

DATE: April 9, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-13255

**DECISION OF ADMINISTRATIVE JUDGE**

**HENRY LAZZARO**

**APPEARANCES**

**FOR GOVERNMENT**

Juan J. Rivera, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has a history of financial delinquencies, some of which have now been fully satisfied, with the remainder under control. To a large extent his financial problems coincided with his wife's health problems, the resulting loss of her income, and distractions her failing health and the pregnancy of his minor daughter caused. He failed to disclose in a security clearance application his debt situation, but credibly explained that resulted from his ignorance of his financial condition and not an intent to falsify the application. Applicant has mitigated the security concerns caused by both his financial considerations and personal conduct. Clearance is granted.

**STATEMENT OF THE CASE**

On August 11, 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. <sup>(1)</sup> The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F, for financial considerations, and Guideline E, for personal conduct.

Applicant submitted a sworn answer to the SOR, dated September 12, 2003, and requested a hearing. Applicant admitted most of the SOR allegations, while at the same time providing explanations that were in many instances in the nature of justifications.

This case was assigned to me on October 29, 2003. A notice of hearing was issued on November 24, 2003, scheduling the hearing for December 10, 2003. The hearing was conducted as scheduled. The government submitted seven documentary exhibits that were marked as Government Exhibits (GE) 1-7, and admitted into the record without an objection. Applicant testified at the hearing, called his wife as a fact witness, and submitted sixteen documentary exhibits that were marked as Applicant's Exhibits (AE) 1-16, and admitted into the record without an objection. The record was held open to provide Applicant the opportunity to submit additional documents in support of his case. One additional document was timely received, marked as AE 17, and admitted into the record without an objection. The transcript was received on December 29, 2003.

**PROCEDURAL ISSUES**

Prior to the presentation of evidence, the government moved to amend the last sentence of SOR subparagraph 2.a. to substitute "paragraph 1.f." for "paragraph 1.e.", and the last sentence of SOR subparagraph 2.b. to substitute "paragraph 1.e." for "paragraph 1.d.". The motion to make those amendments was granted without an objection.

### FINDINGS OF FACT

Applicant's partial admissions to the allegations 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 47 years old and has been employed as an electronics technician by a defense contractor since September 1991. He served on active duty with the U.S. Navy from April 1975 until approximately early in 1979 when he was transferred to the Naval Reserve. He remained in the reserve until 1985, when he returned to active duty. He was discharged from the Navy in February 1991 with an Honorable Discharge. However, because of two Article 15, Uniform Code of Military Justice punishments, and the generally unfavorable impression he made on his superiors, he was given a reenlistment code that prevented his return to a reserve status.

Applicant married his present wife in December 1983. He was previously married to another woman in May 1982, and divorced from her in August 1983. He has two children, ages twenty and eighteen. He resides in a house he and his wife purchased in March 1993. He obtained an associate degree in general education in May 2002.

Applicant's employment involves substantial travel away from home for extended periods. AE 17 establishes that from January 1, 1996, to December 10, 2003, Applicant was away from home on business for weeks and months at a time, and on one occasion in a foreign country for eleven months. Because of his frequent travel, Applicant entrusted the family finances to his wife.

Applicant's wife, among other physical problems, has diabetes, suffered a foot injury in approximately 1997, is presently in the final stages of kidney failure and undergoing dialysis three times a week, and is awaiting a transplant. Her multiple physical problems have prevented her from working since 1998, and is the cause of some of the debts alleged in the SOR. The first four debts alleged in the SOR are medical expenses she has incurred. The first debt, SOR subparagraph 1.a., in the amount of \$54.00 was previously overlooked by Applicant and his wife as they paid other debts to the same creditor. It has now been paid-in-full. (AE 2)

The debts alleged in SOR subparagraphs 1.b. and 1.c. were not initially paid by Applicant because it was his understanding they had been written-off by the medical-provider creditor in an agreement to settle a legal action his wife had instituted against a hospital alleging malpractice in the care of her foot injury that almost necessitated amputation of her leg. Although Applicant is still disputing his liability for these debts, he has begun to make \$50.00 monthly payments on the \$3,654.00 debt (AE 6) and has paid the \$187.00 debt. (AE 7)

The last delinquent medical bill, SOR subparagraph 1.d., arose from the providers failure to submit the claim to Applicant's medical insurer, despite repeated requests from Applicant to do so. Eventually, the creditor wrote the debt off as charged off account. The creditor has now informed Applicant and his wife that because the account was written off as a bad debt there is no payment owing. (Tr. pg. 49)

The \$11,207.00 debt, SOR subparagraph 1.e., arose from a personal loan that became delinquent in 1998, and resulted in a judgment being entered against Applicant after approximately six months of no payments being made. AE 17 discloses that Applicant was away from home on business almost continuously during this period. His wife testified that between her hospitalizations and her daughter becoming pregnant she did not handle this account well and was actually in the hospital when the judgment was entered. (Tr. pp. 50-52) Applicant has maintained communication with the creditor since entry of the judgment and has been making payments on the account. (AE 1 and 3)

The \$8,000.00 debt, SOR subparagraph 1.f., resulted from a voluntary repossession in which Applicant returned a vehicle he considered a "lemon" to the dealer. No payment has been made on this account, and, because the account has been sold on a number of occasions, Applicant, even with the assistance of a consumer credit counseling service, has been unable to locate the company presently holding the account. (Tr. pp. 53-54)

The last account, SOR subparagraph 1.g., represents long-distance phone charges incurred by Applicant's daughter. Applicant and his wife initially refused to pay the bill themselves, and instead attempted to force their daughter to pay it. Instead of actually paying the bill, the daughter misrepresented to them on several occasions that it had been paid. (Tr. pp. 54-55) The bill has now been paid-in-full. (AE 8)

Applicant failed to disclose the judgment that had been entered against him in response to two questions in the security clearance application (SF 86) he submitted on October 5, 2001. (2) He and his wife credibly explained, and submitted documentation confirming in part, that he was out of town on business, and she was in and out of the hospital and preoccupied with her the 15-year-old daughter's pregnancy when the account became delinquent and court action ensued. His testimony, and explanation in his answer to the SOR, that he was unaware of the judgment and was under the impression that the creditor had just placed a lien on his house is believable.

Applicant also failed to disclose the 1995 repossession of an automobile in the SF 86. (3) He explains this admission as resulting from a combination of his believing first: he was not required to list the repossession because he voluntarily returned the vehicle due to it being a "lemon" as opposed to

someone coming and taking it from him; and second: the vehicle was returned more than seven years before he submitted the SF 86. Considering his appearance, manner, and demeanor while testifying, I am convinced he did not deliberately fail to disclose the repossession, and his multiple explanations are the result of his trying to figure out for himself why he did not list the repossession.

Lastly, Applicant failed to disclose he was more than 90 days delinquent on any accounts in the SF 86.<sup>(4)</sup> Applicant's explanation that he left the family finances for his wife to handle, and paid little attention to them himself, is credible, especially in light of the substantial time he spent away from home on business. (AE 17)

Applicant and his wife have now sought the assistance of a consumer credit counseling service in an effort to get their finances in order and to maintain a financially responsible lifestyle. They are presently current on all debts and living within their means. Applicant has also learned that he cannot place all responsibility for the family finances solely on his wife and proceed along himself in ignorant bliss of their debt situation.

### **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, and Guideline E, pertaining to personal conduct, with their respective DC and MC, are 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>(5)</sup> The government has the burden of proving controverted facts.<sup>(6)</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence<sup>(7)</sup>, although the government is required to present substantial evidence to meet its burden of proof.<sup>(8)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>(9)</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>(10)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(11)</sup>

No one has a right to a security clearance<sup>(12)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(13)</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>(14)</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 did suffer the five delinquent accounts, as well as the judgment and automobile repossession, listed in the SOR. Those adverse financial occurrences all arose for reasons other than just inability or unwillingness to satisfy the debts. Disqualifying Condition (DC) 1: *A history of not meeting financial obligations* applies.

Most of the delinquent accounts and the judgment are directly attributable to Applicant's wife's medical problems, the pregnancy of his then 15-year-old daughter, and the resulting strain placed on his wife while he was out of town on business. He has now involved himself more in the family finances, they have consulted a consumer credit counseling service, and they have either satisfied their delinquent accounts, are in the process of making payments on those accounts, or been unsuccessful in locating the creditor, despite reasonable efforts.

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. Guideline F is decided for Applicant.

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Applicant did provide inaccurate answers to several questions in the SF 86 he

submitted. However, I have considered Applicant's, and his wife's, appearance, demeanor, and manner of testifying, the substance of their testimony, the explanations Applicant provided in his answer to the SOR, and the documentary evidence that establishes Applicant was absent from the home for much of the time when the financial problems that were the subject of the questions arose. I am convinced Applicant did not intend to deliberately omit or conceal information. Guideline E 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

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

Subparagraph f: For the Applicant

Subparagraph g: For the Applicant

Subparagraph h: For the Applicant

SOR ¶ 2-Guideline E: For the Applicant

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: 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. Question 37: *Your Financial Record - Unpaid Judgments - In the last 7 years, have you had any judgments against you that have not been paid?* and Question 40: *Public Record Civil Court Actions - In the last 7 years, have you been a party to any public record civil court actions not listed elsewhere on this form?*
3. Question 35: *In the last 7 years, have you had any property repossessed for any reason?*
4. Question 39: *Your Financial Delinquencies - 90 Days - Are you currently over 90 days delinquent on any debt(s)?*
5. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
6. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
7. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

8. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
9. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
10. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
11. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
12. *Egan*, 484 U.S. at 528, 531.
13. *Id* at 531.
14. *Egan*, Executive Order 10865, and the Directive.