

DATE: October 12, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-01294

ECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has experienced continuing financial problems since approximately 1996. He has failed to satisfy numerous delinquent accounts that have been outstanding since that time, and until recently has made little effort to even address those accounts. He also failed to disclose his financial problems in a security clearance application he submitted in July 2001. His explanation for not doing so is not believable. Applicant has failed to mitigate the security concerns caused by his financial considerations and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On September 25, 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 security concerns under Guideline F, for financial considerations, and Guideline E, for personal conduct.

Applicant submitted a sworn answer to the SOR, dated November 8, 2003, and requested a hearing. Applicant admitted the SOR allegations concerning all but one of his financial delinquencies, and provided explanations about their status. He admitted answering questions about his financial delinquencies incorrectly in the security clearance application he submitted in July 2001, but denied he intended to intentionally falsify the application.

This case was assigned to me on April 26, 2004. A notice of hearing was issued on May 20, 2004, scheduling the hearing for June 8, 2004. An amended notice of hearing was issued on June 3, 2004, changing the location of the hearing within the same city, but keeping the date and time of the hearing as originally scheduled. The hearing was conducted as scheduled.

The government submitted three documentary exhibits at the hearing that were marked as Government Exhibits (GE) 1-3, and admitted into the record without an objection. Applicant testified at the hearing, called one character witness, and submitted five documentary exhibits that were marked as Applicant's Exhibits (AE) 1-5, and admitted into the record without an objection. The record was held open to provide Applicant the opportunity to submit additional documents in support of his case. Seven additional documents were timely received, marked as AE 6-12, and admitted into the record without an objection. The transcript was received June 17, 2004.

FINDINGS OF FACT

Applicant's partial admissions to the allegations 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 46 years old, married, and has been employed by a defense contractor as a jet engine mechanic since May 1982. He graduated from high school in 1976, and enlisted in the U.S. Air Force in June 1977. He served in the Air Force as a jet engine mechanic until June 1981, earned an Air Force Commendation medal and a Good Conduct Medal, and was discharged with an Honorable Discharge. He was married in November 1980, and has two children, ages 11 and 13. He is active in community activities, including the girl scouts, a parent-teacher organization, and a 4-H club.

Applicant submitted numerous employee appraisals, certificates of recognition, and monetary award notifications attesting to his being an excellent and dependable employee. He has possessed a secret security clearance since May 1986, and there is no indication that any complaints have ever been made against him alleging mishandling of classified information or that any action has ever been taken to downgrade or revoke his clearance before the action herein in issue. Applicant's supervisor, who has known him since about 1986, testified he is a valued employee who is serious about both his job and security matters.

Applicant's current financial problems began in 1996 when his wife lost her job due to downsizing and then found it financially preferable to remain home caring for their children rather than to obtain employment and expend money on daycare. However, he acknowledges he had problems with credit card debt in the 1988-91 time period that was only resolved by obtaining a loan secured by a second mortgage on his residence in approximately 1991.

When Applicant's wife lost her job in 1996, they found themselves unable to keep up with credit card debt that had previously been serviced by their joint incomes. He began accepting offers of cash advances represented by checks sent to him through the mail to pay off past-due creditors and then found himself unable to keep current on the payments owing on the cash advances. As he became delinquent on those accounts, the interest rates increased causing the debts to become even more unmanageable. He contacted a number of the creditors in unsuccessful attempts to resolve the accounts with reduced payments.

The SOR lists eight accounts totaling \$34,625.00 that either were past due, charged off, or submitted for collection as of June 12, 2002. However, one delinquent account is listed twice, leaving the actual total owed by Applicant on the alleged delinquent accounts at \$28,724.00. In his November 2003 response to the SOR, Applicant admitted all of the accounts were still owing with the exception of one account in the amount of \$4,370.00 that he claims was paid off. In support of that claim, Applicant submitted AE 10 and AE 11 that disclose a settlement offer being extended to Applicant on March 8, 1999 to settle the account for a payment of \$2,416.63, and an acknowledgment that the account was closed with a zero balance owing as of March 18, 2000.

No payments were made by Applicant to resolve any of the remaining accounts prior to the hearing of this case. Following the hearing, Applicant submitted AE 6 in which he alleged he had either paid the creditors, entered into payment arrangements with the creditors, or was unable to locate the creditors. However, he did not submit any documentation to support those claims. In a second post-hearing submission, Applicant submitted AE 7, 8 & 9 which are documents that very inconclusively indicate payments being made on two other accounts.

Accepting as accurate all of Applicant's claims about the current status of the accounts listed in the SOR, he still has two accounts, totaling \$11,542.00, on which no payments have been made because he states he cannot locate the creditors; and two additional accounts, totaling \$9,447.00, on which \$50.00 per month payments are being made with lump sum settlements due within several months. Applicant has provided no explanation as to how he was able to obtain the funds to settle the accounts he claims to have paid off, or where he intends to obtain the funds to settle the accounts on which he is making the \$50.00 per month payments.

Applicant signed a security clearance application on July 9, 2001 in which he denied having any accounts that had been more than 180 days past due in the prior seven years, or that were currently more than 90 days delinquent. Each of the accounts listed in the SOR had been delinquent since either 1996 or 1997. Applicant explained his incorrect answers were due to his believing he did not have to list the accounts because he understood they had all been charged off and were therefore no longer delinquent. Considering his appearance and demeanor while testifying, the status of the accounts, and the totality of information he has submitted about the accounts, including his SOR response, testimony, and documentary submissions, his explanation is not credible.

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 has numerous accounts that became delinquent and were either charged off, submitted for collection, or listed as past due beginning in 1996. With the exception of one account that was apparently satisfied for less than the full amount owing in 2000, he has failed to do anything to resolve those accounts until very recently. Disqualifying Conditions (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debts* apply.

Applicant's current financial problems began when his wife lost her job in 1996, and found it economically advisable to stay at home with her children rather than to seek employment and pay child care expenses. Accepting as true his claims that he has paid some accounts in full and made arrangements to at least begin paying other accounts, Applicant is entitled to some credit under 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 debts*.

However, Applicant still has two large debts for which he has made no arrangements to pay, allegedly because he cannot locate the creditors. He previously stated in his SOR response as to one of those accounts, listed in the amount of \$5,901.00, that "I am in contact with the holder of this debt and we are currently working out a settlement of this debt." He has two additional accounts that he claims to have made arrangements to pay \$50.00 per month until a lump sum settlement is agreed upon within several months. He has not attempted to explain how he will be able to satisfy the lump sum demands now when he has been unable to previously pay off the accounts. Lastly, it must also be noted that Applicant failed to take any action to resolve most of the accounts until after the hearing; and this is not the first time he has found himself in economic distress due to mishandling credit, and there is nothing to indicate his problems will not continue into the future.

Considering all relevant and material facts and circumstances present in this case, including the testimony provided by Applicant and his character witness, the circumstances that caused him to become severely delinquent on various accounts, the actions he took 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 failed to mitigate this security concern. He has not overcome the case against him nor satisfied his ultimate burden of persuasion. Guideline F is decided against Applicant.

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. Applicant failed to disclose his financial problems in the SF 86 he submitted. His explanation for failing to do so is not credible. DC 2: *The deliberate omission, concealment, or falsification of relevant and material facts 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. I have considered all potentially applicable mitigating conditions and none apply. Guideline E 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

SOR ¶ 2-Guideline E: Against the Applicant

Subparagraph a: Against the Applicant

Subparagraph b: 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.