

KEYWORD: Personal Conduct; Financial

DIGEST: Applicant's credit history disclosed numerous delinquent accounts. Most of the alleged delinquent accounts have been resolved. Of the two remaining delinquent accounts, one is being properly handled by Applicant. He has the financial means to satisfy the remaining account but has not done so only because he misunderstands the status of that account. Although Applicant failed to disclose the delinquent accounts in a security clearance application he submitted, he did not intend to deliberately falsify the application. Applicant has mitigated the financial considerations and personal conduct security concerns that were present in this case. Clearance is granted.

CASENO: 02-20493.h1

DATE: 08/26/2004

DATE: August 26, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-20493

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Lynette Andresen, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's credit history disclosed numerous delinquent accounts. Most of the alleged delinquent accounts have been resolved. Of the two remaining delinquent accounts, one is being properly handled by Applicant. He has the financial means to satisfy the remaining account but has not done so only because he misunderstands the status of that account. Although Applicant failed to disclose the delinquent accounts in a security clearance application he submitted, he did not intend to deliberately falsify the application. Applicant has mitigated the financial considerations and personal conduct security concerns that were present in this case. Clearance is granted.

STATEMENT OF THE CASE

On September 30, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was 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 (financial considerations) and Guideline E (personal conduct). Applicant submitted a response to the SOR, dated October 28, 2003, that neither admitted nor denied the SOR allegations, and did not indicate his desire concerning a hearing. He was sent a notice detailing the deficiencies in his response on December 8, 2003. Applicant thereafter submitted a second response, dated December 30, 2003, and requested a clearance decision based on the written record without a hearing. In his second SOR response, Applicant denied all Guideline F allegations, except subparagraph 1.f, and admitted both Guideline E allegations, while at the same time providing an explanation that essentially indicated he did not deliberately provide false information.

Department Counsel prepared a File of Relevant Material (FORM) on March 10, 2004, that was mailed to Applicant on March 18, 2004. Applicant did not object to anything contained in the FORM or submit additional information for consideration within the 30-day time period provided to him. The case was assigned to me May 12, 2004.

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 a production support coordinator by a defense contractor since November 1982. Applicant married his present wife in May 1997, and has two stepchildren from this marriage. He was previously married and has children from that marriage, although the FORM does not disclose the date of the marriage or how many children he has. Applicant's prior marriage ended in divorce in 1993. He is required to pay child support in the amount of \$500.00, but claims he actually provides approximately \$800.00 per month because he helps his children with miscellaneous expenses.

The FORM includes several credit reports, a statement he provided to a special agent from the Defense Security Service (DSS) on March 2, 2001, and a letter from a collection agency, all containing adverse financial information about Applicant's credit history. However, Applicant has consistently claimed he does not know who some listed creditors are and attributes other debts to either directly to his ex-wife or as having arisen out of his 1993 divorce. He sought reinvestigation of a number of the accounts, and the credit report dated June 17, 2003, he submitted with his response indicates the debts alleged in SOR subparagraphs 1.a., 1.c, and 1.h., ⁽²⁾ were reinvestigated and deleted from his credit report. The credit report dated August 18, 2003 he submitted with his response indicates the debt alleged in SOR subparagraphs 1.d. was reinvestigated and deleted from his credit report. ⁽³⁾

Applicant claims the accounts listed in SOR subparagraphs 1.b. and 1.i. are the same debt. The credit reports dated May 14, 2003, June 17, 2003, and August 18, 2003 confirm Applicant's claim in that they disclose the accounts were reported as opened and closed on the same date. Applicant also claims to have paid this account, and the credit report dated August 18, 2003 substantiates that claim in that it reflects the account alleged in subparagraph 1.i. was "paid off" in December 1998.

Applicant claims the \$188.00 delinquent medical bill alleged in subparagraph 1.f. was due to an improper insurance filing by the physician's office and he is working to correct the error and have the bill satisfied. The credit report dated August 18, 2003 discloses the balance due on that account was reduced to \$131.00 indicating some action was taken to at least partially resolve this account that was submitted for collection.

Although the debt alleged in subparagraph 1.g. does not appear in any of the credit reports included in the FORM, Applicant admitted he owed this creditor \$5,212.00 in his 2001 DSS statement, and included a settlement offer letter from the creditor with financial interrogatory answers he submitted in May 2003 that disclosed the total owing had risen to \$12,853.37. The creditor offered to settle the account for either a single payment of \$4,611.55 or monthly payments in the amount of \$160.12, with the interest balance of \$7,088.93 being waived. Applicant failed to submit any proof of payment on the account, and instead chose to rely on the fact that the account did not appear in the two credit reports he submitted with his SOR response.

The creditors alleged in subparagraphs 1.j. and 1.k. are listed only in the credit report dated December 17, 2001. However, that credit report lists no balance owing on either account. In his 2001 DSS statement, Applicant stated he thought 1.j. may have been paid off. However, he also

acknowledged his ex-wife used this credit card while they were obtaining a divorce, but denied he was liable for any charges she may have incurred. In the same statement he denied any knowledge of the account listed in subparagraph 1.k.

The only place the accounts alleged in subparagraphs 1.l. and 1.m. are listed is in the 2001 DSS statement. As to 1.l., Applicant indicated the account may have been paid off. As to 1.m., Applicant indicated he did not recognize the creditor.

Applicant failed to disclose he was either currently more than 90 days delinquent⁽⁴⁾ or that in the last seven years he had been more than 180 days delinquent⁽⁵⁾ on any accounts on the security clearance application (SF 86) he submitted in November 1999. In his FORM response, he explained he was unaware of all the problems on his credit report and that several of the accounts alleged did not belong to him. Applicant's explanation for answering "No" to the questions in issue is credible, considering the FORM itself creates questions and doubts about the status of many of the accounts, and reinvestigation of the accounts by the credit reporting service resulted in deletion of several more.

In the 2001 DSS statement, Applicant attributed his then existing financial problems to his divorce, lending money to friends after the divorce, and to his current wife's health problems. He explained in response to financial interrogatories he received in May 2003 that he and his wife had both been off from work for periods of time because of health problems. The financial statement he submitted disclosed he and his wife have a total monthly net income of \$5,132.00, total monthly expenses of \$3,160.00, total monthly debt payments of \$1,121.00, and a net monthly remainder of \$851.00.

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.⁽⁶⁾ The government has the burden of proving controverted facts.⁽⁷⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence⁽⁸⁾, although the government is required to present substantial evidence to meet its burden of proof.⁽⁹⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽¹⁰⁾ 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.⁽¹¹⁾ Additionally, an

applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. ⁽¹²⁾

No one has a right to a security clearance ⁽¹³⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." ⁽¹⁴⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security. ⁽¹⁵⁾

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 is indebted to the creditor listed in subparagraph 1.g. in the amount of \$12,853.00. Although he has been offered the opportunity to resolve this account with either a greatly reduced lump sum payment or monthly payments that are within his financial means to make, there is no indication he has acted on either option. The account listed in subparagraph 1.f. is also delinquent, but the evidences establish that action is being taken to resolve the account. The remaining accounts either have been satisfied, deleted from his credit report following a reinvestigation of his liability for the account by the credit reporting agency, or have not been shown to either belong to him, or be delinquent. Disqualifying Condition (DC) 1: *A history of not meeting financial obligations* applies. Although Applicant has failed to take any action to resolve the large debt alleged in subparagraph 1.g., I am satisfied that is solely caused by his misunderstanding the insignificance of that account not being listed in his credit report as to his liability for the amount owing, and not because of any unwillingness or inability on his part to satisfy the account.

Applicant credibly attributes whatever financial problems he has experienced to his divorce, the health problems he and his present wife have experienced, and the loss of income that resulted from being out of work because of health problems. He has also taken the initiative to straighten out his credit report by removing accounts he correctly asserted did not belong to him. 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. 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 provided inaccurate answers to two questions in the SF 86 he submitted. However, I have considered Applicant's explanation for the incorrect answers, and the confusing information that can be gleaned from his credit history, and 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

SOR ¶ 2-Guideline E: For the Applicant

Subparagraph a: For the Applicant

Subparagraph b: 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. The credit report dated December 17, 2001 (item 8) discloses the debt alleged in subparagraph 1.h. was "transferred to another lender." The same credit report discloses the name of the creditor identified in 1.h. appended to the creditor alleged in subparagraph 1.e., and identifies the creditor in subparagraph 1.e. to be a collection agency. Based upon this I find that the creditors listed in subparagraphs 1.e. and 1.h. are the same account and that the account alleged in subparagraph 1.e. has also effectively been reinvestigated and should be deleted from Applicant's credit report.
3. Based upon the credit reports and the reinvestigation, I consider these accounts to have been mitigated.
4. Question 39: *Your Financial Delinquencies - 90 Days - Are you currently over 90 days delinquent on any debt(s)?*
5. Question 38: *Your Financial Delinquencies - 180 Days - In the last 7 years, have you been over 180 days delinquent on and debt(s)?*
6. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
7. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
8. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
9. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
10. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
11. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
12. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
13. *Egan*, 484 U.S. at 528, 531.
14. *Id* at 531.
15. *Egan*, Executive Order 10865, and the Directive.