

DATE: April 15, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-23604

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant received a discharge of more than \$17,000.00 in debts under chapter 7 of the bankruptcy code in July 1993. As of June 2003, he had accumulated more than \$21,000.00 in delinquent accounts, and had deferred repayment of approximately \$64,000.00 in student loans. He has now either satisfied or made arrangements to expeditiously satisfy his delinquent accounts, and entered into an agreement that will allow him to repay his student loans over the course of the next thirty years. Applicant's belated effort to repay long-standing past-due creditors is insufficient to mitigate the security concern caused by his many years of financial irresponsibility. Clearance is denied.

STATEMENT OF THE CASE

On June 6, 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. [\(U\)](#) The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline F, financial considerations.

Applicant submitted a sworn answer to the SOR that was received by DOHA on June 23, 2003, and requested a hearing. Applicant admitted all allegations contained in the SOR.

The case was assigned to another administrative judge on September 16, 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 18, 2003. I cancelled the scheduled hearing for personal reasons. A second notice of hearing was issued on January 13, 2004, rescheduling the hearing for February 5, 2004. The hearing was conducted as rescheduled. The government submitted seven documentary exhibits that were marked as Government Exhibits (GE) 1-7 and admitted into the record without an objection. Applicant testified and submitted seventeen documentary exhibits that were marked as Applicant's Exhibits (AE) 1-17 and admitted into the record without an objection. The transcript was received on February 18, 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 35 years old, single, has no children, and supports no one other than himself. He has been employed by a defense contractor since April 2000, presently works as an aircraft systems engineer, and earned more than \$62,000 in 2003. The letters of recommendation and performance evaluation worksheet he submitted attest to his reputation for being a valued employee who is considered to be trustworthy, honest and of high integrity.

Applicant attended college from 1987 to 1993, but left prior to receiving a degree because of financial constraints. He later returned to college and received a bachelor of science degree in aerospace engineering in August 1999. Applicant worked while attending school, and at all times in between, with the exception of a period of unemployment from June 1994 to October 1994. Additionally, he was underemployed for a short period of time in approximately March 1997 because of a work-related injury, and again for several months beginning in approximately September 1997 because of a labor strike.

Applicant filed for Chapter 7 bankruptcy protection on April 2, 1993, and was granted a discharge on October 16, 2003. He discharged approximately \$17,000.00 in debt at that time, including a \$5,1000.00 judgment that arose from an auto accident, \$2,200.00 in credit card debt, and a personal loan in the amount of \$3,627.36. Applicant attributes his need to file for bankruptcy to financial irresponsibility and the fact that he was living beyond his means.

Applicant again had substantial delinquent debt as of June 2003, totaling more than \$21,000.00. That amount includes a deficit of more than \$8,000.00 owing following the repossession of a vehicle, and more than \$11,000.00⁽²⁾ in credit card debt that had been written off as bad debt. In addition to the delinquent accounts, Applicant had approximately \$64,000.00 in student loans that were deferred due to financial hardship.

Applicant has been working for the same employer since 2000, and was transferred by the employer to his current state of residency in August 2003. He was provided a relocation allowance by the employer as partial compensation for the move, that he has used to satisfy some of his delinquent accounts. He has transferred the balance of one of the delinquent credit cards to a new credit card on which he is making payments. He also is now residing with his mother and not paying rent, which has allowed him to apply the money he is saving to satisfy additional creditors.

Applicant has consolidated all his student loans into a single loan and entered into a repayment agreement that will allow him to satisfy that account in thirty years. He has a workable plan that will allow him to pay all remaining delinquent accounts within the very near future, and has indicated he will then be in a position to satisfy the student loans in considerably less time than the thirty years agreed to.

Applicant attributes his present financial difficulties to unemployment and underemployment he experienced in 1997. However, he has worked continuously since that time, including the past four years with his present employer. He did not take action to resolve the delinquent accounts until sometime after he received the SOR in June 2003.

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

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

security clearance determinations should err, if they must, on the side of denials."⁽¹¹⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹²⁾

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.

The government has established its case under Guideline F. Applicant secured a discharge in bankruptcy in 1993, and then acquired significant delinquent debt that was outstanding, and on which no payments were being made, as of June 2003. He acknowledges the bankruptcy was caused by his financial irresponsibility and living beyond his means. 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 recently fully satisfied several of his delinquent accounts, and has arranged to repay the remaining accounts, with the exception of the student loans, in the near future. Once he has satisfied the remaining delinquent accounts, he will be able to expedite repayment of the student loans. MC 6: *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debt* applies in this case.

However, while Applicant is presently living within his means, and is rapidly attaining financial stability, it is too soon to predict with any degree of reliability that he will continue on his current path. He has a track record of financial irresponsibility that spans more than a decade, and fails in his attempt to blame the present delinquencies on loss of income he sustained more than six years ago. He took no action to resolve the accounts until recently, despite being gainfully employed and having no one but himself to support. Further, at least two of the accounts were initially opened after his periods of unemployment and underemployment.

Considering all relevant and material facts and circumstances present in this case, including Applicant's character references, the circumstances he attributes to being the cause of him becoming severely delinquent on various accounts, the recent actions he has taken 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 failed to mitigate this security concern. It is impossible to reconcile his demonstrated irresponsibility with the degree of trust and confidence that must be placed in one who is granted access to the nation's secrets. Applicant 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. Subparagraph 1.f. alleges an *unknown amount*. GE 3 and GE 6 read together evidence there was \$757.00 owing on this account.
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.