

KEYWORD: Financial

DIGEST: Applicant is unable to successfully mitigate the security concern stemming from his history of financial problems, which are ongoing. Clearance is denied.

CASENO: 04-06517.h1

DATE: 04/25/2005

DATE: April 25, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06517

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is unable to successfully mitigate the security concern stemming from his history of financial problems, which are ongoing. Clearance is denied.

STATEMENT OF THE CASE

On May 25, 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 June 10, 2004, and he requested a hearing. The case was assigned to me September 10, 2004. A notice of hearing was issued on September 16, 2004, scheduling the hearing for October 27, 2004. Applicant appeared without counsel and the hearing took place as scheduled. I left the record open to allow Applicant to submit additional matters, those matters were timely received, and are admitted into the record evidence, collectively, as Exhibit P. DOHA received the hearing transcript on November 5, 2004. Issuing a decision in this case was delayed due to a heavy caseload.

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 47-year-old man who is a native-born U.S. citizen. He works as a security guard for a company that provides security services for a defense contractor. He seeking a security clearance in conjunction with this employment.

The background investigation of Applicant revealed a history of delinquent indebtedness.

The SOR alleges that Applicant received a discharge of more than \$26,000.00 in debt under Chapter 7 of the bankruptcy code, has ten accounts in a collection or charged off status, and lacks sufficient income to pay his delinquent debts. These matters are discussed below.

SOR subparagraph 1.a alleges the Chapter 7 bankruptcy case. Applicant and his wife filed a Chapter 7 petition in July 1996 to eliminate debt so they could qualify for a mortgage loan. The bankruptcy petition listed more than \$26,000.00 in liabilities. The bankruptcy court granted Applicant and his wife a discharge in October 1996. Subsequently, Applicant and his wife obtained a mortgage loan and bought a home, which has since been foreclosed upon and will be discussed below.

The debt of \$239.00 alleged in subparagraph 1.b is based on a revolving credit line, which has been placed for collection. Applicant admits this is his account, and it remains unpaid.

The debt of \$92.00 alleged in subparagraph 1.c is based on telephone account, which has been placed for collection. Applicant does not deny the account, but contends it is paid. Applicant did not present documentary evidence that this account is paid.

The debt of \$992.00 alleged in subparagraph 1.d is based on a bank credit card account, which has been charged off. Applicant admits this is his account, and it remains unpaid.

The debt of \$4,356.00 alleged in subparagraph 1.e is based on a bank credit card account, which has been charged off. Applicant admits this is his account, and it remains unpaid.

The debt of \$3,652 alleged in subparagraph 1.f is based on a bank credit card account, which has been charged off. Applicant admits this is his account, and it remains unpaid.

The debt of \$1,622.00 alleged in subparagraph 1.g is based on a medical account, which has been placed for collection. Applicant admits this is his account, and it remains unpaid.

The debt of \$190.00 alleged in subparagraph 1.h. is based on a dental account, which has been placed for collection. Applicant admits this is his account, and it remains unpaid.

The debt of \$27.00 alleged in subparagraph 1.i is based on a telephone account, which has been charged off. Applicant admits this is his account, and it is paid (Exhibits C and P at p. 7).

The debt of \$133.00 alleged in subparagraph 1.j is based on a telephone account, which has been placed for collection. Applicant does not deny the account, but contends it is paid. Applicant did not present documentary evidence that this account is paid.

The debt of \$85,801.00 alleged in subparagraph 1.k is based on a balance due owed on a mortgage loan that was foreclosed upon in 2003. Applicant admits this is his account, and it remains unpaid. The mortgage loan was joint liability between Applicant and his wife. When Applicant moved out of the house due to undue family discord and relocated to another state in 2002, his wife told him she would pay the mortgage loan. She did not, and Applicant was unaware the property was foreclosed upon until the subject was brought up during his background investigation.

The matter alleged in subparagraph 1.l is that a personal financial statement (Exhibit 2 at p. 6) executed by Applicant in December 2003 showing he had a negative monthly net remainder of \$297.00, which did not include repayment of the delinquent debts discussed above. Applicant does not dispute this matter.

In addition to the debts discussed above, Applicant presented documentary proof that he has resolved some other debts. Exhibit D shows Applicant paid \$763.54 to resolve a credit card debt. Likewise, Exhibits M and N are proof Applicant has resolved two medical bills that were placed for collection.

Applicant is still married to his wife, but he wants to divorce her. He does not know of her whereabouts and this has delayed starting divorce proceedings. Applicant has a girlfriend who he met through work, they live together, and they plan on marriage. The girlfriend provides financial assistance to Applicant and this reduces Applicant's living expenses. Applicant earns \$14.00 per hour as a security guard and finds his wages do not go very far as he lives in a high-cost area. 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.

Applicant suffers from certain medical conditions requiring prescription drugs. As a result, he has incurred out-of-pocket costs for medical treatments and drugs that his health insurance does not cover.

In an effort to resolve his delinquent indebtedness, Applicant retained the services of a company that provides a debt settlement program to its customers. Applicant enrolled in the program in 2004, after receiving the SOR, and has made monthly payments of \$210.00 to the company (he is also charged a monthly fee of \$50.00 for this service). Although Applicant has made several monthly payments to this company, he has not presented documentary proof that any of the delinquent debts have been paid, settled, or otherwise resolved through this program.

Applicant presented favorable character evidence through the testimony of two witnesses and two documentary exhibits (Exhibits A and B). These persons believe Applicant is hard working, pays attention to detail, possesses good judgment, is very security conscious, is trustworthy, and is a very dedicated and thorough security professional.

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 Chapter 7 bankruptcy case, the delinquent debts, and the foreclosure demonstrate a history of not meeting financial obligations as well as inability to pay one's just debts.⁽¹¹⁾ The same facts and circumstances demonstrate financial irresponsibility.

I have reviewed the mitigating conditions under the guideline and conclude Applicant receives some credit in mitigation. I am persuaded Applicant's financial problems would not be so severe but for his troubled marriage, which is yet to be resolved. Accordingly, MC 3⁽¹²⁾ applies in his favor. And Applicant has taken the initial steps toward making a good-faith effort to pay or otherwise

resolve his indebtedness by enrolling in the debt settlement program.⁽¹³⁾ That credit is limited, however, as there is no documentary proof that any of the debts have been resolved via the program.

Despite these matters in mitigation, Applicant's financial problems are long standing and ongoing. Indeed, it appears he is in a deep financial hole with limited ability, short of another Chapter 7 bankruptcy case, to resolve his delinquent debts. 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

Subparagraphs a - l: 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.A6.1.3.3. 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).
13. E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.