

DATE: December 8, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06555

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 47-year-old electrician who is working for a federal contractor waiting the outcome of his security clearance determination. Applicant has a long history of delinquent debts, and although he has been paying them off in the last year, he did nothing to resolve them until his debts became a security clearance issue. Applicant's wife is a citizen and her family are citizens and residents of Thailand. He and his wife provide financial support to the family in Thailand and maintain close contact. Applicant did not divulge his past arrests on his security clearance. Applicant has failed to mitigate the security concerns regarding Guidelines B, foreign influence, Guideline F, financial considerations, and Guideline E, personal conduct. Clearance is denied.

STATEMENT OF CASE

On June 22, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant Statements of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) Department Counsel submitted a motion to amend the SOR on October 17, 2005, [\(2\)](#) adding a new allegation. Applicant did not object and the motion was granted. The SORs, which are in essence the administrative complaints, alleged security concerns under Guideline B, foreign influence, Guideline F, financial considerations, and Guideline E, personal conduct.

In sworn statements, dated July 19, 2005, and November 1, 2005, Applicant responded to the SOR allegations, and requested a hearing. In his SOR responses, Applicant admitted all of the allegations under Guidelines F and B. He denied the allegations in SOR 2.a. and 2. b.

The case was assigned to me on October 17, 2005. A notice of hearing was issued on October 18, 2005, scheduling the hearing for November 8, 2005. The hearing was conducted as scheduled. The government submitted six exhibits that were marked as Government Exhibits (GE) 1-6. The exhibits were admitted into the record without objection. Applicant testified on his own behalf, and submitted one exhibit that was marked as Applicant's Exhibits (AE) A. The exhibits

were admitted without objection. The record was held open to allow Applicant an opportunity to submit additional documents. He submitted AE B-G and they were admitted into the record without objection. The transcript was received on December 1, 2005

FINDINGS OF FACT

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

Applicant is a 47-year-old electrician who worked for a federal contractor from July 2003 to March 2004, and was then laid off. He has since been rehired pending the determination of his security clearance. Applicant has two grown children and is married to his third wife. Applicant met his wife, who is a citizen of Thailand, while working overseas in 2003. They were married in 2004.

Applicant's wife's mother, two sisters, and thirteen year old daughter are citizens and residents of Thailand. Her mother, one sister, and daughter live together, and her other sister resides in a house next door. Applicant has been providing regular financial support to his wife's family for a couple of years. Applicant's wife has a green card, and lives with Applicant in the United States. She sends approximately between \$300-\$400 a month from the income she earns to help support her family in Thailand. Applicant and his wife are planning a trip to Thailand in 2007 to visit the family. They want to bring the daughter back with them for school, and to be part of their family, but will leave the decision to her. Applicant's wife calls her family in Thailand 2-3 times a month, but recently they found an inexpensive phone service so they plan on calling more frequently.

Applicant was aware he had many delinquent debts and chose to spend his money on other things, rather than paying them off. (3) While working overseas Applicant's delinquent debts became an issue when he applied for a security clearance. In 2004, when he learned his delinquencies may hinder his ability to obtain a security clearance, he sought assistance from a debt relief and counseling service (DRCS). Applicant set up a payment plan in June 2004 for the debts listed in SOR 1.b., 1.c., 1.e., 1.f., and 1.g. Applicant has made consistent payments on this plan. Applicant has paid off the debts in 1.b., (4) 1.d., (5) and, 1.g. (6) Applicant claims debt 1.c. and 1.d. were paid, but did not provide documentation to verify his claim. Debt 1.e. was incorrectly listed as Applicant's debt and has since been removed from his credit report. (7) Applicant continues to make consistent payments through this plan on debt 1.f. Applicant paid off the debt on his truck loan and 1.i. is satisfied. (8) Applicant is unaware of what debt 1.h. is for, has not researched it, and does not know if it is paid. Applicant believes debt 1.j. is a duplicate credit card debt, but provided no documentation to verify his assertion. Applicant claims he gave all of his delinquent debts to DRCS for consolidation and set up a payment plan. However, Applicant has not verified if DRCS has all his debts. Debt 1 a. is a car loan defaulted by Applicant. Applicant returned the car and is required to pay the balance owed. Applicant thought it was unfair and has not paid this debt. (9) Regarding this debt, Applicant claimed that his credit counselor advised him that because the debt was almost seven years old, he should not pay it and wait for it to be removed from his credit report. Applicant acknowledged he still owes the debt, but followed the advice of the credit counselor and did not pay it.

While working overseas, Applicant took a vacation to Bali in August/September 2003. He also paid for his daughter to travel from the United States to Bali and join him on vacation.

Applicant answered "No" to Question 24 (*Your Police Record-Alcohol/Drug Offenses-For this item report information regardless of whether the record in your case has been 'sealed' or otherwise stricken from the court record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S. C. 3607. Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?*) Applicant was arrested in about 1997 and charged with Disturbing the Peace as a result of an altercation with two bar bouncers. Applicant was at a dance club when the altercation ensued. He was required to take a breathalyzer, but claims he was not drunk. He claims he did not think this was an alcohol related offense, but admits he was arrested and charged. Applicant stated "I wasn't guilty so I didn't feel like I should have to put it down." (10) "I didn't forget to put it down, I just thought that that wouldn't count against me because I was found not guilty." (11)

Applicant answer "No" to Question 26 (*Your Police Record-Other Offenses-For this item, report information regardless of whether the record in your case has been 'sealed' or otherwise stricken from the court record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S. C. 844 or 18 U.S.C. 607. In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in modules 21, 22, 23, 24, or 25? Leave out traffic fines of less than \$150 unless the violation was alcohol or drug related.*). Applicant had his checkbook stolen by his ex-wife who then wrote numerous bad checks. Applicant became aware of what happened and closed the account. He was arrested on November 13, 1999 for (1) Fraud-Insufficient Funds Checks, and (2) Criminal Mischief, Third Degree. Count one was nolle prossed when Applicant showed his ex-wife had stolen his checks and forged his signature. Regarding Count (2), Applicant's daughter had been in an abusive marriage and Applicant had a physical altercation with her ex-husband. Applicant paid a fine for Count (2). Applicant failed to list his 1997 and 1999 arrests, as required.

Thailand is a constitutional monarchy.⁽¹²⁾ There has been increased incidences of terrorism in Thailand in recent years.⁽¹³⁾ American citizens are especially vulnerable in Thailand.⁽¹⁴⁾ Thailand experiences violent incidents that are criminally and politically motivated by separatist and extremist

groups.⁽¹⁵⁾ These groups are unpredictable. There is also increased tension along the Thailand and Burma border that has resulted in military flare-ups.⁽¹⁶⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. 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.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽¹⁷⁾ The government has the burden of proving controverted facts.⁽¹⁸⁾ The burden of proof is something less than a preponderance of evidence.⁽¹⁹⁾ 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.⁽²⁰⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽²¹⁾

No one has a right to a security clearance⁽²²⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽²³⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽²⁴⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽²⁵⁾ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline B-Foreign Influence is a concern because a security risk may exist when an individual's immediate family,

including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligations are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interest in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Guideline F- Financial Considerations-a security concern exists when a person has significant delinquent 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.

Guideline E-Personal Conduct is a security concern when an individual's conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline B, Guideline F, and Guideline E.

Based on all the evidence, Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1 (*An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country*), and FI DC E2.A2.1.2.2 (*Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists.*) apply. Applicant's wife is a citizen of Thailand and lives with him in the United States. Applicant's mother-in-law, two sisters-in law and stepdaughter are citizens and residents of Thailand. Although they are not immediate family members, they are bound to him through his wife and could create the potential for foreign influence because of her marital relationship. He also provides them with financial support. FI DC E2.A2.1.2.1 applies because all of the above people are citizens or reside Thailand. Applicant's wife, whom he lives with, was born in Thailand and immigrated to the United States after they married in 2004. She sends money home monthly to her family. Applicant has sent money on a regular basis to her family to help support them. They both hope her daughter returns to the United States with them when they visit in 2007. Applicant's wife maintains regular contact with her family through frequent phone calls. FI DC E2.A2.1.2.2 applies because there is a potential for foreign influence of the wife through her family in Thailand. I have considered FI DC E2.A2. 1.2.3. (*Relatives, cohabitants, or associates who are connected with any foreign government*) and conclude no evidence was presented to show that Applicant's wife's family members are in any way connected with a foreign government, and therefore this disqualifying condition does not apply.

I have considered all the mitigating conditions and especially considered Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1. (*A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States*), and FI MC E2.A2.1.3.2. (*Contacts and correspondence with foreign citizens are casual and infrequent*), and conclude they do not apply. Applicant's wife lives with him in the United States, and although it is unlikely she or her family in Thailand are agents of a foreign power, they could be exploited because of their relationship to Applicant. Their relationship is very close, contacts are frequent, and the family relies on financial support from Applicant. This relationship might force Applicant to choose between his wife and her family and his loyalty to the United States. The obvious bond between a husband and wife is too difficult to overcome. In addition, Applicant has developed a strong bond with his wife's family and this makes his especially vulnerable. Thailand is a country where there has been increased incidences of terrorism, thereby making Applicant especially vulnerable due to his family ties there. Applicant has failed to mitigate the security concerns raised under Guideline B, foreign influence.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*), apply in this case. Applicant accumulated significant delinquent debts.

He did not take any action on the debts until he applied for a security clearance and it became an obvious issue.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC E2.A6.1.3.1 (*The behavior was not recent*), FC MC E2.A6.1.3.2 (*It was an isolated incident*), FC MC 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)*), FC MC E2.A6.1.3.4 (*The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Applicant's debts are recent. Even though some date back several years and were in a collection status, they are still unpaid and thus recent. Applicant has numerous creditors and therefore his delinquencies are not isolated. Applicant was aware of the debts, but did not focus on them until 2004 when he became motivated to pay them because of the security clearance implications. Applicant sought credit counseling and consolidated his debts to create a payment plan. Applicant followed the advice of his credit counselor and left debt 1.a. off his payment plan. However, this does not negate the fact that for almost seven years Applicant did not attempt to make any payments on this debt or the others. Applicant has been diligently paying on the previously listed debts that he was aware of since 2004. I find FC MC E2.A6.1.3.4 applies. Although this mitigating conditions applies because Applicant received credit counseling and is now paying on most of his debts, the fact remains that Applicant did not take action on his debts until motivated by security clearance issues. As late as 2003, Applicant chose to take a vacation in Bali and pay for his daughter to join him, rather than paying off some of his debts. Those debts were of little concern at that time. I have considered all the circumstances surrounding Applicant's actions with regards to paying his debts and conclude he did not make a good-faith effort to repay his creditors for many years and when he did it was motivated by his desire for a security clearance. Therefore, I find Applicant failed to mitigate the financial considerations with regard to his security clearance.

Based on all the evidence, Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2 (*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 in this case. Applicant failed to divulge his past arrests, one of which he was required to take an alcohol breathalyzer and occurred in a bar.

I considered all the mitigating conditions and specifically considered Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.2 (*The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*), PC MC E2.A5.1.3.3 (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*), and PC MC E2.A5.1.3.5 (*The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*). I conclude none of the mitigating conditions apply. Applicant deliberately falsified his SCA. He did not provide the correct information until confronted by an investigator. Applicant did not offer any information to show any steps he may have taken to reduce his vulnerability to coercion or exploitation. The falsifications are recent because they are a part of his SCA, and were not isolated because he lied on two questions. One objective of the security clearance process is to determine all relevant and material information concerning an applicant. The process requires full and open disclosure by the applicant of all requested information. Any intentional misrepresentation or omission by an applicant materially obstructs the investigation of Applicant's security worthiness and raises serious concerns about the character and overall integrity of the individual. It might be mitigating that Applicant believed his arrest was not alcohol related and because he was later found not guilty that he should not have to divulge the information. However, even if he was confused, this justification can not be used when Applicant failed to list his other arrest and charge under Question 26. Applicant offered no reasonable explanation for why he did not list the arrests as the question clearly requested. Question 26 is all inclusive so as to negate the possibility of confusion as to the nuances of an arrest, charge, or conviction. I find Applicant deliberately failed to provide the information required by the SCA. Applicant's actions raise serious security concerns. I

find Applicant has failed to mitigate Guideline E.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered the whole person and I find Applicant failed to mitigate the security concerns arising from Guideline B, Guideline F and Guideline. Although Applicant appears to have turned his life around since getting married, and is paying his delinquent debts, he exercised questionable judgment regarding his finances for a lengthy period of time, and the timing of his affirmative actions can not be overlooked. His delinquent debts were not addressed until he became motivated to get a security clearance. It is too soon to conclude that Applicant has a firm commitment to paying his debts on time. In addition, Applicant's wife and her family's citizenship creates foreign influence issues that raise serious security concerns. Applicant failed to divulge his arrests thereby raising character and integrity issues. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline B, Guideline F, and Guideline E are decided against Applicant.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1 Financial Considerations (Guideline F) AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

Subparagraph 1.f. For the Applicant

Subparagraph 1.g. For the Applicant

Subparagraph 1.h. Against the Applicant

Subparagraph 1.i. For the Applicant

Subparagraph 1.j. Against the Applicant

Subparagraph 1.k. For the Applicant

Paragraph 2 Personal Conduct (Guideline E) AGAINST THE APPLICANT

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against the Applicant

Paragraph 3 Foreign Influence (Guideline B) AGAINST THE APPLICANT

Subparagraph 3.a. Against the Applicant

Subparagraph 3.b. 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 a security clearance to Applicant. Clearance is denied.

Carol G. Ricciardello

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 amended SOR added a paragraph of allegations under Guideline B. This paragraph is numbered (2). There is already a paragraph (2) in the original SOR dated June 22, 2005. I have changed the amended SOR and the paragraph will be referred to as paragraph (3).
3. Tr. 86.
4. AE C.
5. AE B.
6. AE F, Applicant has one final payment to make on his payment plan for this debt. He has consistently been making payments through DRCS and it is likely he will make the final payment.
7. AE D.
8. AE G.
9. Tr. 16.
10. Tr 89.
11. *Id.*
12. GE 6 at 2.
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. ISCR Case No. 96-0277 (July 11, 1997) at 2.
18. ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
19. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
20. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.

21. ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.

22. *Egan*, 484 U.S. at 531.

23. *Id.*

24. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

25. Executive Order 10865 § 7.