

DATE: February 1, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-10936

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Rita O'Brien, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 29-year-old engineer employed since 2001, by a Department of Defense contractor. Applicant has a history of financial delinquencies and late payments on his debts. Applicant has made some efforts in bringing his debts up to date, however other debts he has not taken any action on. Applicant has failed to mitigate the security concerns caused by his financial concerns. Clearance is denied.

STATEMENT OF THE CASE

On August 24, 2004, 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, financial considerations. Applicant submitted a response to the SOR, dated September 13, 2004, and requested a hearing. In his SOR response, Applicant denied some allegations contained in the SOR, and admitted others while providing explanations in an effort to extenuate and mitigate the security concerns raised by the allegations.

The case was assigned to me on December 17, 2004. A notice of hearing was issued on December 22, 2004, scheduling the hearing for January 13, 2005. The hearing was conducted as scheduled. The government submitted five exhibits that were marked as Government Exhibits (GE) 1-5, and admitted into the record. The Applicant testified, on his own behalf, and submitted seven exhibits that were marked as Applicant's Exhibits (AE) A-G, and were admitted into the record. The transcript was received on January 24, 2005.

FINDINGS OF FACT

Applicant is 29 years old and has been employed by a defense contractor as an systems engineer, since 2001. He is married and has three children, two of whom live with him and his wife, and the other is from a previous relationship. Applicant pays child support for the child who does not live with him. Applicant's wife does not work.

Applicant graduated from college in 1999. While in college Applicant accepted a ROTC scholarship. He failed to complete his ROTC training and was required to either pay the money back, serve in the military as an enlisted person, or work for the Department of Defense for a period of time. Applicant has not satisfied any of the options, and the debt of over \$13,000 remains outstanding (SOR 1.a.). Applicant claims he thought working for a DoD contractor satisfied his obligation. Applicant made one phone call to the DoD loan agency, but could not get through due to weather problems in the area. He never again attempted to contact anyone regarding this debt.

Applicant failed to consistently pay court ordered child support from 1996 to 2001. In 1999, Applicant was employed for 8 months as a sales associate. In 2000, Applicant worked in a casino. Applicant was inconsistently employed from the date he graduated college until he was hired by his current employer in 2001. He occasionally paid some child support during this time. In September 2001, Applicant began to consistently pay child support. Applicant pays \$200.00 a month, \$141.00 is the current payment and the remainder is used to offset the amount in arrears. Applicant owes approximately \$1,467.00 in back support (SOR 1.c.).

Applicant owed approximately \$7,404.00 in credit card debt. Applicant was delinquent in paying this debt in 2001. On the advice of Applicant's mortgage lender, Applicant took a loan for \$2,500.00 from his 401K plan to pay down this credit card debt and now it is approximately \$4,524.00 (SOR 1.b.). He used \$1,500.00 of the loan for the debt and the other \$1,000.00 was used for moving expenses. He did this so he could qualify for a mortgage and buy a house. Applicant purchased a house in August 2004. The cost was approximately \$125,000.00.

Applicant owed \$1,065.00 for a student loan originating in 1995. Applicant had numerous approved forbearances on the loan. Applicant's forbearances expired and he was to begin payments in January 2000. He failed to make timely payments on the loan. Applicant now owes \$1,890.00, which includes interests. Applicant set up a payment plan to pay \$51.70 per month on this debt. Applicant provided documentation that he paid something in 2004 towards his debt, but it is unclear as to how much or how consistently he made payments.

Applicant owes \$114.00 on an account delinquent since 1999 (SOR 1.e.). Applicant admits the debt. Applicant stated in his April 2003, January 2004, September 2004 written statements, and at his hearing that he would pay off this debt. He has not paid this debt.

Applicant's annual salary is approximately \$56,000. Applicant has approximately between \$15,000.00 and \$18,000.00 savings in his 401K plan. Applicant owns a home and pays a mortgage. Applicant has approximately \$29,000.00 in additional student loan debt and also has other debts he owes, and is current in their payments. It is unclear if Applicant received credit counseling or merely advice from his mortgage lender regarding his finances.

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.⁽²⁾ The government has the burden of proving controverted facts.⁽³⁾ The burden of proof is something less than a preponderance of evidence.⁽⁴⁾ 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.⁽⁵⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁶⁾

No one has a right to a security clearance⁽⁷⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁸⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽⁹⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹⁰⁾ 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.

CONCLUSIONS

Applicant admits he owes the debts alleged in the SOR, subparagraphs 1.a.-1.c. and 1.e., but denies the specific amounts. Applicant denies he is delinquent on the debt alleged in subparagraph 1.d.

Under Guideline F, 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.

Based on all the evidence, under Guideline F, I find DC 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debts*, apply in this case. Applicant has no credible explanation for his failure to contact the loan agency on his DoD debt and make arrangements to pay it (SOR 1.a.). Applicant has not made any effort to resolve it since receiving the SOR. Applicant was late in making payments on his credit card debt (SOR 1.b.). Applicant was delinquent in making timely payments on his child support payments. Applicant was delinquent in making payments on his 1995, student loan (SOR 1.d.). Applicant has not provided complete documentation to verify his payments, although he has provided some information to show he has a plan for paying this debt (SOR 1.d.). Applicant has repeatedly stated he will immediately pay the delinquent debt of \$114.00, but repeatedly has failed to do so (SOR 1.e.).

I have considered all the mitigating conditions under Guideline F, and specifically considered 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 conclude it partially applies. Applicant was delinquent in paying his bills during a period after he graduated from college, due to being under employed. However, Applicant has been gainfully employed since 2001, and failed to address some of his debts. Applicant was delinquent in paying child support during a period of under employment. Although he is still in arrears on back payments, he has consistently been making his current payments and paying off the arrearage. I have considered MC 4: *The person has or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*, and conclude it does not apply. It is unclear whether Applicant actually received credit counseling or merely advice from his mortgage lender. In any event, even if he did receive appropriate counseling, he has not followed through or made any attempt to resolve the debts in SOR subparagraph 1.a. and 1.e. He has failed to pay or set up a plan on these debts, during the same time he purchased a home. There is not a clear indication that he is attempting to resolve these long overdue debts. I have also considered MC 6: *The individual initiated good-faith effort to repay overdue creditors or otherwise resolve debts*, and conclude it partially applies to those debts that Applicant has set up plans to pay and is making consistent payments (SOR 1.b., 1.c. and 1.d.).

In all adjudications the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and various other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

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 not clearly consistent with the national interest to grant Applicant a security clearance. Applicant has failed to mitigate the security concerns caused by his financial delinquencies. Accordingly, Guideline F is decided against 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 Guideline F AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. Against the Applicant

DECISION

In light of all the circumstances 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.

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. 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, ¶ E3.1.14.
4. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
5. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, ¶ E3.1.15.
6. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15
7. *Egan*, 484 U.S. at 531.
8. *Id.*
9. *Id.*, Directive, Enclosure 2, ¶ E2.2.2.
10. Executive Order 10865 § 7.