

KEYWORD: Financial

DIGEST: Applicant successfully explained and mitigated the security concern stemming from her history of financial problems. Clearance is granted.

CASENO: 03-18217.h1

DATE: 12/09/2005

DATE: December 9, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-18217

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant successfully explained and mitigated the security concern stemming from her history of financial problems. Clearance is granted.

STATEMENT OF THE CASE

On August 10, 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, alleged a security concern under Guideline F for financial considerations. In her Answer to the SOR, dated August 1, 2004, Applicant admitted the allegations in subparagraphs 1.a through 1.e, and she provided a detailed explanation. Also, she did not request a hearing.

On February 18, 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 received on March 9, 2005. Applicant submitted a timely response within the 30-day period after receiving the FORM.

On May 12, 2005, the case was assigned to me for a clearance decision based on the written record. On October 27, 2005, after reviewing the case, I issued a memorandum order directing Applicant to submit documentary proof of payment for the two debts listed in subparagraphs 1.c and 1.d, as she claimed she paid these debts. On December 5, 2005, Applicant submitted a timely response and enclosed documentary proof of payment for the two debts. Department Counsel having no objections, the documents are marked and admitted as Applicant's Exhibit A.

FINDINGS OF FACT

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

Applicant is a 44-year-old woman who is divorced from her first husband. She has a 21-year-old daughter. She is employed as a field test technician for a large company engaged in defense contracting. In August 2002, her employer awarded her with a certificate for ten years of employment with the company.

The SOR alleged that Applicant went through Chapter 7 bankruptcy proceedings in 1994 and again in 2001. Also, the SOR alleged she was delinquent on three debts, which included a federal tax debt for tax year 1998. Applicant does not dispute the allegations, but she provided an explanation of the circumstances that led to her financial problems.

The 1994 Chapter 7 bankruptcy in subparagraph 1.a stems from a landlord-tenant matter between Applicant, the landlord, and her tenant. Applicant and her husband divorced in 1991. Her ex-husband kept the family residence and she purchased another home. A couple of years later, her ex-husband moved and offered to sell the family residence to her. Applicant agreed, and she and her daughter moved into the family residence. Applicant rented her other house. Initially her tenant wanted to buy the house, but he could not qualify. Being a first-time landlord, Applicant agreed to allow her tenant to make the monthly rental payments to her mortgage company. The tenant did so for a few months, but he was soon bouncing checks to the mortgage company.

Because the mortgage statements went to the tenant's address, Applicant was unaware of the situation until the mortgage company started a foreclosure action. The tenant would not voluntarily vacate the property forcing Applicant to take legal action to evict the tenant. Facing foreclosure, Applicant was advised she could either bring the mortgage current by making the necessary payments or seeking protection in bankruptcy court. Applicant did not have enough money, and so she filed a Chapter 7 bankruptcy petition in March 1994. The bankruptcy records indicate Applicant surrendered her interest in the rental property and her homestead. She also reaffirmed an auto loan. The bankruptcy court granted Applicant a discharge in July 1994.

The 2001 Chapter 7 bankruptcy in subparagraph 1.b stemmed, in part, from a \$15,000 processing error by a mutual-fund company. In July 1998, Applicant withdrew \$15,941 from mutual funds held in a retirement account with the mutual-fund company. The money was used to pay off a car or for a down payment on a home or both. In June 1999, the mutual-fund company informed Applicant that on May 26, 1998, \$15,206 was purchased into two mutual funds she held with the company, and the money for these purchases were for the benefit of another shareholder (Exhibit 11). ⁽²⁾ In other words, the company mistakenly put another customer's money into Applicant's account. The result of the company's mistake was Applicant was not entitled to receive the money paid to her in July 1998. The company requested Applicant return the full amount within two weeks. Applicant did not have an extra \$15,000 to comply with the company's demand, and she offered to make \$1,000 payments for 15 months. The company demanded full payment. Applicant sought advice to resolve the situation, and an attorney told her to repay the money or file for bankruptcy.

While the processing error matter was pending, in approximately January 2000, Applicant received notice from the IRS that she owed a balance due, plus penalties and interest, for tax year 1998, the debt in subparagraph 1.c. Applicant's withdrawal of funds from her mutual fund retirement account(s) in 1998 triggered a 10% penalty that went unpaid when she filed her 1998 federal income tax return. Although Applicant provided the necessary paperwork related to the withdrawal, the tax preparers mistakenly omitted this information from her 1998 return. In May 2000, Applicant filed an amended return for tax year 1998 showing she owed \$5,799 to the IRS (Exhibit 7). Applicant disputed the amount of the interest owed to the IRS. In December 2003 she received a ruling from an IRS appeals officer denying her interest abatement request (Exhibit 16). Applicant entered into an installment payment agreement with the IRS (Exhibit 6), and she has now paid the 1998 federal tax debt in full, except for .10¢ (Exhibit A).

Sometime in 2001, Applicant's daughter decided she wanted to attend college. As a student, she could no longer make payments on a car loan that Applicant had cosigned when buying the model-year 2000 car. The daughter's father bought an older car for the daughter, and Applicant decided to voluntarily surrender the model-year 2000 car in the bankruptcy case. Also, Applicant's attorney advised her to include all her debts in the bankruptcy case.

In May 2001, she filed the Chapter 7 bankruptcy petition, and it included \$19,500 for the car loan, indicating it had been surrendered. Also, the petition included the \$15,941 debt owed to the mutual-fund company, listed once with the company as a creditor, and listed a second time with a collection agent as a creditor. And the petition included the 1998 federal tax debt for \$4,000. The bankruptcy court granted Applicant a discharge in December 2001.

The collection account for approximately \$607 in subparagraph 1.d is from a credit card account. The credit card account was opened in August 2001. Applicant fell behind on the account when she used it to help her daughter with college expenses. In April 2003, the account was sold to a collection agency. Applicant made a payment of \$292 in July 2003, reducing the balance to about \$607 (Exhibit 9). In August 2004, Applicant entered into a payment arrangement with the collection agency (Exhibit 8). The account is now satisfied (Exhibit A).

The collection account for approximately \$47 in subparagraph 1.e is from a dental bill that Applicant thought was covered by her dental plan. The account is now paid (Exhibit 10).

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.

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security

clearance is not a determination of an applicant's loyalty.⁽³⁾ Instead, it is a determination that the applicant has not met the strict guidelines the President has established for granting a clearance.

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.⁽⁴⁾ There is no presumption in favor of granting or continuing access to classified information.⁽⁵⁾ The government has the burden of proving controverted facts.⁽⁶⁾ The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than the preponderance of the evidence.⁽⁷⁾ The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.⁽⁸⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁹⁾ 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.⁽¹⁰⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹¹⁾

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."⁽¹²⁾ 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 or unexplained affluence. 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 two Chapter 7 bankruptcy cases, the IRS tax debt, and the two collection accounts demonstrate a history of not meeting financial obligations as well as inability or unwillingness to pay one's just debts.⁽¹³⁾ These matters, taken together, raise a security concern under the guideline.

I reviewed the mitigating conditions under the guideline and conclude Applicant successfully explained and mitigated the security concern. The first bankruptcy was due to a deadbeat tenant who put Applicant in a difficult situation. In obtaining relief under Chapter 7, Applicant surrendered her interest in her real estate, and so, she hardly came out ahead. Review of the bankruptcy schedules shows the real estate was the vast majority of her liabilities, and only \$1,376 was unsecured nonpriority debt, which is atypical for a Chapter 7 case. The second bankruptcy case was due to the mutual-fund company's processing error combined with the cosigned car loan. Review of the bankruptcy schedules shows that of the \$52,810 listed on the Schedule F (unsecured nonpriority debt), less than \$1,600 was unrelated to the mutual fund debt and the car loan. And the IRS tax debt was largely due to an accounting error by the firm Applicant hired to prepare her federal income tax return. Although she was perhaps financially naive or inattentive or both, the deadbeat tenant, the mutual-fund company's processing error, and the tax preparation error were unforeseen conditions largely beyond her control.⁽¹⁴⁾ Also, Applicant made a good-faith effort to pay or otherwise resolve her delinquent debt as evidenced by payment of the major debt, the IRS tax bill, as well as by payment of the two minor collection accounts.⁽¹⁵⁾

Based on the record evidence as a whole, Applicant's overall financial situation is greatly improved, she is not overextended, and she is not engaging in financially irresponsible behavior. To conclude, Applicant has met her ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I considered the evidence as a whole, both favorable and unfavorable, 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: For Applicant

Subparagraphs a - e: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

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 mutual-fund company's letter apologized for the error, and it did not suggest Applicant engaged in fraud or theft by withdrawing the money. Likewise, Department Counsel did not argue in the FORM that Applicant engaged in a deceptive or illegal financial practice by withdrawing the money. Given these circumstances, I presume Applicant withdrew the money in good faith.
3. Executive Order 10865, § 7.
4. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
5. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
6. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
7. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).
8. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
9. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
10. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
11. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.
12. *Egan*, 484 U.S. at 528, 531.
13. E2.A6.1.2.1. A history of not meeting financial obligations;" and E2.A6.1.2. 3. Inability or unwillingness to satisfy debts.
14. E2.A6.1.3.3. 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).

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