-made millionaire, in getting his financial affairs in order. With the uncle's help, Applicant has established a budget (AE 4) that provides him with more than \$1,000.00 per month disposable income. He lives by himself and has no dependents. He has acquired two credit cards on which he maintains minimal balances in an effort to reestablish his credit. He drives an eleven-year-old car, has approximately \$2,000.00 in savings, and uses the majority of his disposable income to make cash purchases to furnish his residence.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief 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.⁽²⁾ The government has the burden of proving controverted facts.⁽³⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence⁽⁴⁾, although the government is required to present substantial evidence to meet its burden of proof.⁽⁵⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁶⁾ 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.⁽⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

No one has a right to a security clearance⁽⁹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹¹⁾

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.

On three occasions between 1988 and 2002, Applicant found himself with unmanageable debt and no alternative but to seek protection under the bankruptcy code. Disqualifying Condition (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debts* apply in this case.

The circumstances that forced Applicant to file for bankruptcy on each occasion (his wife abandoning him and leaving him with the family debt, health issues, and extended unemployment) were unanticipated and beyond his control. Further, Applicant was an unskilled minimal wage employee on each occasion when he experienced financial problems, and he has now taken commendable steps to make himself a skilled and well-paid member of the workforce. He has sought the assistance of his uncle, an apparently astute businessman, in placing his finances in order, is living well within his means, accumulating savings, and attempting to reestablish his credit rating. Mitigating Conditions (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)*; MC 4: *The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*; and MC 6: *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* apply in this case.

Considering all relevant and material facts and circumstances present in this case, 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 Applicant has mitigated this security concern. He has overcome the case against him and satisfied his ultimate burden of persuasion. Guideline F is decided for Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline F: For the Applicant

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

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.