

DATE: September 15, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-33806

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was awarded the entire marital debt when he divorced in October 2001. Many of the larger debts quickly became severely delinquent. He has now satisfied most of the debts, is living within his means, and has resumed a financially stable lifestyle. Applicant has mitigated the security concern caused by the financial considerations that existed in this case. Clearance is granted.

STATEMENT OF THE CASE

On September 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 a security concern under Guideline F, financial considerations. Applicant submitted a sworn answer to the SOR that was received by DOHA on October 12, 2004, admitted all SOR allegations, and requested a hearing.

The case was assigned to me on June 20, 2005. A notice of hearing was issued on June 30, 2005, scheduling the hearing for July 27, 2005. 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 objection. Applicant testified at the hearing, and submitted five documentary exhibits that were marked as Applicant's Exhibits (AE) 1-5, and admitted into the record without objection. The record was held open to provide Applicant the opportunity to submit additional documentation in support of his case. Four documents were timely received, marked as AE 6-9, and admitted into the record without objection. The transcript was received on August 5, 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 53 years old, divorced, and has been employed as an engineer by a succession of defense contractors since April 1982. He was married in May 1989, separated from his wife in February 2001, and divorced in October 2001.

Applicant has one child from the marriage, a son who is now 16 years old. Applicant was earning about \$72,000⁽²⁾ and his wife about \$18-20,000 annually at the time they were divorced. Applicant was awarded the marital residence, the entire marital debt, and ordered to pay child support in the amount of \$845 in the divorce proceedings. He presently earns approximately \$88,000.00 annually.

Applicant was initially unable to remain current on the entire marital debt following the separation from his wife and the loss of her income. A recreational vehicle they had purchased was repossessed in early 2002, resold, and an \$8,004.00 deficit became due. A city tax lien in the amount of \$8,492.96 was filed against Applicant in December 2002.

Additionally, more than \$30,000 in credit card debt either became severely past due or was charged off as bad debt between June 2001 and January 2004. Although Applicant had managed to pay off his ex-wife's car loan, and several credit card debts by the time he provided a statement to a special agent from the Defense Security Service in October 2003 (GE 4), the debts listed in the SOR either remained delinquent or became delinquent shortly thereafter. Additionally, foreclosure proceedings were initiated on his residence in March 2004.

Applicant submitted proof that he has satisfied the debts listed in SOR subparagraphs 1.a., 1.c., 1.d., 1.e., and 1.f., that were owing in the total amount of \$30,220.96. He has also brought his mortgage current. The only debts alleged in the SOR that remain outstanding are the \$8,004.00 deficiency owing on the repossessed recreation vehicle, and a credit card that was charged off in January 2004 in the amount of \$9,391. Applicant testified he obtained the funds to satisfy the various accounts by saving some money, withdrawing money from his 401k account, and by selling some personal assets.

Applicant is current on all other debt. He has arranged a schedule to pay his bills directly through his bank as they come due. He now has a positive cash flow each month, and manages to deposit a small amount in his 401k, purchase some savings bonds, and have a few dollars left over as discretionary income. He intends to repay the remaining two debts as soon as possible.

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.

Applicant acquired significant delinquent debt as a result of his failed marriage, assumption of full responsibility for the entire marital debt, and the loss of his wife's income. Disqualifying Condition (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debts* apply in this case.

Applicant's financial woes are directly attributable to the separation and divorce from his wife, his assumption of the marital debt, the decrease in income available to apply to marital debt, and the child support he was ordered to pay. He has now paid off a substantial portion of the delinquent debt, is living within his financial means, and by his actions thus far gives every reason to expect that the entire delinquent debt will be extinguished in the reasonably foreseeable future. Mitigating Conditions (MC) 3: *The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)*; and MC 6: *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debt* apply in this case.

Considering all relevant and material facts and circumstances present in this case, including the circumstances that caused Applicant to become severely delinquent on various accounts, the 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 Applicant has mitigated this security concern. He has overcome the case against him and satisfied his ultimate burden of persuasion. Guideline F is decided for Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline F: For the Applicant

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

Subparagraph f: For the Applicant

Subparagraph g: For the Applicant

Subparagraph h: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

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. Applicant testified he earned about \$76,000 annually before being divorced. (Tr. 39) However, the financial statement he submitted in July 2002, as part of GE 3 discloses his gross monthly salary was \$6,084.
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.