

DATE: March 23, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-08524

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Sabrina Elaine Redd, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is unable to successfully mitigate the security concerns stemming from his history of financial irresponsibility and personal conduct, which includes falsification of his security-clearance application. Clearance is denied.

STATEMENT OF THE CASE

On October 8, 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 security concerns under Guideline F for financial considerations and Guideline E for personal conduct.

Applicant initially responded to the SOR on October 29, 2004, but he did not indicate whether he desired a hearing. Applicant was asked to do so, and he responded on December 2, 2004, and he indicated he did not wish to have a hearing. In his Answer to the SOR, Applicant admitted to having nine delinquent accounts totaling more than \$12,000.00 under Guideline F. Likewise, under Guideline E, Applicant responded as follows: (1) he admitted misrepresenting his state of residence to obtain reduced school tuition; (2) he admitted misrepresenting his residential history on his security-clearance application; and (3) he admitted not revealing certain delinquent accounts in response to two questions on his security-clearance application, but he denied doing so deliberately and says he missed the questions.

On January 10, 2005, Department Counsel submitted her written case consisting of all relevant and material information that could be adduced at a hearing. This so-called File of Relevant Material (FORM) was mailed to Applicant and it was received by him on January 31, 2005. Applicant did not submit any information within the 30-day period after receiving the FORM. The case was assigned to me March 17, 2005.

FINDINGS OF FACT

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

Applicant is a 31-year-old unmarried man who is a native-born U.S. citizen. He is currently employed as a document control specialist for an engineering firm. He has worked for this company since February 2001.

Sometime in 1995, Applicant obtained a driver's license from Maryland by misrepresenting that he was a resident of that state. He did it to attend a community college without paying out-of-state tuition.

In conjunction with his current employment, Applicant completed an application for a security clearance in July 2001. In response to a question called "Where You Have Lived," he indicated he had lived at a certain address in Maryland since August 1995 to present. In response to two questions about whether he had financial delinquencies, he indicated he had a delinquent car loan for about \$9,000.00.

In August 2001, a credit report was obtained during the background investigation. In summary, it revealed Applicant had one repossession and seven accounts in a collection/charge off status. Also, it revealed Applicant had accounts that were past due, including one account 90-days past due and two accounts 120-days past due.

Applicant was interviewed during the background investigation in July 2002, and the interview produced a sworn statement. In it, Applicant admitted losing a job in approximately August 2000 and moving to Virginia where he leased an apartment. He stayed there about three months before leaving the apartment, and in doing so, he broke the lease. Also, he did not pay the last month's rent. Applicant did not reveal his Virginia residence when completing his security-clearance application. In addition, Applicant admitted owing several creditors more than \$10,000.00 in delinquent debt.

In February 2004, Applicant responded to interrogatories put to him by DOHA. He indicated he had not contacted a credit counseling service, but he had set up payment arrangements with his creditors, and he planned to make monthly payments of \$75.00 to each creditor. Other than his representation, Applicant did not provide documentary proof that he had made such arrangements with his creditors or that he had made any payments to them.

The October 2004 SOR alleges and Applicant admits he is indebted to nine creditors for more than \$12,000.00. Seven accounts are charged-off bad debts and there are two collection accounts. Applicant has not provided documentary proof that he has paid or otherwise resolved these accounts.

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 him.⁽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 nine delinquent accounts demonstrate a history of not meeting financial obligations as well as inability or unwillingness to pay one's just debts. ⁽¹¹⁾ Also, the same facts and circumstances demonstrate financial irresponsibility.

I have reviewed the mitigating conditions under the guideline and conclude none apply. Based on the record evidence, I am unable to conclude he has made a good-faith effort to pay or otherwise resolve his indebtedness. ⁽¹²⁾ The evidence does not suggest that Applicant's financial problems are resolved and under control. Accordingly, 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. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance or in other official matters is a security concern. It is deliberate if it is done knowingly and willfully. Omission of a past arrest or past drug use, for example, is not deliberate if the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or thought the arrest had been expunged from the record and did not need to be reported.

Here, based on the record evidence as a whole, the government established its case under Guideline E. In 1995, he misrepresented his true state of residence to avoid paying out-of-state tuition. When he completed his security-clearance application in 2001, in response to a question about where he had lived, Applicant deliberately omitted that he had resided in Virginia for a period of months during 2000. I am not convinced, however, Applicant deliberately omitted information about his finances in response to two questions on the security-clearance application. I accept Applicant's explanation that he missed the questions. Given these circumstances, DC 2-⁽¹³⁾ and DC 5-⁽¹⁴⁾ apply against Applicant. Taken together, these two instances indicate a pattern of dishonesty and a pattern of misrepresenting the truth.

I have reviewed the mitigating conditions under the guideline and conclude none apply. Falsification of a security-clearance application is a serious matter, and it is not easily mitigated or explained away. Indeed, even if Applicant had successfully mitigated the security concern under Guideline F, the falsification of the security-clearance application would still be wholly conclusive of this case. Accordingly, Guideline E 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

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

Subparagraph c: For 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.

12. E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.
13. E2.A5.1.2.2. 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.
14. E2.A5.1.2.5. A pattern of dishonesty or rule violations, including violations of any written agreement made between the individual and the agency.