

KEYWORD: Financial

DIGEST: Applicant is unable to successfully mitigate the security concern stemming from his history of delinquent child support payments resulting in an arrearage of more than \$17,000.00. Clearance is denied.

CASENO: 03-18559.h1

DATE: 03/30/2005

DATE: March 30, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-18559

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Nichole L. Noel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is unable to successfully mitigate the security concern stemming from his history of delinquent child support payments resulting in an arrearage of more than \$17,000.00. Clearance is denied.

STATEMENT OF THE CASE

On June 8, 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 a security concern under Guideline F for financial considerations. Applicant replied to the SOR on or about July 12, 2004, he requested a hearing, and his answer was mixed. Department Counsel indicated she was ready to proceed on August 27, 2004, and the case was assigned to me September 7, 2004. A notice of hearing was issued on September 16, 2004, scheduling the hearing for October 20, 2004. Applicant appeared without counsel and requested a continuance. The request was granted, and the hearing reconvened November 22, 2004. Applicant appeared without counsel and the hearing took place as rescheduled. DOHA received the hearing transcripts on October 28, 2004, and December 1, 2004, respectively.

RULINGS ON PROCEDURE

On or about January 14, 2005, DOHA received notice from Applicant's employer that Applicant's employment had been terminated effective December 1, 2004. Given the hearing was completed in November 2004, and in accordance with DOHA Operating Instruction 29, processing of this case will not be terminated.

FINDINGS OF FACT

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

Applicant is a 36-year-old man who is a native-born U.S. citizen. He has one child, a daughter, who was born in 1994. Applicant was employed for a security company and was seeking a security clearance for this employment.

The SOR alleges Applicant is indebted as follows: three collection accounts for amounts less than \$500.00 each; a child support arrearage for more than \$12,000.00; and a past due account of about \$1,400.00. Each debt is discussed below.

The debt alleged in subparagraph 1.a is based on a medical bill for about \$450.00, which was being handled by a collection agency. Applicant denies this is his account. According to the collection agency, the account was submitted to them in error and they will cease all collection activity on this account (Exhibit A).

The debt alleged in subparagraph 1.b is based on a dental bill for about \$358.00, which was being handled by a collection agency. Applicant denies this is his account. According to the collection agency, the account was submitted to them in error and they will cease all collection activity on this account (Exhibit B).

The debt alleged in subparagraph 1.c is based on a cable TV bill for about \$226.00, which was being handled by a collection agency. This account is paid-in-full (Exhibits C & D).

The debt alleged in subparagraph 1.d is based on child support arrears owed by Applicant in the amount of \$12,668.00, as of February 13, 2004. This arrearage stemmed from a child support order put into effect on May 17, 2001, for Applicant's daughter. The court required Applicant to pay \$246.00 biweekly. As of November 16, 2004, Applicant owed the sum of \$22,140.00, had paid the sum of \$4,391.37, and was delinquent in the sum of \$17,748.63 (Exhibit E). Applicant has requested a proceeding to reduce the arrears and lower the ongoing support payment, and that hearing was scheduled for February 2005. Applicant explained he fell behind due to a combination of periodic employment and his nonpayment due to his anger over not being allowed to visit his daughter.

The debt alleged in subparagraph 1.e is based on a revolving line of credit in the amount of \$1,482.00. Applicant

obtained the line of credit so he could make rather expensive car repairs. After the work was performed, he became involved in a disagreement with the repair shop and stopped making payments. The account was apparently turned over to a collection firm. According to that firm, they have been unable to locate the account (Exhibit F). The debt remains unresolved.

Applicant's current financial situation is fairly described as living paycheck-to-paycheck. He has less than \$200.00 in a checking account and no savings to speak of.

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.⁽²⁾ There is no presumption in favor of granting or continuing access to classified information.⁽³⁾ The government has the burden of proving controverted facts.⁽⁴⁾ The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than the preponderance of the evidence.⁽⁵⁾ The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.⁽⁶⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁷⁾ 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.⁽⁸⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

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."⁽¹⁰⁾

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 line of credit account and child support arrearage demonstrate a history of not meeting financial obligations as well as inability or unwillingness to pay one's just debts.⁽¹¹⁾ The same facts and circumstances demonstrate financial irresponsibility. In addition, failure to pay child support is of special concern because it indicates either inability or refusal to accept responsibility for the consequences of one's actions.

I have reviewed the mitigating conditions under the guideline and conclude Applicant receives some credit in mitigation. He has made a good-faith effort to pay or otherwise resolve his indebtedness, as evidenced by resolving the accounts in subparagraphs 1.a, 1.b, and 1.c.⁽¹²⁾ The evidence does not suggest, however, that his financial problems are resolved and under control, as evidenced by the \$17,000.00 child support arrearage. While \$17,000.00 is not a huge number, the percentages tell the real story. Since the child support order went into effect in May 2001, Applicant has paid about 20%⁽¹³⁾ of what he owes. Applicant appears to be sincere when he says he intends to resolve the child support matter and the line of credit, but actions speak louder than words. His financial problems are long standing and until he establishes a long-term track record of good debt management, it is simply too soon to tell if he has established a financially responsible lifestyle. Accordingly, Guideline F is decided against Applicant.

To conclude, Applicant has failed to meet his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I have considered the record evidence as a whole, the whole-person concept, the clearly-consistent standard, and the 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: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: 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.
13. $\$4,391.37 \text{ paid} \div \$22,140.00 \text{ owed} = 0.1983455$, which is about 20%.