

DATE: November 23, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-07327

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant filed for Chapter 7 bankruptcy protection in 1993, and now has numerous delinquent accounts that have been charged off, submitted for collection, or on which judgments have been obtained. He has a criminal history that began in 1977 and continued until at least December 2001. Clearance is denied.

STATEMENT OF THE CASE

On December 28, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F (financial considerations) and Guideline J (criminal conduct). Applicant submitted a response to the SOR on January 14, 2005, and requested a clearance decision based on the written record without a hearing. Applicant admitted all SOR allegations except subparagraphs 1.b., 1.d., and 1.g.

Department Counsel prepared a File of Relevant Material (FORM) on March 23, 2005, that was originally mailed to Applicant on March 28, 2005, and resent to him on June 28, 2005. Applicant acknowledged receipt of the FORM on June 30, 2005. Applicant did not object to anything contained in the FORM or submit additional information for consideration within the 30-day period provided to him. The case was assigned to me on August 24, 2005.

FINDINGS OF FACT

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

Applicant is a 47-year-old man who has been employed by a defense contractor as a journeyman electrician since January 2003. In the preceding three years he worked as either a journeyman electrician or self-employed handyman for periods ranging from a few months to nearly a year. He was also unemployed from ay 2001 until July 2001, and

October 2001 until March 2002.

Applicant was married in August 1977 and divorced in October 1990. He reported in a Questionnaire for National Security Positions he submitted in March 2003 that he had one son who is 20 years old. However, a probation report prepared in 1989⁽²⁾ discloses Applicant had three children, and that one was taken from the home by local authorities because of alleged child abuse, and a second child was given up for adoption.

Applicant filed for protection under Chapter 7 of the bankruptcy code in June 1993 seeking to discharge of \$13,394.00 in debt.⁽³⁾ Applicant presently has at least three delinquent accounts that have been submitted for collection, totaling \$1,819.00. He has two additional collection accounts, totaling \$804.00, that he claims to have either paid or disputed. He has a judgment entered against him in the amount of \$5,875.00 based upon two accounts that were charged off in February 2002. Applicant had an automobile repossessed, and currently has a deficit owing after resale in the amount of \$20,655.00. Applicant's credit report also discloses a defaulted student loan in the amount of \$418.00 that Applicant claims to be disputing.

With the exception of the one account he claims to have paid and the two accounts he claims to be disputing, Applicant provided no information that he has made an attempt to satisfy any of the other accounts. He claims the President of the United States and his unemployment following the events of September 11, 2001, are responsible for his inability to remain current on his debts. However, at least one of the collection accounts listed in Applicant's August 24, 2004 credit report⁽⁴⁾ was delinquent prior to his first reported period of unemployment.

Applicant has a lengthy criminal history that began with a conviction for Entering with Intent to Commit Felony Theft in 1977 for which he was sentenced to serve ten months on probation. He was assessed a fine in 1980 for Attempt Burglary. He was convicted of felony Retail Theft in June 1984, and sentenced to serve 30 months on probation and six months periodic imprisonment (to be released at all times except from 7:00 P.M. Friday until 7:00 P.M. Sunday).⁽⁵⁾

Applicant was convicted of possessing less than 30 grams of marijuana in January 1986. He was sentenced to serve six months on probation and six months in jail (all but two days of the jail sentence being suspended). Applicant's next conviction occurred in September 1988 when he was found guilty of Attempt Conversion for attempting to steal clothing from a retail store in August 1987. He was sentenced to serve six months probation, 180 days in jail (suspended), and ordered to pay a fine of \$500.00.

Applicant was arrested on April 12, 1989, and charged with numerous controlled substance offenses after he attempted to board an airplane with 112 grams of cocaine, 1.2 kilograms of marijuana, and other controlled substances in his possession. He admitted he was planning on transporting the cocaine and marijuana back to his state of residence to sell. Applicant pled guilty to and was convicted of Possession of Narcotic Drug and sentenced to four years probation and ordered to pay a fine in the amount of \$2,000.00.

Applicant was next arrested in December 2001, and charged with Domestic Battery. He claims this incident occurred when he and his girlfriend became involved in an argument and he slapped her in the face. The girlfriend claimed Applicant pulled her by the hair out of a bed and across a room. The responding officer submitted an affidavit in which he averred the woman had a large amount of hair missing from the rear of her head.⁽⁶⁾ Applicant was again charged with Domestic Battery against the same girlfriend on June 18, 2002. The girlfriend this time alleged Applicant had grabbed her by the neck. The responding officer submitted an affidavit in which he averred the woman had redness to her neck and blood on her shirt around the neck area.⁽⁷⁾ In August 2002, Applicant pled guilty to the 2001 offense, and the case was taken under advisement for a period of 12 months pending his completion of an anger management program and payment of a domestic violence fee. The charge arising from the 2002 offense was dismissed as part of the plea agreement. Applicant completed six anger management sessions between December 2003 and February 2004, and the 2001 charge was dismissed consistent with the plea agreement on May 27, 2004.

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 J, pertaining to criminal 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.⁽⁸⁾ The government has the burden of proving controverted facts.⁽⁹⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁽¹⁰⁾ although the government is required to present substantial evidence to meet its burden of proof.⁽¹¹⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽¹²⁾ 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.⁽¹³⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁴⁾

No one has a right to a security clearance⁽¹⁵⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁶⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹⁷⁾

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 found it necessary to seek bankruptcy protection in 1993. He again found himself in financial distress in 2001, and now has more than \$28,000.00 in debt that has been submitted for collection, charged off, or on which a judgment has been entered against him. Disqualifying Conditions (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debts* apply.

It does appear that most of Applicant's recent financial problems stem from the periods of unemployment he experienced in 2001 and 2002. However, although he was unemployed for a couple of months during the middle of 2001, and for about six months from the end of 2001 until early 2002, he has been steadily employed since March 2002. Despite being steadily employed for the past three and one-half years, Applicant has failed to take any steps to resolve most of his delinquent accounts and provides no basis to conclude he will ever take such steps. Accordingly, I conclude no mitigating conditions apply and Guideline F is decided against Applicant.

Criminal conduct under Guideline J is a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. Willingness to abide by rules is an essential qualification for eligibility for access to the nation's secrets. A history of illegal behavior indicates an individual may be inclined to break rules.

Applicant has a lengthy history of criminal conduct that began in 1977 and continued until 2002 when he was last arrested for a domestic battery committed against his girlfriend. Included in Applicant's criminal history are crimes of violence, larceny offenses, and serious drug offenses. He has been fined, placed on probation, and sentenced to varying periods of incarceration as a result of his many convictions, and did not complete the terms of the plea agreement that disposed of the December 2001 domestic battery until May 2004. DC 1: *Allegations or admission of criminal conduct*,

regardless of whether the person was formally charged; and DC 2: A single serious crime or multiple lesser offenses apply.

The bulk of Applicant's criminal conduct occurred between 1977 and 1990. He thereafter remained crime free until the two domestic violence incidents in 2001 and 2002. However, considering the number and nature of his earlier convictions, his relapse into criminal conduct after more than a decade, and that it has been only about 18 months since he completed the terms of the plea agreement that disposed of the 2001 offense, I conclude no mitigating condition applies. Guideline J is decided against Applicant.

Considering all relevant and material facts and circumstances present in this case, 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 overcome the case against him and satisfy his ultimate burden of persuasion to demonstrate it is clearly consistent with the national interest to grant or continue his access to classified information.

FORMAL FINDINGS

SOR ¶ 1-Guideline F: Against Applicant

Subparagraphs a-i: Against Applicant

SOR ¶ 2-Guideline J: Against Applicant

Subparagraph a-j: 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. FORM, Item 15
3. The FORM does not disclose the outcome of this bankruptcy proceeding.
4. FORM, Item 7
5. The sentence of periodic imprisonment was eventually modified to require that Applicant serve one day per week in jail from 8:00 P.M. on Saturday until 8:00 P.M. on Sunday for 24 consecutive weeks.
6. FORM, Item 13.
7. FORM, Item 14.
8. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
9. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
10. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
11. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

12. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
13. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
14. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
15. *Egan*, 484 U.S. at 528, 531.
16. *Id* at 531.
17. *Egan*, Executive Order 10865, and the Directive.