

DATE: May 6, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-20084

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, which have now been fully satisfied. To a large extent his financial problems coincided with the break up of his second marriage, which has now resulted in a divorce, and a period of unemployment caused by the closure of the factory where he had worked for ten years. He has credibly explained why he failed to disclose the full extent of his prior financial difficulties in a security clearance application he submitted in arch 2001. Applicant has mitigated the security concerns caused by his financial considerations and personal conduct. 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. (1) 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 5, 2003, and requested a hearing. Applicant admitted the SOR allegations concerning his financial delinquencies, and provided explanations about their then current status. He denied the allegations alleging falsification of the security clearance application he submitted in March 2001.

This case was assigned to me on December 23, 2003. A notice of hearing was issued on January 7, 2004, scheduling the hearing for February 25, 2004. The hearing was conducted as scheduled. The government submitted five documentary exhibits at the hearing that were marked as Government Exhibits (GE) 1-5, and admitted into the record without an objection. Applicant testified at the hearing, called one character witness, and submitted eleven documentary exhibits that were marked as Applicant's Exhibits (AE) 1-11, 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. Three additional documents were timely received, marked as AE 12-14, and admitted into the record without an objection. The transcript was received March 4, 2004.

PROCEDURAL ISSUES

The government moved to amend SOR subparagraph 2.d. to allege failure to disclose the debt described in subparagraph 1.g., instead of subparagraph 1.h. The motion to amend was granted without an objection. The government also conceded the debt listed in subparagraph 1.k. was a duplication of the debt listed in subparagraph 1.j., and the debts listed in subparagraph 1.r. and 1.s. had been discharged in bankruptcy in July 1998.

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 41 years old, married, and has been employed by a defense contractor as an armed security guard since July 1999. He graduated from high school in 1980, and worked at several unskilled jobs until he was injured in an automobile accident in 1982. He was disabled and unable to return to work until 1985. He drove a truck from 1985 until 1989, at which time he began working in a factory. He continued the factory job until he was laid-off in 1999 when the plant he was working in closed down. He remained unemployed for approximately six months, and was then underemployed until he began working full-time at his present position in 2002. Applicant's upper-line supervisor testified he is a trustworthy and model employee, and there is no derogatory information contained in his personnel record.

Applicant was first married in August 1982, and divorced that wife in October 1992. He has no children from that marriage. Applicant remarried in December 1994, separated from that wife less than a year later, and obtained a divorce from her in September 1999. He has one child from that marriage who is nine years old, lives with her mother, and for whom Applicant provides support. Applicant married his present wife in December 1999. He has two stepchildren from this marriage, ages fourteen and ten, who live with him and his wife.

Applicant's financial problems began shortly after he married his second wife. She became pregnant shortly after they were married, and was dissatisfied with the two bedroom house they were in the process of purchasing. Applicant purchased a larger house to keep her happy, and rented the second house to tenants who began defaulting on their rent payments. Within the first year of their marriage, Applicant's wife left him, took their daughter with her, and began drawing welfare. The state garnished his wages to cover the support provided by the welfare department for his child. Applicant's financial problems were further complicated by the need to replace the transmission in his vehicle four times, before he finally gave up and allowed it to be repossessed.

Applicant filed for Chapter 7 bankruptcy protection on February 19, 1998, listing \$67,669.00 in secured and unsecured debt. He received a discharge in bankruptcy on July 10, 1998. Additionally, the company holding the note on the rental property foreclosed on the mortgage, and sold the property without any deficit being owed.

Applicant was earning \$15.50 per hour until he was laid off in January 1999. He relocated to a different state to be near his present wife, and was unable to find work until July 1999, at which time he began working part-time as a security guard making \$8.69 per hour. He eventually was hired as a full-time security guard and presently earns \$14.50 per hour. His and his wife's combined income in 2003 was \$89,062.00. They are purchasing the house his wife bought prior to their marriage that Applicant values at approximately \$65,000.00, and which will be paid off in two years.

Applicant accumulated a number of delinquent accounts following the bankruptcy discharge because of his unemployment and inability to sell the house he resided in prior to relocating. The house was eventually subject to a foreclosure, and was disposed of with no deficit being owed. He has now satisfied all creditors, is current on his debts, and the only wage garnishment he is subject to is a mandatory garnishment for child support in accord with applicable state law.

Applicant disclosed his bankruptcy, child support wage garnishment, automobile repossession, and mortgage foreclosure in the security clearance application (SF 86) he submitted on March 9, 2001. However, he did not disclose an alleged arrearage in child support payments, and a garnishment entered to collect the arrearage. He credibly explained, and offered documentary evidence in corroboration, that there was no arrearage and the action taken by the state welfare agency was in error. He also credibly explained he failed to list a debt that was more than 180 days delinquent, because it had been discharged in bankruptcy, and a debt that was more than 90 days delinquent through inadvertence.

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.⁽²⁾ The government has the burden of proving controverted facts.⁽³⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence⁽⁴⁾, although the government is required to present substantial evidence to meet its burden of proof.⁽⁵⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁶⁾ 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.⁽⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

No one has a right to a security clearance⁽⁹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹¹⁾

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.

Beginning in the early to mid-1990s, and continuing until recently, Applicant experienced marital problems and financial setbacks that caused him to experience mortgage foreclosures and automobile repossessions, file bankruptcy and become delinquent on numerous debts. Disqualifying Conditions (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debts* apply.

Applicant's financial problems first arose when his wife left him, took their daughter, and began drawing welfare. They were exacerbated by automobile breakdowns and his tenants' failure to pay rent. Shortly after he received a bankruptcy discharge, Applicant found himself first unemployed and then underemployed. He has now satisfied his creditors, is earning a substantial combined income with his wife, and appears to have regained relative financial security. 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 debts* apply.

Considering all relevant and material facts and circumstances present in this case, including the testimony provided by Applicant's character witness, 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 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.

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 disclosed many of his financial problems in the SF 86 he submitted, but also provided incorrect answers to several questions. However, I have considered Applicant's appearance, demeanor, and manner of testifying, and the explanations he has given. 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

Subparagraph i: For the Applicant

Subparagraph j: For the Applicant

Subparagraph k: For the Applicant

Subparagraph l: For the Applicant

Subparagraph m: For the Applicant

Subparagraph n: For the Applicant

Subparagraph o: For the Applicant

Subparagraph p: For the Applicant

Subparagraph q: For the Applicant

Subparagraph r: For the Applicant

Subparagraph s: For the Applicant

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

8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15

9. *Egan*, 484 U.S. at 528, 531.

10. *Id* at 531.

11. *Egan*, Executive Order 10865, and the Directive.