

KEYWORD: Financial

DIGEST: Applicant is unable to successfully mitigate the security concern stemming from his history of financial problems, which are ongoing. Clearance is denied.

CASENO: 03-21852.h1

DATE: 05/27/2005

DATE: May 27, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-21852

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is unable to successfully mitigate the security concern stemming from his history of financial problems, which are ongoing. Clearance is denied.

STATEMENT OF THE CASE

On August 20, 2004, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating the reasons why DOHA proposed to deny or revoke access to classified information for Applicant. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline F for financial considerations. Applicant responded to the SOR on September 17, 2004, and he indicated he did not desire a hearing. In his Answer to the SOR, Applicant admitted to having five delinquent accounts totaling more than \$27,000.00 under Guideline F.

On December 14, 2004, Department Counsel submitted his written case consisting of all relevant and material information that could be adduced at a hearing. This so-called File of Relevant Material (FORM) was mailed to Applicant and it was received by him on March 1, 2005. Applicant did not submit any information within the 30-day period after receiving the FORM. The case was assigned to me May 11, 2005.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the

record, I make the following findings of fact:

Applicant is a 33-year-old married man who is a native-born U.S. citizen. He is currently employed as a space management/planner I for a company engaged in defense contracting.

In conjunction with his employment, Applicant completed a security-clearance application in May 2002. In response to Question 35, Applicant revealed that he had property repossessed in July 1996. It appears the repossession involved an automobile.

In May 2002, a credit report was obtained during the background investigation. In summary, it revealed Applicant had one repossession and nine accounts in a collection/charge off status.

In September 2003, another credit report was obtained. In summary, it revealed Applicant had ten accounts in a collection/charge off status.

Applicant was interviewed during the background investigation on September 4, 2003, and the interview produced a three-page sworn statement. In it, Applicant acknowledged he had reviewed the September 2003 credit report and agreed with the information reflected in it. He indicated he and his wife still planned to file for Chapter 7 bankruptcy, they had saved the money to do so, and they planned on doing so in October 2003. Also, Applicant indicated an inability to obtain a debt consolidation loan due to poor credit. Applicant denied that abuse of alcohol, illegal drug usage, or criminal conduct played any part in his financial difficulties. Instead, Applicant traced the problems to his marriage in July 1996 when his wife brought debt into the marriage as well as not being reimbursed for business expenses Applicant charged to his personal credit card.

The August 2004 SOR alleges and Applicant admits he is indebted to five creditors for more than \$27,000.00. The first two accounts appear to be medical bills for small amounts that have been turned over for collection. The third account is a credit card account for \$8,829.00 that has been turned over for collection. The fourth account is a credit card account for \$580.00 that has been turned over for collection. The fifth account refers to the automobile repossession with an outstanding balance of \$17,515.00. All of these accounts are unpaid and delinquent.

In his September 2004 response to the SOR, Applicant indicated he had yet to file for Chapter 7 bankruptcy. He stated he was in the process of completing the paperwork and planned to have it filed sometime in October 2004. The record evidence does not establish if Applicant did, in fact, file a Chapter 7 bankruptcy petition, and what action, if any, the bankruptcy court took on the petition.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security-clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each applicable guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on 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.

BURDEN OF PROOF

The only 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⁾ There is no presumption in favor of granting or continuing access to classified information.⁽³⁾ The government has the burden of proving controverted facts.⁽⁴⁾ The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than the preponderance of the evidence.⁽⁵⁾ The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.⁽⁶⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁷⁾ Once the government meets its burden, an applicant has the burden of presenting evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him.⁽⁸⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

As noted by the Court in *Egan*, "it should be obvious that no one has a 'right' to a security clearance," and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

CONCLUSIONS

Under Guideline F, a security concern typically exists for two different types of situations--significant unpaid debts and unexplained affluence; this case involves the former. 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, negligent, or careless in properly handling and safeguarding classified information.

Here, based on the record evidence as a whole, the government established its case under Guideline F. The five delinquent accounts demonstrate a history of not meeting financial obligations as well as inability or unwillingness to pay one's just debts. ⁽¹¹⁾ Also, the same facts and circumstances demonstrate financial irresponsibility.

I have reviewed the mitigating conditions under the guideline and conclude none apply. Based on the record evidence, I am unable to conclude he has made a good-faith effort to pay or otherwise resolve his indebtedness. ⁽¹²⁾ The evidence does not suggest Applicant's financial problems are resolved and under control. Indeed, his financial problems are long standing and ongoing. Accordingly, Guideline F is decided against Applicant.

To conclude, Applicant has failed to meet his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I have considered the record evidence as a whole, the whole-person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

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

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.

Michael H. Leonard

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. 02-18663 (March 23, 2004) at p. 5.
4. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
5. *Department of 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. E2.A6.1.2.1. A history of not meeting financial obligations;" and E2.A6.1.2. 3. Inability or unwillingness to satisfy debts.

12. E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.