

DATE: December 20, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-13108

ECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is unable to successfully mitigate the security concern raised by his history of not meeting his financial obligations. Also, he failed to explain or mitigate the security concern raised by a false answer about his financial record on his security-clearance application. Clearance is denied.

STATEMENT OF THE CASE

On February 23, 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 due to a history of not meeting financial obligations and Guideline E for personal conduct due to providing a false answer on his security-clearance application. Applicant responded to the SOR on March 19, 2004, and he indicated he did not wish to have a hearing. Also, he admitted to the allegations under Guideline F except for subparagraphs 1.g and 1.j, and he admitted to the falsification allegation under Guideline E.

On March 31, 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) ⁽²⁾ was mailed to Applicant on or about April 5, 2004, and it was received by Applicant shortly thereafter. Applicant did not submit any information within the 30-day period after receiving the FORM. The case was assigned to me May 20, 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 35-year-old married man employed as a test technician. In conjunction with his employment, he completed a security-clearance application on or about November 16, 2000 (Item 4). The application requires an applicant to provide truthful and accurate information of a private and personal nature about various subjects, including an applicant's financial record. In response to Question 38, Applicant answered "no" denying ever being over 180-days delinquent on any debt in the last seven years. Indeed, in response to all questions about his financial record, Applicant answered "no" thereby denying the existence of any derogatory information.

In April 2002, a special agent of the Defense Security Service (DSS) interviewed Applicant, and that interview produced a 11-page signed, sworn statement, including a personal financial statement (Item 5). Applicant provided detailed information on approximately 25 accounts, many of which were delinquent or past due, including three unpaid judgments. Concerning why he omitted information about his financial record on his security-clearance application, Applicant provided the following explanation:

Having known that a credit check would be done following a request for a security clearance on my behalf, I intentionally falsified my responses in the [application] in reference to the area of finances due to my own embarrassment. I am ashamed of my financial situation. I was also concerned when having completed the [application] that the facility security officer at PC would have possibly viewed the paperwork. However, having provided this statement I feel that I have been forthright with my responses to the Special Agent [John Doe], and have, furthermore, provided copies of billing and collection notices and statements on all accounts, described in this statement.

Concerning his financial situation, Applicant indicated he had a very serious debt problem and limited means to meet his financial obligations. He attributed his indebtedness to irresponsibility, a lack of discipline, being oblivious to most bills, ignoring the family budget, personal illness, limited and inconsistent earnings, a 13-month period of unemployment in 1994 - 1995, a job termination, excessive credit purchases, and out-of-pocket medical expenses for himself, wife, and three children.

In April 2003, the government obtained Applicant's credit report (Item 7). In summary, this credit report revealed six accounts in a collection/charge off status and two unpaid judgments; it also revealed a reported balance owed (excluding any mortgage) of \$23,334 and a reported balance past due of \$2,639.

The SOR, which was issued in February 2004, alleges 14 delinquent accounts with a total indebtedness of more than \$11,000. Two of those accounts (subparagraphs 1.h and 1.i) are unpaid money judgments for a total of about \$2,000. In his response to the SOR, Applicant denies two accounts (subparagraphs 1.g and 1.j) for a total of about \$3,200 claiming he is unaware of their existence. Otherwise, he admits the other ten delinquent accounts and two unpaid judgments. Concerning the falsification of his security-clearance application, Applicant offered the following explanation:

Although I was too ashamed to fully admit my financial delinquencies - 180 days ("Question 38"), I was up front and disclosed all debt in the interview process. Being the primary provider for a wife and three daughters has proven to be a financial challenge, one that I thought would be overcome. Currently I pay \$175.00/month towards past debt, work 40+ hrs/wk, and continue to provide for my family. In my opinion I feel as if I am worthy of a security clearance.

To sum up, accepting his denial at face value on the two accounts, Applicant still has about \$7,800 in delinquent debt, which has been charged off or placed for collection, as well as the two unpaid judgments.

Applicant's personal history includes being diagnosed and treated for bipolar disorder, and the FORM includes three documents (Items 10, 11, and 12) concerning this matter. Because Applicant's mental health has not been challenged in the SOR, I have not considered the information in these three documents.

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.⁽³⁾ There is no presumption in favor of granting or continuing access to classified information.⁽⁴⁾ The government has the burden of proving controverted facts.⁽⁵⁾ The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than the preponderance of the evidence.⁽⁶⁾ The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.⁽⁷⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁸⁾ 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 them.⁽⁹⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁰⁾

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."⁽¹¹⁾ 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 and the two unpaid judgments demonstrate a history of not meeting financial obligations as well as inability or unwillingness to pay one's just debts.⁽¹²⁾ Also, the same facts and circumstances demonstrate financial irresponsibility. Indeed, Applicant admitted to financial irresponsibility and poor financial management in his sworn statement (Item 5).

I have reviewed the mitigating conditions under the guideline and conclude none apply. Although it appears he is making some payments, his ability to do so is limited and he has not made much progress. Moreover, based on the quality of the record evidence, I am unable to conclude he has made a good-faith effort to pay or otherwise resolve his indebtedness.⁽¹³⁾ 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, it is simply too soon to tell if he has truly changed his ways for the better. 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 response to Question 38, Applicant answered in the negative, and his answer was deliberately false. He knew he had financial problems, and he should have disclosed the delinquent accounts as alleged in subparagraphs 1.a, 1.b, 1.c, 1.e, 1.f, and 1.k. Indeed, in his security-clearance application, Applicant revealed no derogatory information about his financial record thereby painting a picture of a financially responsible lifestyle, which was clearly not the case. His explanations

for doing so (being embarrassed, ashamed, and concerned about his privacy) are perhaps understandable human emotions, but his explanations do not justify or excuse his false answer. Given these circumstances, DC 2⁽¹⁴⁾ applies against Applicant.

I have reviewed the relevant 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 dispositive or conclusive of this case. Accordingly, Guideline E 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: For the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

Subparagraph j: For the Applicant

Subparagraph k: Against the Applicant

Subparagraph l: Against the Applicant

Subparagraph m: Against the Applicant

Subparagraph n: Against the Applicant

SOR ¶ 2-Guideline E: Against the Applicant

Subparagraph a: 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. The FORM contains several documents identified as Items 1 - 12 for consideration.
 3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
 4. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
5. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
 6. *Department of 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. E2.A6.1.2.1. A history of not meeting financial obligations;" and E2.A6.1.2. 3. Inability or unwillingness to satisfy debts.
13. E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.
14. E2.A5.1.2.2. The deliberate omission, concealment, of 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.