

DATE: May 4, 2004

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-22892

**DECISION OF ADMINISTRATIVE JUDGE**

**HENRY LAZZARO**

**APPEARANCES**

**FOR GOVERNMENT**

Juan R. Rivera, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's credit report includes eleven accounts, totaling approximately \$13,000.00, that have been delinquent for as long as nine years. He attributes most of the accounts to his mother having incurred debt using his name. Applicant has done absolutely nothing to resolve the situation, and instead exhibits complete financial irresponsibility. He has failed to mitigate the security concerns caused by the financial considerations present in this case. Clearance is denied.

**STATEMENT OF THE CASE**

On August 11, 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 a security concern under Guideline F, financial considerations, based upon eleven delinquent accounts, totaling approximately \$13,000.00.

Applicant submitted an answer to the SOR that was received by DOHA on September 8, 2003. He admitted all of the allegations contained in the SOR, and requested a hearing.

The case was assigned to me on December 23, 2003. A notice of hearing was issued January 28, 2004, scheduling the hearing for February 23, 2004. The hearing was conducted as scheduled. The government submitted six documentary exhibits that were marked as Government Exhibits (GE) 1-6, and admitted into the record without an objection. Applicant testified at the hearing but did not submit any documentary evidence. DOHA received the transcript March 17, 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 28-years-old, married, and the father of a three-year-old child. He has been employed by a defense contractor, first as a janitor and now as a mail specialist, since August 2000. Applicant and his wife's combined incomes total approximately \$25,000.00 per year.

Applicant graduated from high school in May 1994, and attended a junior college until May 1996. He worked as a bookkeeper for his father's logging business from June 1994 until April 1998, as a press oiler for a box company from April 1998 until May 1998, and was unemployed from May 1998 until July 2000.

Applicant's credit reports list eleven delinquent accounts totaling approximately \$13,000.00. Two of the accounts are repossessions, one is a television cable bill, and the balance appear to be credit card debt that has either been submitted for collection or charged off as bad debt. The majority of the accounts have been delinquent since between 1995 and 1999.

Applicant acknowledges he is responsible for one automobile repossession account, charged off as a bad debt in the amount of \$3,559.00 in July 1995. He has made no effort to resolve this account. He claims the remaining delinquent accounts were incurred by his mother using his name to obtain credit without his permission. Applicant included a notarized note from his mother with his response to financial interrogatories in which she accepted responsibility for incurring the debts. However, whether or not the debts are actually his responsibility, Applicant has been aware these debts were listed as his liabilities since 1999 and has done nothing to deal with them.

Applicant provided a statement to a Special Agent from the Defense Security Service (DSS) on June 6, 2002 in which he indicated both he and his mother lacked the financial ability to pay off the debts. He expressed an intention to file bankruptcy within a couple of months. He responded to financial interrogatories on May 7, 2003, and stated he would probably file bankruptcy sometime in the future. He testified at the hearing that it was his intention to file bankruptcy when he got everything together.

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

No one has a right to a security clearance<sup>(9)</sup> and "the clearly consistent standard indicates that

security clearance determinations should err, if they must, on the side of denials."<sup>(10)</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>(11)</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's has substantial delinquent debt, vis-a-vis his income, that remains outstanding. While he attributes most of the debt to his mother, he has not taken any steps to resolve the delinquent accounts, including the nine-year-old automobile repossession deficiency he admits belongs to him. Based on all the evidence presented in this case, I find Disqualifying Conditions (DC) 1: *A history of not meeting financial obligations*: and DC 3: *Inability or unwillingness to satisfy debts* apply in this case.

Applicant has been aware of the delinquent accounts for at least the past five years, and has been aware they were of concern in granting him a security clearance since at least the time of the DSS interview in June 2002. He has repeatedly acknowledged he lacks the resources to satisfy the accounts and claimed he would file for bankruptcy protection. To date he has done nothing. I have considered all mitigating conditions under Guideline F and conclude none apply.

Considering all relevant and material facts and circumstances present in this case, including 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 is unable to mitigate this security concern. He has failed to overcome the case against him or satisfy his ultimate burden of persuasion. Guideline F is decided against Applicant.

### **FORMAL FINDINGS**

SOR ¶ 1-Guideline F: Against the Applicant

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

Subparagraph j: Against the Applicant

Subparagraph k: 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.

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.