

KEYWORD: Financial; Personal Conduct

DIGEST: In the past several years, Applicant had several judgments entered against him and other accounts that were submitted for collection. He filed for Chapter 13 bankruptcy protection twice in 2002, and both actions were dismissed because of his failure to make required payments under the plans that had been entered. He failed to disclose his financial situation as required in a security clearance application he submitted in April 2001. Applicant has failed to mitigate the security concerns caused by his financial considerations and personal conduct. Clearance is denied.

CASENO: 03-18267.h1

DATE: 02/16/2005

DATE: February 16, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-18267

**DECISION OF ADMINISTRATIVE JUDGE**

**HENRY LAZZARO**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

In the past several years, Applicant had several judgments entered against him and other accounts that were submitted for collection. He filed for Chapter 13 bankruptcy protection twice in 2002, and both actions were dismissed because of his failure to make required payments under the plans that had been entered. He failed to disclose his financial situation as required in a security clearance application he submitted in April 2001. Applicant has failed to mitigate the security concerns caused by his financial considerations and personal conduct. Clearance is denied.

**STATEMENT OF THE CASE**

On January 15, 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. <sup>(1)</sup> The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F, for financial considerations, and Guideline E, for personal conduct. Applicant submitted a sworn answer to the SOR that was received by DOHA on March 10, 2004, and requested a hearing. He admitted all SOR allegations except those contained in subparagraphs 1.b., 1.f., 1.g., 1.l., 1.m., 1.o., 2.a., and 2.b.

This case was assigned to me on September 15, 2004. A notice of hearing was issued on October 29, 2004, scheduling the hearing for November 16, 2004. The hearing was conducted as scheduled. The government submitted 12 documentary exhibits that were marked as Government Exhibits (GE) 1-12 and admitted into the record without objection. Applicant testified at the hearing and submitted two documentary exhibits that were marked as Applicant's Exhibits (AE) 1-2 and admitted into the record without objection. The record was held open until November 24, 2004 to provide Applicant the opportunity to submit additional documentation in support of his case. I granted Applicant additional time and he finally submitted two additional documents on February 7, 2005. Those documents were marked as AE 3-4 and admitted into the record without objection. The transcript was received November 24, 2004.

## FINDINGS OF FACT

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

Applicant is a 51-year-old high school graduate with three years of college who has been employed by a defense contractor as a senior treatment plant operator since February 2001. He is a journeyman waste water treatment operator who was previously employed by a sanitation district from September 1978 to May 1999. The security clearance application (SF 86) he submitted on April 19, 2001 also lists employment as a plant operator aboard an Air Force base from May 1995 to October 1999, although the start date appears to be a typographical error. Applicant quit his employment in October 1999 to work full-time in a catering business his wife had been operating on a part-time basis since 1991.

Applicant was first married in September 1976, and that marriage ended in divorce in September 1986. He has one child from that marriage who is 24 years old. Applicant remarried in October 1989, separated from his wife in October 2001, and obtained a divorce from her in November 2004.

Applicant filed for protection under Chapter 13 of the bankruptcy code in April 1992, and received a discharge in October 1996. He again sought protection under Chapter 13 of the bankruptcy code in June 2002, however, that case was dismissed in September 2002 because he failed to commence payments under the Chapter 13 plan. Applicant again filed for protection under Chapter 13 of the bankruptcy code in October 2002. That case was dismissed with prejudice in February 2003 because he failed to commence payments under the Chapter 13 plan, and he was enjoined from filing a new case under any chapter of the bankruptcy code for a period of 180 days from the date of the order entered in that case.

The SOR lists seven collection accounts totaling \$1,088.00, three judgments totaling \$2,988.51, one charged off account in the amount of \$155.00, a past due account in the amount of \$1,283.00, and a mortgage delinquency in the amount of \$7,983.00 that was foreclosed upon and resulted in Applicant losing his house in September 2003. Applicant testified he believes there is nothing owing on the mortgage debt after the foreclosure. A review of GE 7, a credit report, and AE 3, a satisfaction of judgment, indicates the account listed in SOR subparagraph 1.c. as past due in the amount of \$1,283.00 resulted in the entry of a judgment against Applicant in the amount of \$3,629.70 on June 17, 2003 that was satisfied on December 22, 2004. AE 4 indicates that three collection accounts, totaling \$173.01, were paid on November 26, 2004.

The remaining delinquent accounts remain outstanding with no action having been taken to resolve them. Applicant testified he would be filing for protection under Chapter 7 of the bankruptcy code about two weeks after the hearing was conducted. He had not filed sooner because he did not have the \$800.00 his attorney wanted to file the petition on his behalf. Applicant did not submit anything post-hearing to indicate he had filed under any chapter of the bankruptcy code.

Applicant blames his financial woes on the failure of the catering business and his wife misspending money. However, the 1992 Chapter 13 bankruptcy preceded the catering venture by about seven years. Further, although he testified the catering business was doing reasonably well when he first launched it as a full-time enterprise in 1999, the various credit reports in evidence indicate that at least some of the accounts listed in the SOR were delinquent at the time he quit his job and went into the catering business.

Applicant failed to disclose he had an unsatisfied judgment and accounts that were more than 180 days delinquent in response to relevant questions in the SF 86 he submitted in April 2001. His explanation for failing to list those accounts in the SF 86 is that he either overlooked the questions of thought he answered them correctly. Considering the number of accounts that were delinquent at the time and that the judgment had been entered against him a mere ten months earlier, his explanations are not credible.

### **POLICIES**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon 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. Considering the evidence as a whole, Guideline F, pertaining to financial considerations and Guideline E, pertaining to personal conduct, with their respective DC and MC, are most relevant in this case.

### **BURDEN OF PROOF**

The sole 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> The government has the burden of proving controverted facts.<sup>(3)</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence<sup>(4)</sup>, although the government is required to present substantial evidence to meet its burden of proof.<sup>(5)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>(6)</sup> 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.<sup>(7)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(8)</sup>

No one has a right to a security clearance<sup>(9)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(10)</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be<sup>(11)</sup>

resolved in favor of protecting national security.

## 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.

Applicant filed for protection under Chapter 13 of the bankruptcy code in 1992 and obtained a discharge in 1996. He thereafter allowed numerous accounts to become delinquent and had several judgments entered against him. He twice filed under Chapter 13 of the bankruptcy code in 2002, and both times the cases were dismissed due to his failure to commence plan payments. He remains indebted on most of the delinquent accounts, has taken little action to satisfy the accounts, and has displayed virtually no interest in rectifying his financial situation. Disqualifying Conditions (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debts* apply.

Although Applicant attributes his current financial situation to a failed business venture, it is noteworthy that a number of his accounts became delinquent before he quit his job and undertook that venture. Further, as evidenced by the 1992 bankruptcy filing, Applicant's financial problems are longstanding. While he has now paid off several of his accounts, it was not until after completion of the hearing that he even attempted limited steps to display financial responsibility. Accordingly, I specifically find Mitigating 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* do not apply. The remaining mitigating conditions clearly have no applicability to the facts of this case.

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. Applicant failed to disclose his financial problems in the SF 86 he submitted. His explanation for failing to do so is not credible. DC 2: *The deliberate omission, concealment, or 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* applies. I have considered all potentially applicable mitigating conditions and none apply.

Considering all relevant and material facts and circumstances present in this case, including the testimony and evidence provided by Applicant, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has failed to mitigate the security concerns in this case. He has failed to overcome the case against him or satisfy his ultimate burden of persuasion. Guideline F and Guideline E are decided against Applicant.

## FORMAL FINDINGS

SOR ¶ 1-Guideline F: Against Applicant

Subparagraphs a-q: Against Applicant

SOR ¶ 2-Guideline E: Against Applicant

Subparagraph a: Against Applicant

Subparagraph b: Against 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.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 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, Item 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, Item E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id* at 531.
11. *Egan*, Executive Order 10865, and the Directive.