

DATE: February 15, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-01499

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is unable to successfully mitigate the security concern stemming from his history of not meeting financial obligations and inability to satisfy debts. In October 2001, he tried to pay off his delinquent debts by a Chapter 13 bankruptcy payment plan. Applicant was unable to comply with the plan and the case was dismissed in November 2002. His home was foreclosed upon in April 2003. Still struggling financially in March 2004, Applicant filed a Chapter 7 case wherein he received a discharge from his indebtedness in June 2004. It is too soon to tell if Applicant has changed his financial ways for the better. Clearance is denied.

STATEMENT OF THE CASE

On February 4, 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 April 8, 2004, and requested a hearing.

Department Counsel indicated he was ready to proceed on July 21, 2004. On July 23, 2004, this case was assigned to me to conduct a hearing. On July 27, 2004, a notice of hearing was issued scheduling the hearing for September 1, 2004. Applicant appeared without counsel and the hearing took place as scheduled. The transcript was received on September 10, 2004. Issuing a decision in this case was delayed due a heavy caseload.

RULINGS ON PROCEDURE

Department Counsel moved to amend SOR subparagraph 1.1 to conform to the record evidence by deleting the figure \$5,120 and substituting the figure \$512.00. Without objections, the motion to amend was granted.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated into my findings, and after a thorough review of the record, I make the following findings of fact:

Applicant is a 49-year-old married man. He is employed as an information management analyst working in inventory. He has been employed by this same company since December 1992. Since 1996, he has worked periodically as a part-time security officer for three different security companies. As required by a periodic reinvestigation, Applicant completed and submitted a security-clearance application in December 2001.

The background investigation revealed Applicant has a history of delinquent indebtedness. The SOR alleges (1.a - 1.i) that Applicant is indebted to nine creditors for unpaid delinquent accounts, to which Applicant admits except he points out that three accounts have now been paid in full. The SOR alleges (1.j - 1.l) that Applicant is indebted to three creditors for unpaid money judgments taken against him. The SOR alleges (1.m) that Applicant filed a voluntary petition for Chapter 13 bankruptcy in October 2001, to which Applicant admits and notes it was dismissed. The SOR alleges (1.n) that Applicant is indebted to the IRS for delinquent taxes for more than \$70,000.00, to which Applicant denies and contends he owes only about \$500.00.

Applicant previously experienced financial problems resulting in past due indebtedness. His history was documented in a previous background investigation during 1992-1993 (Exhibits 3 and 4). Applicant and his wife found themselves struggling financially in October 2001 and elected to seek protection under bankruptcy. They filed a joint petition under Chapter 13 on October 18, 2001. According to the summary of schedules filed with the petition, they listed \$127,725.00 in total assets and \$180,090.30 in total liabilities. Approximately \$139,000.00 of debt was due to a mortgage listed in Schedule D. Another \$19,000.00 of debt was owed for unpaid federal and state income taxes (\$7,000.00 and \$12,000.00, respectively). The court subsequently confirmed a payment plan for Applicant and his wife, but they were unable to make timely payments. The court dismissed the Chapter 13 case due to nonpayment in November 2002 (Exhibit 8). After the Chapter 13 was dismissed, Applicant was unable to rectify the arrears owed for the mortgage. The property was foreclosed upon in April 2003.

Still struggling financially, Applicant and his wife again sought protection under bankruptcy. This time, they filed a joint petition under Chapter 7 on or about arch 22, 2004 (Exhibit C), which was about six weeks after receiving the SOR. According to the summary of schedules filed with the petition, they listed \$7,515.13 in total assets consisting solely of personal property and more than \$57,000.00 in total liabilities. The Schedule D included \$9,000.00 of debt owed stemming from a repossessed vehicle. The Schedule E listed more than \$17,000.00 in unpaid state income taxes and more than \$7,000.00 in unpaid federal income taxes. The Schedule F--which concerns unsecured debt--listed 36 creditors for more than \$24,000.00 in debt. Nine of the creditors were described as credit card debt. Also, the Schedules I and J indicated Applicant's monthly expenditures exceeded income by \$280.00. The court granted Applicant and his wife a discharge in bankruptcy on June 28, 2004 (Exhibit B).

Applicant still owes the IRS for unpaid federal income taxes, although the amount has been reduced greatly. As of September 1, 2004, Applicant's balance due was \$510.71, which included penalties and interest figured to September 13, 2004 (Exhibit A). Applicant believes he still owes unpaid state income taxes, although he is not certain how much.

In his hearing testimony, Applicant described his financial situation as living paycheck-to-paycheck. He and his wife have essentially no money in the bank (checking and savings accounts), nor do they have any investments of note.

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 them.⁽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 delinquent accounts, the money judgments, the unpaid state and federal income taxes, the dismissed Chapter 13 bankruptcy case, the home foreclosure, and the Chapter 7 bankruptcy case with a discharge granted in June 2004 clearly demonstrate a history of not meeting financial obligations as well as inability to pay one's just debts.⁽¹¹⁾ Also, the same facts and circumstances demonstrate financial irresponsibility. Of particular concern here are the unpaid state and federal income tax debts. Failure to pay income taxes is a security concern because it indicates a lack of respect for one's financial obligations and a lack of respect for the government.

I have reviewed the mitigating conditions under the guideline and conclude none apply.

Although Applicant received a "fresh start" via the Chapter 7 discharge, it does not appear he has a firm plan to achieve financial fitness. His financial problems are long standing and appear to be the result of financial irresponsibility (e.g., the nine credit card debts listed on Schedule F of the Chapter 7 petition) or living beyond his means or both. Until he establishes a long-term track record of good debt management and a financially responsible lifestyle, it is simply too soon to tell if he has truly changed his financial ways for the better. 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

Subparagraphs a - n: 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.