

DATE: December 13, 2004

In re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-14964

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL H. LEONARD**

**APPEARANCES**

**FOR GOVERNMENT**

Catherine Engstrom, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is unable to successfully mitigate the security concern raised by his history of not meeting his financial obligations. Clearance is denied.

**STATEMENT OF THE CASE**

On September 12, 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. (1) The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline F for financial considerations. Applicant responded to the SOR on October 21, 2003, and he requested a clearance decision based on a written record in lieu of a hearing.

On March 24, 2004, Department Counsel prepared and submitted her written case. The File of Relevant Material (FORM) (2) was mailed to Applicant on or about arch 29, 2004, and it was received by Applicant on April 15, 2004. Applicant submitted information within the 30-day period after receipt of the FORM. On ay 6, 2004, Department Counsel indicated she had no objection to Applicant's response to the FORM. The case was assigned to me on May 10, 2004. Issuing a decision in this case was delayed due a heavy caseload.

**FINDINGS OF FACT**

Applicant's partial admissions to the SOR allegations are incorporated into my findings, and after a thorough review of the record, I make the following essential findings of fact:

Applicant is a 32-year-old employee of a federal contractor; his position or title is described as passenger/gate agent. He married in January 2002. He is currently working overseas for the company in support of U.S. military operations. He has worked for this company since June 25, 2001, and is seeking a security clearance for that employment. In February 2004, Applicant received a certificate of appreciation for a job well done from a high-ranking military commander.

In conjunction with his employment, he completed a security-clearance application in June 2001 (Item 3). As part of the required background investigation, the government obtained a credit report (Item 6) concerning Applicant in July 2001. In summary, the credit report revealed 15 accounts in a collection/charge off status and a bankruptcy case; it also revealed a reported balance owed (excluding any mortgage) of \$15,414 and a reported balance past due of \$7,839.

With his current employment overseas, he earned \$26,415.10 in 2001 and \$50,827.20 in 2002, which was 100% tax free. As of May 30, 2003, Applicant was earning \$4,235.60 per month, which was 100% tax free, for an annual rate of \$50,827.20 (Items 2.B & 2.C). His savings account balance as of May 31, 2003, was \$5,275.89 (Item 5.G). His checking account balance as of April 26, 2004, was \$123.36 (Response to FORM).

Concerning the bankruptcy case (SOR ¶ 1.n & ¶ 1.o), Applicant filed a Chapter 7 petition in May 2001, shortly before he accepted his current employment. Based upon a review of the petition (Item 8), it appears Applicant filed the petition *pro se*, without the assistance of counsel. Likewise, the summary of schedules was left blank, and it appears that Schedules D and E were mixed together. The bankruptcy court dismissed the petition in June 2001, apparently because Applicant did not make his initial appearance due to the start of his overseas employment the same month.

In his response to the FORM, Applicant asserts the total balance remaining on his bills is less than \$4,500, and that the total left on the federal student loans is \$1,700, which he is paying \$450 monthly. He says the student loans will be paid off by the end of July 2004. He also asserts three accounts (¶ 1.b, ¶ 1.c and ¶ 1.j), listed as unresolved in the table, will be written off due to age, and so, he does not plan to pay or resolve them. Applicant asserts he has trimmed his living expenses by no longer renting a car at his overseas location, and that he is no longer sending money to his wife's family. Finally, he asserts he has paid off \$30,000 in debt in less than three years.

The SOR alleges Applicant has 13 delinquent accounts with a total indebtedness of approximately \$18,000. The following table summarizes the relevant details about the 13 delinquent accounts.

SOR ¶	Account Description	Status
¶ 1.a	\$595 collection account for a department store	Paid (Item 2.H)
¶ 1.b	\$2,563 charged off credit card account	Unresolved
¶ 1.c	\$336 charged off credit card account	Unresolved
¶ 1.d	\$1,452 collection account for state student loan	Paid (Item 2.G)
¶ 1.e	\$669 collection account for state student loan	Paid (Item 2.G)
¶ 1.f, 1.g, & 1.h	\$1,798 collection account, \$994 collection account, & \$2,709 collection account for federal student loans	Paying on; balance of \$2,202 or less as of 04/11/2004
¶ 1.I	\$2,576 collection account for student loan	Paying on; balance unknown
¶ 1.j	\$103 collection account for rental car company	Unresolved
¶ 1.k, 1.l, & 1.m	\$2,208 collection account, \$268 collection account, & \$2,248 collection account all for labor and employment overpayment	Unresolved

To sum up, it appears he has paid 3 of the 13 delinquent accounts, he is paying on 4 accounts, and 6 accounts are unresolved. Based on the unresolved accounts alone, he may owe as much as \$7,726 in delinquent debt.

## 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.

## 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>(3)</sup> There is no presumption in favor of granting or continuing access to classified information.<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 properly handling and safeguarding classified information.

Here, based on the record evidence as a whole, the government has established its case under Guideline F. The 13 delinquent accounts and the dismissed Chapter 7 bankruptcy case demonstrate a history of not meeting financial obligations as well as inability or unwillingness to pay one's just debts.<sup>(12)</sup> Also, the same facts and circumstances demonstrate financial irresponsibility.

I have reviewed the mitigating conditions under the guideline and conclude none apply. In particular, his financial problems cannot be viewed as not recent<sup>(13)</sup> because his delinquencies are ongoing. His situation is not an isolated incident<sup>(14)</sup> because it involved multiple accounts over a period of years. Applicant has paid 3 of the 13 delinquent accounts in the SOR, it appears he has resolved debts not addressed in the SOR, and he is making good progress on the student loans. Nevertheless, based on the quality of the record evidence, I am unable to conclude Applicant has made a good-faith effort to pay or otherwise resolve his indebtedness.<sup>(15)</sup> His financial problems are long standing and it is simply too soon to tell if he has truly reformed his ways. Until he establishes a long-term track record of good debt management and a financially responsible lifestyle, it is likely he will return to not meeting his financial obligations. Accordingly, Guideline F is decided against Applicant. In reaching my decision, I have considered the record evidence as a whole, the whole-person concept, the clearly-consistent standard, and other appropriate factors and guidelines in the Directive.

## FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

SOR ¶ 1-Guideline F: Against the Applicant

Subparagraphs a - o: Against the Applicant

## DECISION

In light of all the circumstances presented by the record, 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. The FORM contains several documents identified as Items 1 - 8 for consideration.
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
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. E2.A6.1.2.1. A history of not meeting financial obligations;" and E2.A6.1.2. 3. Inability or unwillingness to satisfy debts.
13. E2.A6.1.3.1. The behavior was not recent.
14. E2.A6.1.3.2. It was an isolated incident.
15. E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.