

DATE: April 11, 2003

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-11419

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL H. LEONARD**

**APPEARANCES**

**FOR GOVERNMENT**

Marc Curry, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 31-year-old married man employed by a defense contractor as a computer help-desk technician with a history of financial problems (three NSF checks resulting in criminal charges, delinquent accounts with nine creditors for a total of nearly \$16,000, and a proposed bankruptcy petition that includes \$131,500 in debt owed to 44 creditors). Although he intends to resolve his indebtedness via a Chapter 7 bankruptcy proceeding, additional time is necessary before Applicant can establish a track record of financial responsibility and stability sufficient to mitigate the security concerns raised by his financial irresponsibility. Clearance denied.

**STATEMENT OF THE CASE**

On July 14, 2002, 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 for financial considerations.

On August 2, 2002, Applicant answered the SOR, and he requested a clearance decision based on a hearing record. In his Answer, Applicant admits to the SOR allegations (subparagraphs 1.a - 1.m).

On October 23, 2002, DOHA assigned this case to me to conduct a hearing and issue a written decision. Thereafter, on December 2, 2002, a notice of hearing was issued to the parties scheduling the hearing for December 18, 2002, at a location near Applicant's place of employment.

At the hearing, Department Counsel offered three documentary exhibits (Exhibits 1 - 3); no witnesses were called. Applicant appeared without counsel, offered his own testimony and that of one character witness, and offered three documentary exhibits (Exhibits A - C). DOHA received the hearing transcript on January 2, 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 31-year-old married man. He and his spouse have two children, ages 3 years and 7 months. Applicant's first marriage ended in divorce in April 1992. That marriage produced one child, a daughter, who is now 14-years-old. Applicant obtained custody of that child and she lived with Applicant until recently when she elected to reside with her mother.

Applicant is employed by a defense contractor as a help-desk technician where he is responsible for setting up computers and assisting others in operating computers. He's worked for this company since October 2001. Previously, he worked for the company as a temporary employee and was subsequently hired based on his successful duty performance. In conjunction with his current employment, Applicant has applied to obtain a security clearance.

The company security manager vouched for Applicant's application. The security manager--a retired Marine first sergeant who has worked continuously in industrial security since 1987--is of the opinion that Applicant is honest, truthful, and not a security threat. The witness also indicated that during the application process Applicant was very candid and up-front that he had experienced financial problems. That testimony is consistent with Applicant's security-clearance application<sup>(2)</sup> wherein Applicant revealed many debts in response to the appropriate questions.

The SOR alleges--and Applicant admits--the following: (1) he wrote three worthless or NSF checks in 1995-97 resulting in criminal charges in state court; (2) he is indebted to nine creditors for delinquent accounts (two for outstanding balances after car repossessions, one credit card account, one electrical bill, three medical bills, one car insurance bill, and one veterinary bill) for a total of nearly \$16,000; and (3) he has little remaining money after expenses to pay his past due debts and plans on file for bankruptcy within the next 90 days. During the hearing, it was established that Applicant paid the three NSF checks, the remaining nine delinquent accounts are unsatisfied with essentially no payments (beyond a few token payments) being made for some time, and Applicant has yet to file for bankruptcy, although he has retained legal counsel for that purpose.

Concerning the bankruptcy, Applicant plans to file a petition for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code.<sup>(3)</sup> To that end, Applicant presented a copy of the proposed Schedule F, which is a list of creditors holding unsecured nonpriority claims Applicant seeks to discharge in bankruptcy. The schedule, which was prepared by his bankruptcy attorney, contains 44 creditors totaling about \$131,500 in debt, including a residential foreclosure for \$82,000.

Applicant attributes his financial troubles to his April 1992 divorce, his failed attempt to operate an internet service provider (ISP) business during 1996 - 1998, the unexpected loss of a job at the end of June 2001 resulting in unemployment until on or about October 4, 2001. Applicant then started working as a contractor for his current employer and was made a regular employee shortly thereafter. Applicant also acknowledges he and his spouse have lived beyond their means, he is currently in no position to pay off his delinquent debts, and he has reluctantly decided bankruptcy is the only real option.

Concerning his 1992 divorce, Applicant received custody of his daughter. He was not required to pay child support, alimony, or other court-ordered payments. His spouse was required to pay a nominal amount of child support, but for the most part she paid nothing.

Concerning the failed ISP business, Applicant, while employed full time at another job, operated his company from about February 1996 to September 1998. Doing business as a S corporation, the firm failed because Applicant and his partner neglected the proper billing of customers. Applicant testified that he has no corporate debt stemming from the business failure as the initial start-up funds of about \$15,000 was obtained without expectation of repayment.

## POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security-clearance eligibility.

Chief among them is the disqualifying and mitigating conditions 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. Considering the record evidence as a whole, the following adjudication guidelines are most pertinent here: 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>(4)</sup> The government has the burden of proving controverted facts.<sup>(5)</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>(6)</sup> The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.<sup>(7)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>(8)</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>(9)</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(10)</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>(11)</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**

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 their 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 shows (1) a history of not meeting financial obligations, (2) illegal financial practices, and (3) inability to satisfy debts.<sup>(12)</sup> The NSF checks, two car repossessions, the foreclosure, the other delinquent accounts, and the \$131,500 of debt revealed in the Schedule F support these conclusions. The same facts also support a conclusion of financial irresponsibility. His financial irresponsibility is a security concern because it raises the possibility he may be irresponsible, unconcerned, negligent, or careless in his obligation to properly safeguard or handle classified information.

I have reviewed the mitigating conditions (MC) under Guideline F and, given the record evidence, conclude none apply. Of the six, MC 3<sup>(13)</sup> is the only condition that deserves serious consideration. It does not apply, however, because Applicant's circumstances were not the primary reasons for his financial problems. Indeed, the divorce occurred more than 10 years ago and he was not burdened with substantial debt or other payment obligations. Likewise, the business failure did not result in corporate debt. And his unemployment in 2001 was for about four months, a relatively brief period considering the extent of Applicant's financial problems.

To his credit, Applicant has recently taken the first step toward resolving the financial problems by pursuing bankruptcy. If a Chapter 7 bankruptcy petition is filed and a discharge granted, he and his spouse will be released from personal liability for their pre-bankruptcy debts (except for any debts that are exempted, non-dischargeable, or reaffirmed). The discharge would also provide a financial "fresh start" free from the pressures of the indebtedness. But based on the record before me, a petition has yet to be filed, and so I cannot give this matter much weight because it is a future event that may or may not happen. Accordingly, the record evidence is insufficient to mitigate the security

concerns raised by Applicant's financial problems.

To sum up under Guideline F, the record evidence shows Applicant has a history of financial difficulties attributed to financial irresponsibility. At this time, I assess the likelihood of recurrence as average. And I have weighed the record evidence--both favorable and unfavorable--and conclude Applicant has not established, at this time, that it is "clearly consistent with the national interest" that he should be granted the privilege of a security clearance. Time will tell if his financial irresponsibility is a thing of the past or a firmly established part of his character. Until he can establish a track record of financial responsibility and stability, security concerns will continue to exist under Guideline F.

### FORMAL FINDINGS

SOR ¶ 1-Guideline F: Against the Applicant

Subparagraphs 1.a - 1.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.

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. Exhibit 1.
3. Exhibit C.
4. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
5. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
6. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).
7. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
8. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
9. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
10. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.
11. *Egan*, 484 U.S. at 528, 531.
12. DC 1 ("A history of not meeting financial obligations;"), DC 2 ("Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional breaches of trust;") and DC 3 ("Inability or unwillingness to satisfy debts.").
13. 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).").