

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant obtained a discharge under Chapter 7 of the bankruptcy code in 1998. Since then, he has allowed a number of accounts to become delinquent and either charged off or submitted for collection. He has failed to take any action to resolve the vast majority of these accounts. He also failed to disclose either the bankruptcy or the delinquent accounts in a security clearance application he submitted in December 2000. Applicant has failed to mitigate the security concerns caused by his financial considerations and personal conduct. Clearance is denied.

CASENO: 03-21381.h1

DATE: 06/08/2005

DATE: June 8, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-21381

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant obtained a discharge under Chapter 7 of the bankruptcy code in 1998. Since then, he has allowed a number of accounts to become delinquent and either charged off or submitted for collection. He has failed to take any action to resolve the vast majority of these accounts. He also failed to disclose either the bankruptcy or the delinquent accounts in a security clearance application he submitted in December 2000. Applicant has failed to mitigate the security concerns caused by his financial considerations and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On June 8, 2004, 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 an undated sworn answer to the SOR but failed to indicate whether he wanted a hearing. According to a note in the file, Applicant orally requested a hearing on September 17, 2004, during a conversation with a personnel security specialist from the DOHA. Applicant admitted all SOR allegations.

This case was assigned to me on March 14, 2005. A notice of hearing was issued on April 22, 2005, scheduling the hearing for May 11, 2005. The hearing was conducted as scheduled. The government submitted seven documentary exhibits that were marked as Government Exhibits (GE) 1-7, and admitted into the record without objection. Applicant testified, called his wife to testify on his behalf, and submitted five documentary exhibits

that were marked as Applicant's Exhibits (AE) 1-5, and admitted into the record without objection. The transcript was received May 20, 2005.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 42 years old. He has an eighth grade education, and has been employed as a security guard since August 2000, by a company that provides services to the U.S. government. He previously worked as a general helper from September 1985 to March 1999, as a security guard from April 1999 to June 2000, and he was unemployed from June 2000 to August 2000. Applicant has been married since August 1990, and has two daughters, ages fourteen and seven. He submitted two letters of recommendation that indicate he is considered to be a very good employee who gets along well with his co-workers.

Applicant filed for protection under Chapter 7 of the bankruptcy code in December 1997. He listed assets worth \$650.00, and liabilities totaling \$17,605.75 in the bankruptcy petition. He received a discharge on April 2, 1998.

The SOR alleges six accounts, totaling \$7,992.00, that have been submitted for collection, and two accounts, totaling \$1,334.00, that have been charged off. A judgment listed in SOR subparagraph 1.i. was included in the 1997 bankruptcy. The only account Applicant has made any payment on is a \$59.00 cellular telephone bill he claims to have paid by using a charge card so he could once again obtain cellular telephone service. He acknowledges he has not made any payments on the remaining debts, with the exception of two small collection accounts that he claims to be uncertain about. Applicant's explanation for accumulating the delinquent debt and then not making payments on the accounts is that he changed residences two years ago and did not have an address to which his mail could be forwarded.

Applicant signed a security clearance application (SF 86) on December 20, 2000, in which he answered "No" to questions asking if he had filed for bankruptcy in the preceding seven years, or had been over 180 days delinquent on any debt in the preceding seven years. Both those answers were false. Applicant also answered "No" to a question dealing with unsatisfied judgments, but because that judgment had been discharged in the 1997 bankruptcy his answer was not false.

Applicant testified his false answers resulted either from him not reading the questions carefully or not understanding them if he did read them carefully. He provided a statement in June 2003, in which he stated the SF 86 was typed for him and he inadvertently did not review the form before signing it. He also claims to have disclosed his delinquent accounts to his company's security officer, and being told by that person that disclosure of the debts might hold up or prevent the granting of a clearance to him.

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.

Applicant obtained a discharge under Chapter 7 of the bankruptcy code in April 1998, and has since accumulated more than \$9,000.00 in delinquent debt. He has done virtually nothing to deal with any of the accounts, with the exception of a telephone bill he claims to have paid by charging the amount owed to a credit card in order to restore phone service. Disqualifying Conditions (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debt* apply in this case. I have considered all mitigating conditions and none apply.

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. 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.

Applicant's explanations for failing to disclose either his bankruptcy or delinquent accounts in the SF 86 are not credible. Having listened to Applicant's testimony, and viewed his appearance and demeanor while testifying, I am satisfied he fully understood the questions and was concerned about the possible adverse effect that truthful answers may have had on his obtaining employment. Applicant's false answers severely undermine the ability to place trust and confidence in him and create a significant security concern. DC 2: *The deliberate omission, concealment, or falsification of relevant and material fact 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.

Considering all relevant and material facts and circumstances present in this case, including the testimony and evidence provided by Applicant, 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 failed to mitigate the security concerns in this case. He has failed to overcome the case against him or satisfy his ultimate burden of persuasion. Guideline F and Guideline E are decided against Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline F: Against Applicant

Subparagraph a : Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: Against Applicant

Subparagraph d: Against Applicant

Subparagraph e: Against Applicant

Subparagraph f: Against Applicant

Subparagraph g: Against Applicant

Subparagraph h: Against Applicant

Subparagraph i: For Applicant

Subparagraph j: For Applicant

SOR ¶ 2-Guideline E: Against Applicant

Subparagraph a: Against Applicant

Subparagraph b: For Applicant

Subparagraph c: Against 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.