

DATE: May 4, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-02403

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 28 year old divorced father. He has worked for a federal contractor since 1998. Prior to 2001, Applicant's then wife was emotionally unstable and would often make irrational decisions. She refused to take her medications that would help her. During this time, Applicant's wife would spend their money frivolously. Applicant's attempts to control her spending were unsuccessful. Applicant and his wife divorced in 2002. Applicant has successfully repaid and resolved most of the delinquent debts and has a solid and consistent payment history with the others. Applicant has successfully mitigated the security concern raised under Guideline F, financial considerations. Clearance is granted.

STATEMENT OF THE CASE

On November 3, 2003, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F, for financial considerations.

In a sworn statement, dated December 4, 2003, Applicant responded to the SOR allegations, and elected to have his case decided on the written record, in lieu of a hearing. In his SOR response, Applicant admitted some of the allegations contained in the SOR, denied others, and provided explanations to mitigate the security concerns. Department Counsel submitted the government's case on April 21, 2004. A complete copy of the file of relevant material (FORM) was received by Applicant on April 27, 2004. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM, and did provide additional material. Department Counsel did not object to the material. The case was originally assigned to another judge, but due to case load considerations, it was reassigned to me on March 25, 2005.

FINDINGS OF FACT

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

Applicant is 28 years old and a divorced father of two boys, ages 6 and 7. Applicant has worked for a federal contractor as a financial analyst since 1998. Applicant was married in 1995 and divorced in March 2002.

In August 2001, Applicant advised his employer that he was separated from his wife and had filed for a divorce.⁽²⁾ He further advised his employer that his wife had a history of emotional and psychological problems which had resulted in her being hospitalized twice during the previous year. Applicant's wife refused to take her prescribed medicines and had ceased attending her counseling sessions. Applicant's wife's problems caused her to make irrational decisions. Throughout the previous year, Applicant's wife spent excessive amounts of money on elaborate items, ranging from clothes to plastic surgery.

Applicant's attempt to thwart his wife's spending habit was unsuccessful. Applicant's wife would open joint accounts without telling her husband and then fail to make timely payments on the bills. After Applicant and his wife separated, she would intercept the mail and fail to provide him the outstanding bills and notices regarding the debts. Some of these debts he did not know existed. She also intercepted a subpoena that he was required to respond to regarding a debt notice.

Applicant became concerned that his wife's irrational behavior would reflect negatively on him with his employer so he notified them of his situation.⁽³⁾ Applicant provided his employer an update on his marital strife and his financial situation on April 24, 2002.⁽⁴⁾ Applicant was working a full time job and was attending school at the time. Applicant's wife was responsible for running the household and maintaining the family budget. Applicant's wife neglected the budget and spent their money frivolously. Applicant attempted to restrain her spending habits, but was unsuccessful. He remained with his wife until her infidelity became an issue and she became physically violent toward him.

Applicant was divorced on March 28, 2002. After the divorce Applicant became aware of accounts that his wife had opened in his name and failed to tell him about and were now delinquent. Applicant's divorce decree provided that he and his wife's marital debts were to be split equally. Applicant's wife failed to pay for many of her half of the marital debts in accordance with the divorce decree. To resolve many of the marital delinquencies and attempt to improve and regain his financial health, Applicant paid some of the debts in their entirety.

The table below lists Applicant's debts and their current status:

Debt	Nature & Amount	Current Status	Record
Debt 1.a	Collection account, \$316.00. Due October 2001, unpaid as of August 2003.	Telephone account acquired by in-laws without authorization. Removed from credit report and credit agency opened fraud investigation.	Government Exhibit (GE) 3.
Debt 1.b	Collection account, \$567.00. Due April 2001, unpaid as of August 2003.	Payment plan, paid two equal installment payments to satisfy debt. Will attempt to recoup ex-wife's share.	Statement of May 13, 2004, with supporting documents.
Debt 1.c	Collection \$133.00, utilities account. Due March 2002, unpaid as of August 2003.	Applicant had sold home, utilities did not transfer. Paid debt to resolve, even though claims he was not responsible.	GE 3.
Deb 1.d	Collection account, \$589.00. Due February 2002, unpaid as of August 2003.	Resolved dispute May 2004, paid.	Statement of May 13, 2004, with supporting documents.
Debt 1.e	Overdue bill for \$39.00, unpaid as of August 2003.	Applicant was unaware of bill. Paid.	Statement of May 13, 2004, with supporting documents.
Debt 1.f	Voluntary repossession, \$16,255.00, unpaid as of	Incorrect amount. Actual amount owed as of November 2003 is \$4,587.00. Applicant consistently pays \$150.00	GE 3; Statement of May 13, 2004, with

	August 2003.	a month.	supporting documents.
Debt. 1.g	Collection account \$1,154.00, unpaid as of August 2003.	Paid in full as of April 27, 2004. Applicant disputed charges due to unauthorized charges to his account by ex-wife.	Answer; Statement of May 13, 2004, with supporting documents.
Debt 1.h	School debt charged off/collection for \$1,585.00 as of August 2003.	Paid.	Answer; Statement of May 13, 2004, with supporting documents.
Debt 1.i	School debt/delinquent, \$3,803.54 as of October 2002.	Disputes amount, claims \$2,179.00 was due and Applicant has been providing monthly payments and further reduced debt to \$1,637.00 as of May 2004.	Answer, Statement of May 13, 2004, with supporting documents.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline F, pertaining to financial considerations, with its respective DC and MC, apply in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. 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.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁵⁾ The government has the burden of proving controverted facts.⁽⁶⁾ The burden of proof is something less than a preponderance of 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 sensitive information must be resolved in favor of protecting such sensitive information.⁽¹²⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹³⁾ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of all the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline F- Financial Considerations-a security concern exists when a person has significant delinquent 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.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the fact in evidence and the legal standards. The government has established a prima facie case for disqualification under Guideline F.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), FC DC E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*), apply in this case. Over a period of time, Applicant accumulated significant delinquent debt due to his wife's spending habits.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and specifically considered FC MC E2.A6.1.3.1 (*The behavior was not recent*), FC MC E2.A6.1.3.3 (*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 FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) and conclude they all apply.

Applicant's financial crisis began when his then wife was spending money on things they could not afford and failed to tell her husband. Applicant's wife had medical issues regarding her emotional stability. The financial crisis escalated when Applicant's wife opened accounts in Applicant's name without telling him. Applicant's wife would then intercept bills and notices regarding these and other delinquent accounts so Applicant was unaware of the delinquencies. Applicant divorced his wife in 2002 and has made a concerted effort to resolve the delinquent debts and put his finances back in order. Although the divorce order required each party to pay half of the marital debts, Applicant's ex-wife has not resolved her half of the debts. In order to get his finances back in order, in many cases, Applicant has paid off the entire debt, including his ex-wife's share. Applicant has resolved most of his debts completely, and those that he was unable to completely resolve he has maintained a consistent payment plan. Applicant's financial problems were directly related to his wife's spending habits that were largely beyond his control.

I have considered all the evidence in this case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I am persuaded by the totality of the evidence in this case that it is clearly consistent with the national interest to grant Applicant a security clearance. Applicant has mitigated the security concerns caused by his financial considerations. Accordingly, Guideline F, pertaining to financial considerations is decided for Applicant.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Financial Considerations (Guideline F) FOR THE APPLICANT

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

Subparagraph 1.f. For the Applicant

Subparagraph 1.g. For the Applicant

Subparagraph 1.h. For the Applicant

Subparagraph 1.i. 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.

Carol G. Ricciardello

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. Government Exhibit 5.

3. *Id.*

4. *Id.*

5. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

6. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.

7. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

8. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, ¶ E3.1.15.

9. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15

10. *Egan*, 484 U.S. at 531.

11. *Id.*

12. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

13. Executive Order 10865 § 7.