

DATE: October 13, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-22714

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 30-year-old control room operator employed by a defense contractor. In August 2001, he submitted a security clearance questionnaire and asserted he had no delinquent debts. At that time Applicant had three debts that were delinquent. Applicant has defaulted on numerous debts, failed to make timely payments on others, and had still more debts sent to collection agencies. Applicant's financial history and lack of candor in admitting his debts raise security concerns. Clearance is denied.

STATEMENT OF THE CASE

On August 13, 2003, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) 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 Guidelines F for financial considerations and Guideline E for personal conduct.

In a sworn answer dated September 29, 2003, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the government's case on July 15, 2004. A complete copy of the file of relevant material (FORM) was received by Applicant on July 29, 2004. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM and did not provide any additional material. The case was assigned to me on September 24, 2004.

FINDINGS OF FACT

Applicant has admitted he is responsible for the debts alleged in subparagraphs 1.a. through 1.l., pertaining to Guideline F. Applicant claims certain debts have been paid off and he is making monthly payments on other debts. Applicant denies the factual allegations in subparagraph 2.a. and 2.b. pertaining to Guideline E. Applicant's admissions to the allegations contained in the SOR are incorporated herein. In addition, after a thorough review of the pleadings and

exhibits, I make the following findings of fact:

Applicant is 30 years old, and has been employed by a defense contractor as a control room operator since June 2001. From 1993 to 1996, Applicant served in the Army and was honorably discharged. He remained in the Army Reserves in an inactive status from 1996 to 2000 and in 2000 he changed his reserve status to active. Prior and subsequent to his military service Applicant held various jobs in private industry. Applicant has been married since 1993. He attended college from 1997 to 2001. He does not have a security clearance.

Applicant submitted a security clearance application (SF 86) and swore to its accuracy on August 6, 2001. Question 38 asked: *In the last 7 years, have you been over 180 days delinquent on any debt(s)?* Applicant answered "No." Question 39 asked: *Are you currently over 90 days delinquent on any debt(s)?* Applicant answered "No." Applicant's credit report dated August 10, 2001 shows three accounts that are delinquent. All three are listed as "bad debt/charge off." The last action by Applicant on each account was July 1999, August 2000, and February 1994. All three debts were in a delinquent status for at least twelve months.

Additional credit reports were submitted and dated May 21, 2003, February 17, 2004 and July 14, 2004. As of July 2004, Applicant had six delinquent accounts totaling more than \$15,000 that have been submitted for collection. Included in the total submitted for collection are four student loans totaling more than \$11,000. Applicant defaulted on these loans and they were charged off and sold for collection twice. In May 2003, Applicant set up a payment plan through a loan rehabilitation program and agreed to pay \$120 a month on the debt. Applicant paid the May 2003 payment but has failed to provide evidence of any subsequent payments. In addition, Applicant has settled three accounts that were submitted for collection for approximately \$450.

Applicant's credit reports since 2001 show he has developed a substantial history of delinquency in paying his debts on time. His credit report of May 2003, shows he had more than \$13,000 that was charged off and sold for collection and another \$4,000 that was in collection. By July 2004, Applicant had paid off or settled three accounts, but still had more than \$15,000 in delinquent debts. The majority of Applicant's delinquencies are his student loans and the remainder is credit card debts. Applicant has failed to provide evidence to refute the credit reports detailing his history of delinquency, nor has he provided documentation to verify monthly payments that he claims he is making. Applicant admits money is tight and he moves money around so he can pay his debts.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. 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 apply.

The sole purpose of a security clearance determination 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 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 sensitive information must be resolved in favor of protecting such sensitive information.⁽¹¹⁾

CONCLUSIONS

Applicant does not dispute the debts alleged in the SOR. Applicant has paid or settled some of his delinquent accounts, but not before these debts had been forwarded to collection agencies and were past due. Applicant did make the effort to set up a payment plan for his largest debt on his student loans, but has failed to provide documentation to prove he is making timely monthly payments. Applicant's debts and delinquencies have increased since he first submitted his SF 86 in August 2001. Applicant's attempts at moving money around to try and cover his debts have been unsuccessful and he continues in default or behind in payments on many of his accounts. Although Applicant has paid some of his debts, many have been charged off, sold or transferred to collection agencies more than once, or are delinquent in being paid on time. Applicant has accumulated a significant history of failure to pay his financial obligations

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.

Based on all the evidence, under Guideline F, I find Disqualifying Condition (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debts*, apply in this case. I have considered all the mitigating conditions under Guideline F, and specifically considered mitigating conditions MC 1: *The behavior was not recent*; MC 2: *It was an isolated incident*; and MC 6: *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*, and conclude none apply in this case.

Applicant's debt delinquencies have been prevalent for at least the past four years and continue to the present. Due to the number of delinquencies Applicant has acquired over this time period these are not isolated incidents. Applicant has not provided any explanation to indicate a condition existed beyond his control that caused a financial crisis. Although Applicant has paid off some debt and has shown some effort to create a payment plan and resolve some of his debts he has been inconsistent in maintaining a firm commitment to eliminating his overdue financial obligations. Despite Applicant's claim that he is making monthly payments on his outstanding debts, he has failed to provide evidence to substantiate these claims and therefore a good-faith effort to pay overdue creditors cannot legitimately be verified. Applicant's attempt at moving money around from one account to another has not been a viable long term plan for resolving his debts. Applicant's considerable long term debt and inability to maintain a healthy financial plan is a security concern, and Guideline F is decided against 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. Personal 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.

Many of Applicant's delinquencies were subsequent to his submission of the SF 86 in August 2001. I have not considered those subsequent delinquencies with regards to Guideline E. However, Applicant had at least three delinquent accounts noted on his credit report in August 2001. He stated on his security application that he did not have outstanding debts more than 180 or 90 days past due. Applicant had taken some action on each debt in July 1999, August 2000, and February 1994 and therefore was aware that the debts existed. The debts were charged off prior to August 2001, and Applicant has provided no explanation regarding these accounts, other than claiming he was unaware of their delinquency at the time he filled out his SF 86. Applicant has offered no other information regarding these delinquencies and was less than candid when answering questions about them. Therefore, Guideline E, 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 in this case.

Under Guideline E, I have considered all the mitigating conditions and specifically considered MC 1:*The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability;* MC 2:*The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;* and MC 5: *The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress,* and conclude none apply. Verification of the Applicant's delinquent accounts as of August 2001, were substantiated in his credit report. Applicant was aware all three accounts existed as evidenced by his having taken some action on the accounts prior to August 2001. All three had been in a delinquent status for at least twelve months. Applicant did not voluntarily admit to his overdue debts, but rather they were the subject of a background investigation. Applicant's lack of candor regarding his financial situation raises security concerns and Guideline E is decided against Applicant.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline F AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. Against the Applicant

Subparagraph 1.h. For the Applicant

Subparagraph 1.i. Against the Applicant

Subparagraph 1.j. For the Applicant

Subparagraph 1.k. For the Applicant

Subparagraph 1.l. Against the Applicant

Paragraph 2. Guideline E AGAINST THE APPLICANT

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against the 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.

Carol. G. Ricciardello

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. 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, Section 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, Section E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8;Directive, Enclosure 3, Section E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id.* at 531.
11. *Egan*, Executive Order 10865, and the Directive.