

DATE: November 23, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-30626

## **DECISION OF ADMINISTRATIVE JUDGE**

**HENRY LAZZARO**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Eric Borgstrom, Esquire, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a 27-year-old man who has been sporadically employed by defense contractors since September 2001. He has more than \$18,000.00 in delinquent debt that has been past due for several years, and has done little to demonstrate he is a financially responsible individual. Applicant has failed to mitigate the financial considerations security concern present in this case. Clearance is denied.

### **STATEMENT OF THE CASE**

On April 16, 2004, 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 facts raising a security concern under Guideline F, financial considerations. Applicant submitted an answer to the SOR that was received by DOHA on May 17, 2004, and requested a hearing. Applicant admitted all SOR allegations.

The case was assigned to me on August 10, 2004. A notice of hearing was issued on August 26, 2004, scheduling the hearing for September 13, 2004. The hearing was conducted as scheduled. The government submitted four documentary exhibits that were marked as Government Exhibits (GE) 1-4, and admitted into the record without an objection. Applicant testified, called one witness, and submitted five exhibits that were marked as Applicant's Exhibits (AE) 1-5, and admitted into the record without an objection. The transcript was received on September 23, 2004.

### **FINDINGS OF FACT**

Applicant's admissions to the allegations contained in 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 27-year-old man who has been employed sporadically by defense contractors for the past few years. He graduated from college in May 2001, and was awarded a bachelor of business administration degree in information

systems and business management. He was employed part-time during his college days, including work at the college radio station and as a disc jockey. He is single and has no children.

Applicant began employment with defense contractors in September 2001, but was thereafter placed on administrative leave and recalled on several occasions due to his inability to perform on contracts because he lacked a security clearance. He estimates he only worked a total of six or seven months for defense contractors between September 2001 and July 2004. He periodically received unemployment compensation or found what he referred to as "piecework" with his former radio station employer. Since July 2004, Applicant has been employed by a government contractor performing work for the U.S. State Department while he awaits a clearance decision.

Applicant's financial problems seem to have begun when he purchased an automobile in July 2000. His testimony is unclear about what transpired, but he claims to have contracted to buy the vehicle for \$13,500.00 (\$18,900.00 with finance charges), and a monthly payment of \$217.00. However, he testified that after the dealer was mistakenly informed he was not employed by the college radio station, he had to sign a second contract in which the price was increased to \$26,000.00, and the monthly payment to \$387.50. Again his testimony is unclear about what followed, but he apparently was charged with vehicular fraud, was unable to register or insure the vehicle, retained an attorney to assist him, and, after only making several payments over the course of the next year, retained possession of the automobile until the summer of 2003 without making any additional payments.

Applicant eventually surrendered the car to the financing company after it caught fire. As of May 25, 2004, his outstanding balance on the auto loan was \$15,648.90. (AE 2) The finance company offered to accept a lump sum settlement in the amount of \$10,954.23 to fully satisfy this debt or monthly payments of \$100.00 on the full balance. (AE 2) Applicant made \$100.00 payments in July and August 2004, (AE 3 & 4) and testified he was now waiting for the finance company to send him a new agreement before he resumes making monthly payments.

Applicant has an account in the amount of \$2,390.00 that was placed for collection in March 2003. (AE 5) He testified this delinquent account originally arose while he was in college and had a credit card stolen. Although the account was closed after the theft of the card, he was billed for accrued interest that eventually rose to approximately \$1,100.00. The account was sold to a collection agency at which time the amount owing increased to approximately \$2,300.00. He claims he contacted the collection agency and offered \$1,000.00 to satisfy the debt, but was told they would only accept full payment, although they would make arrangements for a monthly payment plan. He has indicated he would be willing to settle the account with the collection agency if they are agreeable to making some sort of a deal with him. (GE 2)

The last collection account listed in the SOR was a telephone bill in the amount of \$357.00 that was placed for collection in March 2001. Applicant did not settle this account until he finally made a payment made in May 2004, the month after the SOR was issued. (AE 5)

## **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.<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 two substantial debts still outstanding that have been delinquent for several years. He made little effort to resolve the larger debt until very recently, and virtually no effort to resolve the smaller outstanding debt despite having been made aware of their security significance more than two years ago when he was first questioned about them (GE 2). Disqualifying Condition (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debts* apply.

Applicant did reach a settlement and satisfy the smallest debt listed in the SOR, and has belatedly entered into an apparent repayment agreement with the creditor on the largest of his debts. Accordingly, he is entitled to some consideration under Mitigating Condition (MC) 6: *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*. Although Applicant relies upon his numerous periods of unemployment for failing to deal with his delinquent accounts, those accounts were entered into and became delinquent while he was in college, and were for the most part ignored while he was engaged in the same employment he had when he undertook the debt obligations. Accordingly, I do not find MC 3: *The conditions that resulted in the behavior were largely beyond the person's control*. . . applies. I have considered the remaining mitigating conditions and conclude that none apply.

Most troubling about Applicant's conduct is the way he dealt with the automobile debt. While he indicates he may have been taken advantage of by the dealer and finance company, his willingness to retain the vehicle for years without either making payments or resolving the dispute is indicative of the type of irresponsibility that must call into question Applicant's willingness and/or ability to protect classified information.

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 failed to mitigate this security concern. He has displayed a financially irresponsible attitude that is inconsistent with the character that must be expected of one who is to be entrusted with the nation's secrets. Applicant has failed to overcome the case against him and 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

## **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.

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.