

DATE: December 8, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-06665

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Juan J. Rivera, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of financial delinquencies, most of which have now been fully satisfied. To a large extent his financial problems coincided with the break up of his marriage, which has now resulted in a divorce. He also failed to disclose in a Security Clearance Application that he had received punishment under Article 15, Uniform Code of Military Justice while on active duty with the United States Army. He has mitigated the security concerns caused by both his financial considerations and personal conduct. Clearance is granted.

STATEMENT OF THE CASE

On June 17, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find that 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 on July 16, 2003, and requested a hearing. Applicant admitted four and denied four of the alleged delinquent accounts. He also denied both personal conduct allegations.

This case was assigned to me on October 28, 2003. A notice of hearing was issued on November 6, 2003, scheduling the hearing for November 21, 2003. The hearing was conducted as scheduled. The government submitted five documentary exhibits at the hearing that were marked as Government Exhibits (GE) 1-5 and admitted into the record without an objection. Applicant testified at the hearing and submitted six documentary exhibits that were marked as Applicant's Exhibits (AE) 1-6, 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. One additional document was timely received, marked as AE 7, and admitted into the record without an objection. The transcript was received on December 3, 2003.

PROCEDURAL ISSUES

The government moved to amend the dates alleged in SOR subparagraphs 1.b. ⁽²⁾, 1.d., 1.f., and 1.g. The motion to amend was granted without an

objection. The government also moved to amend the amount of the alleged delinquent accounts in subparagraphs 1.d. and 1.f. Those motions were also granted without an objection.

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 35-years-old and has been employed by a defense contractor since May 2001. He was married in June 1986, obtained a divorce in August 2003, and has three children, ages sixteen, fourteen, and thirteen. Applicant provides support for the children who reside with their mother. He has completed one and one-half years of college.

Applicant enlisted in the United States Army on July 1, 1986 and served continuously on active duty until he was honorably discharged on March 31, 2003.⁽³⁾ He was a Sergeant, paygrade E-5, at the time of his discharge. He received numerous awards while in the Army, including an Army Commendation Medal, six Army Achievement Medals, and four Good Conduct Medals. To the best of his knowledge, Applicant never held a security clearance while in the Army.

Applicant received one non judicial punishment on September 26, 1996, under Article 15, Uniform Code of Military Justice (UCMJ), for the offenses of assault consummated by a battery and drunk and disorderly. He was awarded 14 days restriction and 14 days extra duty. The offenses resulted from a physical altercation between Applicant and his wife in an on-post club overseas after he found her dancing with another man. Applicant's wife returned to the United States following this incident and he completed his overseas assignment unaccompanied, living in a barracks and providing money to his wife to support herself and their children.

Applicant accepted employment with a defense contractor in January 2001, and was assigned to an unaccompanied overseas location in the Middle East. He continued to provide support to his wife and children while working in the middle east. Applicant also received more than \$35,000.00 in separation pay when he was discharged from the Army, which he gave to his wife to pay past due bills and other expenses. He returned to the United States in April 2001, and was hired by his present employer in May 2001.

Applicant discovered shortly after he returned from the Middle East that his wife had squandered the separation pay on things other than family bills, and that she also had neglected a number of other accounts. They separated a few months after his return and ultimately obtained the divorce in August 2003. Debts were allocated between the parties in the divorce, and Applicant has been satisfying those allocated to him. He also provides more than \$1,000.00 per month to his wife for alimony and child support payments.

The SOR alleges eight delinquent accounts totaling \$5,658.82. A review of the documents submitted by both the government and Applicant discloses that at the time of the hearing Applicant had satisfied six of the accounts in full and still owed a total of \$877.37 on the remaining two accounts. His financial statement discloses, despite the hefty support payments he is making to his ex-wife, he has disposal income to apply to those two remaining debts.

Applicant submitted a Security Clearance Application (SF 86) on November 7, 2001 in which he answered "No" to question 25: *Your Police Record - Military Court - In the last 7 years, have you been subject to court martial or other disciplinary proceedings under the Uniform Code of Military Justice? (Include non-judicial, Captain's mast, etc.). . .* This answer was incorrect because Applicant did receive Article 15 punishment on September 26, 1996 as discussed earlier. Applicant also asserted he had never received non judicial punishment in a statement he provided to a special agent for the Defense Security Service on March 12, 2001. However, Applicant credibly explained that he thought his company commander had merely "chewed him out" and he was unaware that it had been recorded as a non judicial punishment.

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.⁽⁴⁾ The government has the burden of proving controverted facts.⁽⁵⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence⁽⁶⁾, although the government is required to present substantial evidence to meet its burden of

proof.⁽⁷⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁸⁾ 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.⁽⁹⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁰⁾

No one has a right to a security clearance⁽¹¹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹²⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹³⁾

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 had more than \$5,600.00 in delinquent accounts that were either submitted for collection or written off as bad debts. Disqualifying Condition (DC) 1: *A history of not meeting financial obligations* applies in this case.

Applicant credibly explained that most of the accounts resulted from his placing trust in his wife to handle paying accounts while he was either stationed overseas with the Army or working in the middle east for a defense contractor. In addition to supplying her with a substantial portion of his pay to satisfy their debts, he entrusted her with the relatively large separation pay he received upon being discharged from the Army with the expectation that all his past due accounts would be paid. She instead squandered the money for non household expenses, leaving him to satisfy the delinquent accounts with what funds he has left after providing her with alimony and support payments.

Applicant has made a commendable effort to return to financial responsibility. He presently owes only \$877.37 on those accounts listed in the SOR. He has sufficient disposable income to satisfy those accounts in the very near future, and his past performance provides adequate justification to believe he will do just that. Mitigating Condition (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* apply. Guideline F is decided for 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 did provide an incorrect answer to a question in the SF 86 he submitted, and erroneous information in the course of an interview by a special agent. However, I have considered Applicant's appearance, demeanor, and manner of testifying, and his explanation. I am convinced Applicant did not intend to deliberately omit or conceal information. Guideline E 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

Subparagraph i: For the Applicant

SOR ¶ 1-Guideline E: For the Applicant

Subparagraph a: For the Applicant

Subparagraph b: 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.

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. The transcript at page 15, lines 4 and 5 is in error as to the paragraph being amended. The actual motion was to amend subparagraph 1.b., not 1.d. as stated in the transcript. My notes and the date described in the transcript clearly refer to a motion to amend subparagraph 1.b. at that time.
3. He commenced terminal leave in January 2003.
4. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
5. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
6. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
7. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
8. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
9. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
10. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
11. *Egan*, 484 U.S. at 528, 531.
12. *Id* at 531.
13. *Egan*, Executive Order 10865, and the Directive.