

DATE: December 22, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-12651

ECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 39-year-old man, employed by a defense contractor since 1997, who has a history of financial delinquencies. After being discharged from his debts through bankruptcy in 1998, he again accumulated debts that he is unable to pay timely and consistently. Applicant has failed to mitigate the security concerns caused by his financial considerations. Clearance is denied.

STATEMENT OF CASE

On April 12, 2004, 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.^(u) The SOR, which is in essence the administrative complaint, alleges security concerns under the Guideline F, for financial considerations.

In a sworn answer, dated May 14, 2004, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the government's written case on September 13, 2004. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Additional information was submitted by Applicant and Departmental Counsel indicated he did not object to consideration of the additional information. The case was assigned to me on October 12, 2004.

FINDINGS OF FACT

Applicant is a 39-year-old man employed by a defense contractor. He held a security clearance in the past, but when he left a prior employer he no longer needed it, and it expired. He returned working for a defense contractor, his present employer, in 1997. Applicant is divorced and remarried in 1998. His current wife has four children from a previous marriage. Applicant has been paying child support for his two children since 1998. Applicant accumulated debt during

his first marriage and, subsequent to his divorce, he filed for bankruptcy. In 1998, Applicant had \$51,000 of debt discharged in bankruptcy. Applicant wanted to start fresh, debt-free, with his new spouse. During the 1990s, Applicant failed to file income taxes "a few times." Subsequently a tax lien was imposed. He does not know how many years he neglected to file his taxes. Applicant paid some voluntary garnishment payments to the Internal Revenue Service, however a tax lien for \$4,198 remains on Applicant's credit reports. The documentation provided shows a tax lien was released on March 30, 2001, however the IRS is entitled to refile the lien for Applicant's 1993 taxes, prior to April 26, 2005, and his 1994 taxes, prior to June 12, 2005. If the IRS does not refile the tax lien prior to those dates, the tax lien is released. The refiling date for Applicant's 1991 taxes expired on May 20, 2002. The total amount for a potential tax lien on Applicant's 1993 and 1994 taxes is \$4,144.48.

The chart below provides the current status of Applicant's debts.

Debt	Nature & Amount	Current Status	Record
SOR 1.a.	Collection, \$186.00	Admits, not paid.	Answer, FORM
SOR 1.b.	Collection, \$474.00	Admits, not paid.	Answer, FORM
SOR, 1.c.	Collection, \$1011.00	Admits, not paid.	Answer, FORM
SOR. 1.d.	Charged off, bad debt, \$948.00	Admits, claims making payments, no documentation provided.	Answer, FORM
SOR 1.e.	Delinquent account, \$18,709.00	Admits, made 12 documented payments from 8/2001 to 4/2004, totaling \$1,120.00.	Answer, FORM
SOR 1.f.	Charged off \$1,183.00	Disputes, remains on credit report.	Answer, FORM, credit reports
SOR 1.g.	Tax Lien \$4,198.00 on credit report. Less the expired 1991 tax lien, \$4,144.48.	Potential tax lien of \$4,144.48, if IRS refiles prior to deadline.	Answer, FORM, credit reports

Applicant has been employed with the same employer since 1997. He was out of work on and off prior to that time for short periods of time. Applicant's wife changed jobs after they were married and had a reduction in income. She is now gainfully employed in her business.

Applicant provided character letters vouching for his professionalism, integrity, and trustworthiness. He was described as a responsible person who provided a quality work product. Applicant also provided performance evaluations that rated him as satisfactory, superior and outstanding in the various traits, at different times.

Applicant is making payments on the two accounts he believes are most important. He is not paying on others because he feels it is important to make some progress while "continuing to provide a comfortable living for his current family." Therefore, he chooses to pay on "one or two" debts at one time. Applicant has more than \$21,000 in delinquent debt, but does not believe he is overextended with debt. He claims he is merely focusing on what is before him. He is using public transportation to save money.

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. 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. Considering the evidence as a whole, Guideline F, pertaining to financial considerations applies.

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⁾ although the government is required to present substantial evidence to meet its burden of proof.⁽⁵⁾ Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.⁽⁶⁾ 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.⁽⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

No one has a right to a security clearance⁽⁹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹¹⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹²⁾ 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

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.

Based on all the evidence, under Guideline F, I find disqualifying condition (DC)1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debts*, apply in this case. I have considered all the mitigating conditions under Guideline F, and specifically considered mitigation conditions (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*; and conclude neither apply in this case.

Applicant has a significant history of financial difficulties and delinquencies. Applicant was unemployed on and off prior to 1997. He has been consistently employed with his current employer since 1997, a period of seven years. In 1998, Applicant had \$51,000 worth of debts discharged in bankruptcy, since then he has accumulated more than \$21,000 in delinquent debt. Applicant is attempting to pay some of his debts, but others remain dormant and delinquent. Applicant still has a potential tax lien, but it is unlikely the IRS will refile a lien against him. Applicant has made a decision to prioritize his debts, while keeping his family comfortable. Applicant is unable to meet his financial obligations consistently and timely. Applicant does not believe he is overextended financially, despite the accumulation of considerable debt and creditors being unpaid. I have considered all the evidence in this case. 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. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. For the Applicant

Subparagraph 1.h. 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.

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, Section E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p.3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p.2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, Section E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Section E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id.* at 531.
11. *Egan*, Executive Order 10865, and the Directive.
12. Executive Order. 10865, § 7.