

DATE: April 15, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-16531

**DECISION OF ADMINISTRATIVE JUDGE**

**HENRY LAZZARO**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant had numerous delinquent accounts that originated when he and his wife separated and she abused their joint credit. He was awarded most of the joint liability when they divorced in 2001. He has now discharged most of that liability through a Chapter 7 bankruptcy, is living within his means, and has resumed a financially stable lifestyle. Applicant has mitigated the security concern caused by the financial considerations that arose in his life. Clearance is granted.

**STATEMENT OF THE CASE**

On August 25, 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 a security concern under Guideline F, financial considerations, based upon six delinquent accounts totaling \$56,933.00.

Applicant submitted a sworn answer to the SOR that was dated September 15, 2003, and requested a hearing. Applicant admitted all of the allegations contained in the SOR.

The case was assigned to another administrative judge on October 29, 2003, and reassigned to me on November 21, 2003, due to caseload considerations. A notice of hearing was issued on December 2, 2003, scheduling the hearing for December 17, 2003. I cancelled the scheduled hearing for personal reasons. A second notice of hearing was issued on January 12, 2004, rescheduling the hearing for February 3, 2004. The hearing was conducted as rescheduled. The government submitted nine documentary exhibits that were marked as Government Exhibits (GE) 1-9 and admitted into the record without an objection. Applicant testified at the hearing, and submitted three documentary exhibits that were marked as Applicant's Exhibits (AE) 1-3, 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. Eleven documents were timely received, marked as AE 4-14, and admitted into the record without an objection. The transcript was received on February 12, 2004.

**FINDINGS OF FACT**

Applicant's admissions to the allegations contained 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 39 years old, divorced, and has been employed by a succession of defense contractors since March 1991. He presently works as an engineering technician, and earns approximately \$4,000.00 per month. The letters of recommendation, certificates of commendation, employee awards, and performance assessment he submitted attest to his reputation for being a valued and trusted employee.

Applicant graduated from high school in 1982, and joined the United States Navy in September of that year. He served continuously on active duty until he was honorably discharged in September 1990 as a petty officer first class, paygrade E-6. He left active duty because of the difficulty he encountered in remaining within the Navy's height-weight standards. Applicant served as a torpedoman on ballistic missile submarines and was assigned duty as a nuclear weapons security guard.

Applicant possessed a secret clearance while in the Navy and has maintained a confidential clearance while working for defense contractors. The letters of recommendation Applicant submitted indicate he has routinely had access to classified material, has at all times maintained proper control over that material, and is considered to be reliable and trustworthy. No complaint has ever been made alleging he mishandled classified material, and no action has been taken to suspend, revoke, or downgrade his access to classified material before the SOR was filed in this case.

Applicant was married in February 1993. He separated from his wife in August 1998, and attempted a failed reconciliation shortly thereafter. He obtained a legal separation in August 2001, and a divorce in February 2002. Applicant's wife was arrested for driving under the influence of alcohol (DUI) once before their 1998 separation, and has been arrested twice more for DUI since that separation. She additionally abused controlled substances, and engaged in two extramarital affairs, including one while they were participating in marriage counseling following the 1998 separation.

Before their 1998 separation, Applicant and his wife had a combined gross income of approximately \$65-70,000.00 per year. They purchased a modest house, and then took out loans secured by second and third mortgages to payoff an automobile loan and make improvements on the house. The loans were reasonable and within their means to repay based on their combined incomes. Their credit and finances were in good condition when they separated in 1998.

However, Applicant's financial situation rapidly deteriorated following the separation. His wife ran up charges and made cash withdrawals on their joint credit cards, at least in part to support her extramarital affairs. Creditors sought repayment from him. Applicant attempted to make payments on the credit cards and stay current on the three mortgages noted above, but was unable to do so. The SOR lists \$56,933.00<sup>(2)</sup> in delinquent accounts that do not include the loans secured by mortgages. He represented himself in the legal separation and divorce proceedings, and was assigned responsibility for most of the marital debt. He continued to attempt to satisfy creditors after the divorce, but was unable to make workable arrangements with them.

Applicant filed for Chapter 7 bankruptcy protection on June 30, 2003. All debts listed in the SOR were included in the bankruptcy. He was granted a discharge on October 16, 2003. He presently is current on the three loans secured by mortgages, and minimal balances that are owing on three retail store credit cards. His utility expenses are nominal and current. His other living expenses and recreational expenses are compatible with his income. He has \$89,000.00 saved in a 401K account.

### **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, with its respective DC and MC, is 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>(3)</sup> The government has the burden of proving controverted facts.<sup>(4)</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence<sup>(5)</sup>, although the government is required to present substantial evidence to meet its burden of proof.<sup>(6)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>(7)</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>(8)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(9)</sup>

No one has a right to a security clearance<sup>(10)</sup> and "the clearly consistent standard indicates that

security clearance determinations should err, if they must, on the side of denials." <sup>(11)</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>(12)</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 acquired significant delinquent debt as a result of a failed marriage and his wife's reckless abuse of their credit when they separated. The only workable option available to him was to file for bankruptcy protection after he was allocated the bulk of the marital debt in the divorce proceedings. Based on all the evidence presented in this case, I find that Disqualifying Condition (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debts* apply in this case.

Applicant's financial woes are directly attributable to the separation from his wife, the resulting decrease in income that was available to apply to marital debt, and her abuse of the family finances. He has now had the debt he could not service discharged in bankruptcy, and is living well within his financial means. 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)*; and MC 6: *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debt* apply in this case.

Considering all relevant and material facts and circumstances present in this case, including Applicant's character references, the circumstances that caused him to become severely delinquent on various accounts, the actions he took to return his finances to order, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find that Applicant has mitigated this security concern. He has overcome the case against him and satisfied his ultimate burden of persuasion. Guideline F 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

### 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. GE 3 discloses the amounts alleged in subparagraphs 1.a. and 1.b. were the "high credit" entries instead of the "past due" entries. The actual amount of the alleged delinquent debt should be \$56,970.00.

3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
5. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
6. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
7. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
8. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
9. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
10. *Egan*, 484 U.S. at 528, 531.
11. *Id* at 531.
12. *Egan*, Executive Order 10865, and the Directive.