

DATE: July 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 04-08270

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Eric F. Adams, Esq.

SYNOPSIS

Applicant failed to present sufficient evidence to explain, extenuate, or mitigate the security concern arising from his history of not meeting financial obligations and inability or unwillingness to satisfy debts. It appears that he does not have a firm grasp on his financial situation. His status as a delinquent debtor who has just started working with a credit counseling service is insufficient to establish a track record of prudent and responsible financial management that is consistent with holding a security clearance. Clearance is denied.

STATEMENT OF THE CASE

Applicant is challenging the Defense Department's initial decision to deny or revoke his security clearance. Acting under the relevant Executive Order and DoD Directive, ⁽¹⁾ on July 12, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) detailing the basis for its decision. 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 August 23, 2005, and requested a hearing. The case was assigned to me on January 23, 2006. The next month, on February 6, 2006, a notice of hearing was issued scheduling the hearing for March 8, 2006. Applicant appeared with counsel and the hearing took place as scheduled. DOHA received the transcript (with the corrected cover page) on May 8, 2006.

At the hearing, I left the record open until April 30, 2006, to allow Applicant to submit additional documentary evidence. On or about April 26, 2006, Applicant, without the assistance of his attorney, submitted a two-page letter concerning the progress that had been made on his financial situation, and the letter is admitted as Exhibit C. On or about May 2, 2006, this matter was discussed with Applicant's Counsel and Department Counsel, and I explained that I interpreted Applicant's letter as a request to keep the record open past the April 30th deadline. Without objections, the record was kept open until June 30, 2006, to allow Applicant to submit any additional documentary evidence for the accounts listed in the SOR as well as a status report from his credit counselor. ⁽²⁾ To date, no such matters have been received.

RULINGS ON PROCEDURE

On March 2, 2006, Applicant's counsel moved to continue the hearing until a later date.⁽³⁾ On March 4, 2006, I denied the motion because it did not meet the good-cause standard.⁽⁴⁾ At the hearing, Applicant's counsel renewed the motion, and I denied it for the reasons stated on the record.⁽⁵⁾

Without objections, SOR subparagraph 1.f was amended by deleting the figure \$13,739.46 and substituting the figure \$12,383.⁽⁶⁾

FINDINGS OF FACT

In his written reply to the SOR, Applicant admitted that the debts were listed on his credit report, but indicated that his wife had accepted responsibility for seven of the eight debts. For the eighth debt, Applicant said that he believed the account was his wife's responsibility as well. His admissions are incorporated herein as findings of fact. In addition, after considering the record evidence as a whole, I make the following findings of fact.

Applicant is a 45-year-old married man who has lived separately from his wife for the past six years. He has two children, a 19-year-old son and a 16-year-old daughter. His son is married and living on his own. His daughter has lived with him for the past two years or so. His wife was diagnosed with breast cancer about six months ago and is receiving medical treatment. As they are still legally married, his wife is covered by his medical insurance.

Applicant is seeking a security clearance for his employment with a company engaged in defense contracting. He works as an aircraft mechanic, aircrew member, crew chief, and technical inspector. His annual salary is now about \$48,000. He is a high-school graduate. In addition, he has completed technical schools necessary for aviation maintenance. From 1979 to 1982, he served on active duty in the U.S. Army working as an aircraft mechanic crew chief. He was honorably discharged at the rank of sergeant. From 1984 to 1988, he served on active duty in the U.S. Marine Corps working as an aircraft mechanic crew chief. He was honorably discharged at the rank of sergeant.

Applicant has a history of financial problems. He completed his security-clearance application in May 2003.⁽⁷⁾ A credit report identified with Applicant was obtained in September 2003 as part of the background investigation.⁽⁸⁾ In summary, it revealed the following: (1) three accounts 120-days past due; (2) a repossession; and (3) nine accounts in a collection or charged-off status.

A January 2006 credit report identified with Applicant revealed additional delinquent debt not included in the SOR.⁽⁹⁾

The SOR concerns eight delinquent debts for a total of more than \$20,000. The debts are based on charged-off accounts and collection accounts. As of the hearing, none of the debts were paid, settled, or otherwise resolved. An undated letter⁽¹⁰⁾ from Applicant's wife indicates she accepted responsibility for seven of the debts. His position at the hearing, however, was that the accounts in question were jointly held and that he was going to take responsibility for them so long as he could determine that the accounts were his, and, if so, he would take action to resolve the accounts.

A few days before the hearing, on or about March 6, 2006, Applicant met with a credit counselor from a well-established credit counseling service. The meeting resulted in a letter⁽¹¹⁾ from the credit counselor wherein she reported what had been accomplished at that point. The gist of the letter is that they had just begun the process of contacting creditors and the possible actions included disputing certain accounts or making payment arrangements for certain accounts. In his post-hearing letter,⁽¹²⁾ Applicant stated that he had contacted his various creditors by phone and in writing requesting an account statement from each. He stated that he planned on returning to his credit counselor so she could help him to consolidate valid debts and reaching settlement agreements with his creditors.

Concerning his overall financial situation, he has about \$1,000 in the bank.⁽¹³⁾ He owns some undeveloped real estate in another state that he estimates has a market value of about \$8,000.⁽¹⁴⁾ A couple of years ago, he made a loan against his 401(k) retirement account to buy a motorcycle, pay for holiday expenses, and take care of some other bills.⁽¹⁵⁾ He

owes about \$700 on the loan, which he is paying it off via payroll deduction.⁽¹⁶⁾ Unaware of the rules governing a 401(k) retirement account, Applicant is now paying off a tax debt to the IRS under a repayment agreement.⁽¹⁷⁾ He estimates that he currently owes the IRS about \$1,500.⁽¹⁸⁾ Since his background interview in November 2003,⁽¹⁹⁾ Applicant sold an automobile and bought a 2004 Ford Mustang for which he is making monthly payments.⁽²⁰⁾

Asked to explain how he got into this adverse financial situation, Applicant said he really couldn't say, other than that he has never been a good money manager.⁽²¹⁾ Indeed, he described himself as a "terrible money manager."⁽²²⁾

Two witnesses appeared at the hearing and provided highly favorable character evidence for Applicant. Both witnesses are retired military officers who now work with Applicant on a daily basis. Both witnesses vouched for Applicant's knowledge, skills, and abilities as an employee. And both witnesses vouched for Applicant's suitability to hold a security clearance.

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 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. A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.⁽²³⁾ Instead, it is a determination that the applicant has not met the strict guidelines the President has established for granting a clearance.

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.⁽²⁴⁾ There is no presumption in favor of granting or continuing access to classified information.⁽²⁵⁾ The government has the burden of presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted.⁽²⁶⁾ An applicant is responsible for presenting witnesses and other evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.⁽²⁷⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽²⁸⁾

No one has a right to a security clearance.⁽²⁹⁾ And as noted by the Supreme Court in *Department of Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽³⁰⁾ 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,⁽³¹⁾ a security concern typically exists for two different types of situations--significant unpaid debts or unexplained affluence. 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. As established above, Applicant has a history of not meeting financial obligations as well as inability or unwillingness to pay one's just debts.⁽³²⁾ He has several delinquent accounts in his name in a collection or charged-off status, and he does not have a firm grasp on the particulars of these accounts. What's notable here is Applicant's inaction or procrastination in addressing his situation. Many of these debts have been around for some time, the SOR was issued to him in July 2005,

and he has only just begun taking the initial steps to clean up his financial house by working with a credit counseling service. His inaction or procrastination in handling his financial affairs might easily carry over to handling and safeguarding classified information. To sum up, the facts and circumstances here paint a picture of financial irresponsibility, neglect, avoidance, or a combination of the three.

I reviewed the six mitigating conditions under the guideline and conclude none apply. In particular, although Applicant is now working with a credit counseling service, MC 4-(33) does not apply because there are not clear indications, at this time, that the problem is being resolved or is under control. Likewise, MC 6-(34) does not apply because Applicant has not made a good-faith effort to repay or otherwise resolve his financial problems. Time will tell if he will follow through and take the necessary actions to clean up his financial house. To sum up, although I'm persuaded that Applicant is a hardworking and loyal American, his status as a delinquent debtor who has just started working with a credit counseling service is insufficient to establish a track record of prudent and responsible financial management that is consistent with holding a security clearance. Accordingly, Guideline F is decided against Applicant.

To conclude, Applicant failed to present sufficient evidence to explain, extenuate, or mitigate the security concern arising from his history of not meeting financial obligations and inability or unwillingness to satisfy debts. And he has not met his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I have considered 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 Applicant

Subparagraphs a-h: 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.

Michael H. Leonard

Administrative Judge

1. Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended (Directive).
2. Appellate Exhibit III (Letter to Mr. Adams, dated May 2, 2006).
3. Appellate Exhibit I (Applicant's Motion to Continue March 8, 2006, Hearing, dated March 2, 2006).
4. Appellate Exhibit II (Letter to Mr. Adams, dated March 4, 2006).
5. R. 10-20.
6. R. 105-106.
7. Exhibit 1.
8. Exhibit 3.
9. Exhibit 4.

10. Exhibit A.
11. Exhibit B.
12. Exhibit C.
13. R. 86-87.
14. R. 83.
15. R. 87-88.
16. R. 88.
17. R. 93-94.
18. R. 94.
19. Exhibit 2.
20. R. 83.
21. R. 89.
22. R. 89.
23. Executive Order 10865, § 7.
24. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
25. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
26. Directive, Enclosure 3, Item E3.1.14.
27. Directive, Enclosure 3, Item E3.1.15.
28. Directive, Enclosure 3, Item E3.1.15.
29. *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988)("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) ("It is likewise plain that there is no 'right' to a security clearance, so that full-scale due process standards do not apply to cases such as Duane's.") (citations omitted).
30. 484 U.S. at 531.
31. Directive, Enclosure 2, Attachment 6.
32. Item E2.A6.1.2.1. A history of not meeting financial obligations; and Item E2.A6.1.2. 3. Inability or unwillingness to satisfy debts.
33. Item E2.A6.1.3.4. The person has received or is received counseling for the problem and there are clear indications that the problem is being resolved or is under control.
34. Item E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.