

DATE: January 14, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-11627

**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. Despite receiving a Chapter 7 bankruptcy discharge in March 2004, Applicant still owes more than \$50,000 in delinquent child support payments and delinquent student loan debt. Clearance is denied.

**STATEMENT OF THE CASE**

On January 15, 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. <sup>(1)</sup> The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline F for financial considerations due to a history of delinquent indebtedness. Applicant responded to the SOR on January 31, 2004, and he indicated he did not wish to have a hearing. Also, he admitted to all the allegations under Guideline F.

On June 14, 2004, Department Counsel submitted his 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 on or about June 18, 2004, and it was received by Applicant on June 24, 2004. Applicant submitted his response to the FORM on or about July 10, 2004. The case was assigned to me July 28, 2004. Issuing a decision in this case was delayed due a heavy caseload.

**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 33-year-old man and a native-born U.S. citizen. He is employed as a designer for a shipbuilding

company, and he has worked for this company since July 2002. On or about September 2002, Applicant submitted a security-clearance application in conjunction with his employment.

Applicant has a history of delinquent indebtedness. The SOR alleges and Applicant admits having 15 debts that have been placed for collection and one charged off debt. The SOR alleges and Applicant admits owing approximately \$7,261 in delinquent child support payments, for which his wages are being garnished. The debts alleged in the SOR total more than \$50,000, and this includes approximately \$23,402 placed for collection by the U.S. Department of Education for student loan debt. Department Counsel concedes the debt alleged in subparagraph 1.q is the same as the debt alleged in subparagraph 1.f, and requests a favorable finding for Applicant on subparagraph 1.q.

In November 2002, Applicant was interviewed as part of the background investigation. The interview produced a sworn statement wherein Applicant addressed various subjects, including his financial history. Addressing why he has a history of delinquent indebtedness, Applicant attributed his situation to being overextended in credit, poor planning, and mismanagement.

In November 2003, Applicant, with assistance of legal counsel, filed a Chapter 7 bankruptcy petition. According to the summary of schedules (the individual schedules are not included in the case file), Applicant listed \$1,875.00 in total assets and \$58,608.05 in total liabilities. Concerning liabilities, the summary indicated Applicant had \$16,158.25 in unsecured nonpriority claims (unsecured debt) listed in the Schedule F, and \$42,449.80 in unsecured priority claims listed in the Schedule E. Also, the summary indicated Applicant has a monthly income of \$1,655.00 and monthly expenditures of \$1,621.00. No assets were available for distribution, and Applicant received a discharge on or about March 5, 2004. I presume all the Schedule F debt was discharged, but I make no such presumption for the Schedule E debt, as it likely included the child support and student loan debts that ordinarily are not discharged in bankruptcy.

The most recent credit report from June 2004 shows Applicant owes approximately \$31,496 in child support, which consists of approximately \$30,614 in arrears. Also, the June 2004 credit report shows Applicant owes approximately \$22,831 in past due student loan debt. Taken together, Applicant, still owes more than \$50,000 in past due child support and student loan debt.

In his written response to the FORM, Applicant points out that his current financial situation does not place undue stress on him, because he has lived with a female companion for the last two years and they share living expenses. With her income, both Applicant and his companion are able to meet their current living expenses, and Applicant believes this will help him address his child support and student loan debt. Applicant also professes to love his employment at the shipyard and stresses he would never do anything to jeopardize national security.

## **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.<sup>(2)</sup> There is no presumption in favor of granting or continuing access to classified information.<sup>(3)</sup> The government has the burden of proving controverted facts.<sup>(4)</sup> The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than the preponderance of the evidence.<sup>(5)</sup> The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.<sup>(6)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>(7)</sup> Once the government meets its burden, an applicant has the burden of presenting evidence of refutation, extenuation, or mitigation sufficient

<sup>(8)</sup>

to overcome the case against them. In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. <sup>(9)</sup>

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." <sup>(10)</sup> 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 Chapter 7 bankruptcy, the past due child support, and the delinquent student loan debt demonstrate a history of not meeting financial obligations as well as inability or unwillingness to pay one's just debts. <sup>(11)</sup> Also, the same facts and circumstances demonstrate financial irresponsibility. Indeed, Applicant admitted to financial irresponsibility and poor financial management in his sworn statement. Of particular concern here is the child support and student loan debt. Failure to pay child support is a security concern because it indicates either inability or refusal to accept responsibility for the consequences of one's actions. Likewise, failure to pay a federal student loan 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. Based on the record evidence as a whole, I am unable to conclude he has made a good-faith effort to pay or otherwise resolve his indebtedness. <sup>(12)</sup> Indeed, despite receiving a Chapter 7 bankruptcy discharge in March 2004, he still owes more than \$50,000 in delinquent child support payments and delinquent student loan debt. Applicant's financial problems are long standing, and until he establishes a long-term track record of good debt management and a financially responsible lifestyle, and digs himself out of his \$50,000 financial black hole, it is simply too soon to tell if he has truly changed his ways for the better. Accordingly, Guideline F is decided against Applicant.

In reaching my decision, I have considered the record evidence as a whole, the whole-person concept, the clearly-consistent standard, and other 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

Subparagraph j: Against the Applicant

Subparagraph k: Against the Applicant

Subparagraph l: Against the Applicant

Subparagraph m: Against the Applicant

Subparagraph n: Against the Applicant

Subparagraph o: Against the Applicant

Subparagraph p: Against the Applicant

Subparagraph q: For the Applicant

Subparagraph r: 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.
12. E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

