

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant had automobiles repossessed in 1995 and 2000, and has allowed several accounts to become delinquent. While he has recently taken steps to bring his finances under control, and appears to be on his way toward living a financially responsible lifestyle, he still has large delinquent accounts outstanding. His explanations for not fully disclosing his financial condition in a security clearance application he submitted in September 2001 are not credible. Applicant has failed to mitigate the security concerns that exist in this case. Clearance is denied.

CASENO: 02-15962.h1

DATE: 02/28/2005

DATE: February 28, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-15962

**DECISION OF ADMINISTRATIVE JUDGE**

**HENRY LAZZARO**

**APPEARANCES**

**FOR GOVERNMENT**

Juan Rivera, Esq., Department Counsel

## **FOR APPLICANT**

Laura E. Culp, Personal Representative

### **SYNOPSIS**

Applicant had automobiles repossessed in 1995 and 2000, and has allowed several accounts to become delinquent. While he has recently taken steps to bring his finances under control, and appears to be on his way toward living a financially responsible lifestyle, he still has large delinquent accounts outstanding. His explanations for not fully disclosing his financial condition in a security clearance application he submitted in September 2001 are not credible. Applicant has failed to mitigate the security concerns that exist in this case. Clearance is denied.

### **STATEMENT OF THE CASE**

On September 3, 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 that was received by DOHA on October 16, 2003, and requested a hearing. He admitted all SOR financial allegations except that contained in subparagraph 1.h., and denied all personal conduct allegations.

This case was assigned to another administrative judge on October 27, 2004, and reassigned to me on December 6, 2004, due to regional rotation. <sup>(2)</sup> A notice of hearing was issued on December 8, 2004, scheduling the hearing for December 28, 2004. The hearing was conducted as scheduled. The government submitted eight documentary exhibits that were marked as Government Exhibits (GE) 1-8, and admitted into the record without objection. Applicant testified and submitted 17 documentary exhibits that were marked as Applicant's Exhibits (AE) 1-17, and admitted into the record without objection. The transcript was received January 7, 2005.

## FINDINGS OF FACT

Applicant's admissions to the SOR allegations 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 44-year-old man who has been employed by a defense contractor as a maintenance electrician since October 2000. He enlisted in the United States Air Force in September 1978, and served continuously on active duty until he retired in October 1998 as a Staff Sergeant (paygrade E-5). He began working in private industry as an electrician immediately following his retirement in October 1998, and worked there until he was hired by the defense contractor. He was paid \$8.00 an hour when he worked as an electrician. His current net monthly salary is \$2,035.80. He also receives military retirement pay in the amount of \$975.00 per month. His wife does not work.

Applicant was first married in May 1985, and that marriage ended in divorce in September 1989. He was married again in June 1994, and that marriage ended in divorce in February 1998, although he separated from that wife in August 1995. He has now been married a third time since February 2001. Applicant has no children, but does have a 24-year-old stepdaughter through his current wife. He had three stepchildren through one of his earlier marriages.

Applicant's financial problems extend back to at least 1991. (GE 7) Within a few years of separating from his second wife in 1995, his credit report discloses he allowed a number of accounts to become delinquent. (GE 6) The most serious delinquency resulted in the repossession of an automobile in September 1995 (GE 6), and a \$5,202.00 judgment being entered against him in May 1997. (AE 6) Applicant testified he never received notice of the judgment and the creditor never sent him any request for payment. Applicant included a letter, dated April 13, 2003, with his response to financial interrogatories in which he stated he anticipated paying this account in full by July 2003 with funds he was going to borrow from a 401K account. However, no payment has been made on the account, and it has now been removed from his credit report only because of the passage of time.

Applicant incurred a medical bill that was referred for collection in January 2001 in the amount of \$150.00. (GE 6) He believes this charge should have been covered by his military health insurance, but was not because the creditor failed to submit an insurance claim within the time allotted. Unable to get the health insurance company to pay the bill, Applicant has now paid it in full himself. (GE 4)

Applicant had two revolving charge accounts that were charged off in the amounts of \$587.00 and \$612.00. (GE 3) He has now satisfied both accounts in full. (AE 13 and AE 14) A video store account in the amount of \$297.00 was referred for collection in October 1996, because his ex-wife failed to return videos she had rented after their separation. (GE 6) The company is no longer in business, and Applicant's efforts to resolve this account have accordingly been unsuccessful. He credibly testified the collection account in the amount of \$233.00 for failure to return a cable box is in error. (GE 6)

Applicant had a second car repossessed in 2000 that has resulted in the account being referred for collection in the amount of \$11,063.00 in October 2000. (3) (GE 5) The repossession of this vehicle resulted from Applicant's inability to remain current on the payment after he retired from active duty and had an income that was limited to his retirement pay and an \$8.00 per hour job. The car was first repossessed in January 2000, but

Applicant was able to scrape together the money to redeem the car. The car was again repossessed in May or June of 2000, when Applicant again found himself unable to remain current on the payments. In April 2003, Applicant claimed he was researching this account with the goal of making payment arrangements. (GE 3). However, the letter addressed to this creditor that he offered as evidence was dated November 12, 2004. (AE 3)

Applicant's recent credit reports indicate he is current on all obligations he has incurred in the past several years. His personal financial statement as of December 2004 (AE 4) indicates he is living within his means, although his monthly income only exceeds his monthly expenses by \$59.66. The financial statement he prepared in March 2002 (GE 2), disclosed a net monthly remainder of \$587.00. A comparison of the two statements discloses the biggest difference is in 2002 he had a single car payment of \$278.00, while in 2004 he had two car payments totaling \$869.14.

Applicant failed to disclose the 2000 repossession, 1996 judgment, and the other delinquent accounts in a security clearance application (SF 86) he submitted in September 2001. He did disclose the 1996 repossession and a resulting deficiency of \$5,000.00. Considering he disclosed the debt itself in the SF 86, his explanation that he did not list the judgment because he was unaware of it is credible. However, his testimony explaining the reason for not listing the 2000 repossession, that he hoped to once again be able to redeem the car, is confusing at best, particularly considering the SF 86 was submitted over a year after the repossession. The explanation he provided in his answer to the SOR, namely: he didn't remember to include it, is not credible considering the recency of the repossession. Finally, his explanation that he did not list the delinquent accounts because he was only thinking of his current finances is not believable.

## **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>(4)</sup> The government has the burden of proving controverted facts.<sup>(5)</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence<sup>(6)</sup>, although the government is required to present substantial evidence to meet its burden of proof.<sup>(7)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>(8)</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>(9)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(10)</sup>

No one has a right to a security clearance<sup>(11)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(12)</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>(13)</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 had two autos repossessed, incurred a judgment being entered against him in connection with one of those repossessions, and allowed several other accounts to become severely delinquent. Disqualifying Conditions (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debts* apply.

Despite assertions he was going to resolve many of his delinquent accounts a couple of years ago, Applicant failed to take any substantial steps toward paying them until after issuance of the SOR. The two largest accounts, totaling more than \$16,000.00, remain outstanding without any meaningful action being taken to deal with them. Most troubling is that rather than apply the discretionary income he disclosed in the 2002 financial statement to the resolution of his debts, Applicant acquired a second vehicle and car payments three times what he was paying in 2002.

Applicant's dilatory efforts to resolve a few of his accounts, especially in consideration of his total disregard for others, do not merit application of Mitigating Condition (MC) 6: *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*. Similarly, the fact that Applicant did nothing to resolve any of these accounts for many years following his 1998 divorce deprives him of application of 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)*.

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. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Applicant failed to disclose the 2000 automobile repossession and his other delinquent accounts in the SF 86 he submitted in September 2001. His explanations for not doing so are not credible. DC 2: *The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities* applies. I have considered all potentially applicable mitigating conditions and none apply.

Considering all relevant and material facts and circumstances present in this case, including the testimony and evidence provided by Applicant, the whole person concept, including Applicant's 20 years of honorable service in the Air Force, 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 the security concerns in this case. He has neither overcome the case against him nor satisfied his ultimate burden of persuasion. Guideline F and Guideline E are decided against Applicant.

### **FORMAL FINDINGS**

SOR ¶ 1-Guideline F: Against Applicant

Subparagraph a: For Applicant

Subparagraph b: For Applicant

Subparagraph c: For Applicant

Subparagraph d: Against Applicant

Subparagraph e: Against Applicant

Subparagraph f: Against Applicant

Subparagraph g: For Applicant

Subparagraph h: For Applicant

Subparagraph i: Against Applicant

SOR ¶ 2-Guideline E: Against Applicant

Subparagraph a: Against Applicant

Subparagraph b: For Applicant

Subparagraph c: Against Applicant

Subparagraph d: Against 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. A note in the file indicates the previously assigned administrative judge had attempted to schedule the case for an earlier hearing date, but had been informed Applicant was unavailable until December 10, 2004.
3. This same account is alleged in both SOR subparagraphs 1.d. and 1.f.
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 the 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. *Id* at 531.
13. *Egan*, Executive Order 10865, and the Directive.