

DATE: January 29, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-13049

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL H. LEONARD**

**APPEARANCES**

**FOR GOVERNMENT**

Erin C. Hogan, Esq., Deputy Chief Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant, a 49-year-old man, is a senior hardware technician for a major defense company. The record evidence is insufficient to overcome the negative security implications stemming from his history of financial irresponsibility (e.g., approximately \$44,000 in unsecured credit card debt discharged under Chapter 7 in 1998 and additional delinquent credit card debt since the bankruptcy). It is too soon to tell if Appellant's financial irresponsibility is a thing of the past unlikely to recur. Clearance is denied.

**STATEMENT OF THE CASE**

On July 10, 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.<sup>(1)</sup> The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F for financial considerations.

Applicant answered the SOR on August 6, 2003, and he requested a clearance decision based on the written record without a hearing. In his Answer, Applicant admitted to the factual events alleged in the SOR. Thereafter, Department Counsel prepared and submitted its written case. The File of Relevant Material (FORM) was mailed to Applicant on or about October 2, 2003, and it was received by Applicant on October 21, 2003. Applicant's written response to the FORM was due November 20, 2003, and no response was received. The case was assigned to me January 15, 2004.

**FINDINGS OF FACT**

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the record, I make the following essential findings of fact:

In general, I find that the record evidence as a whole is sufficient to establish, by substantial evidence, the occurrence of

all the factual events alleged in SOR subparagraphs 1.a, 1.b, and 1.c.

Applicant is a 49-year-old man. He is employed by a major defense company as a senior hardware technician. He has worked for this company since January 1978. The record is silent concerning Applicant's abilities and attributes as an employee. Applicant has held a secret-level security clearance since at least January 1990.

In conjunction with his employment, Applicant completed a security-clearance application (SF 86) in May 2001. In response to Question 33, <sup>(2)</sup> Applicant answered "yes" disclosing a bankruptcy from June 1998.

The background investigation established that Applicant and his spouse filed a Chapter 7 bankruptcy petition in February 1998. According to the summary of schedules filed with the petition, Applicant listed \$123,291.00 for total assets and \$161,952.00 for total liabilities. Concerning liabilities, \$57,737.00 were listed on Schedule F as unsecured nonpriority debt and the balance was listed on Schedule D as secured debt. The Schedule F listed 16 accounts. Of the 16 accounts, 14 were credit card accounts, and those 14 accounts amounted to \$44,097.00 in unsecured credit card debt. The other two accounts were for a student loan and attorney's fees. Applicant agreed to reaffirm \$11,072.53 in debt owed for a car listed on the Schedule D. The bankruptcy court granted Applicant and his spouse a discharge under Chapter 7 in June 1998.

After the bankruptcy, Applicant opened a credit card account in December 1999. According to a credit report, the account was 120-days past due at some point in time before it was turned over to a collection agency. The balance owed is approximately \$2,966.00. Applicant incurred this debt due to car repairs and other expenses. Applicant has said he has no intention of paying this debt since it has been turned over to a collection agency.

In his answer, Applicant attributes his financial problems to overextending his credit and poor spending habits by him and his spouse. It appears Applicant is now divorced.

## 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. Considering the record evidence as a whole, the following adjudicative guidelines are most pertinent here: Guideline F for financial considerations. <sup>(3)</sup>

## 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 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 his obligation to protect classified information.

Here, based on the record evidence, the government has established its case under Guideline F. The record evidence shows Applicant has a history of not meeting his financial obligations as well as inability or unwillingness to satisfy his debts. <sup>(12)</sup> The record evidence also supports a conclusion of financial irresponsibility. It is noteworthy that although he received a financial "fresh start" via the Chapter 7 bankruptcy in 1998, he is back in the same hole of delinquent credit card debt by running up nearly \$3,000.00 in debt that he is either unwilling or unable to repay.

I have reviewed the mitigating conditions under Guideline F and conclude none apply. In particular, MC 6 <sup>(13)</sup> does not apply. It is perfectly legal and ethical to seek protection under federal law via bankruptcy. Given the circumstances here, however, I cannot conclude his actions amount to "a good-faith effort" to resolve financial problems given that Applicant continues to have delinquent credit card debt, which he has said he will not pay. Taken together, the Chapter 7 bankruptcy and the subsequent delinquent credit card debt do not paint a picture of Applicant as a financially responsible person. It is my commonsense assessment that it is too soon to tell if his financial irresponsibility is a thing of the past unlikely to recur. Accordingly, Applicant has failed to extenuate or mitigate the security concerns under Guideline F.

In reaching my decision, I have considered the evidence as a whole, both favorable and unfavorable, as well as the whole-person concept and other appropriate factors and guidelines in the Directive.

## **FORMAL FINDINGS**

SOR ¶ 1-Guideline F: Against the Applicant

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.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.

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. Question 33 asks "In the last 7 years, have you filed a petition under any chapter of the bankruptcy code (to include Chapter 13)?"
3. Guideline F is found at Attachment 6 to Enclosure 2 of the Directive, at pages 29-30.
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. Disqualifying Condition (DC) 1 is "A history of not meeting financial obligations;" and DC 3 is "Inability or unwillingness to satisfy debts."

13. "The individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."