

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has a large amount of delinquent debt that primarily resulted from misuse of credit cards. He failed to disclose the delinquent accounts in a security clearance application he submitted in December 2002. Clearance is denied.

CASE NO: 04-09036.h1

DATE: 04/13/2006

DATE: April 13, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09036

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Sabrina Redd, Esq., Department Counsel

FOR APPLICANT

George Day, Esq.

SYNOPSIS

Applicant has a large amount of delinquent debt that primarily resulted from misuse of credit cards. He failed to disclose the delinquent accounts in a security clearance application he submitted in December 2002. Clearance is denied.

STATEMENT OF THE CASE

On June 13, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were 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 for financial considerations and Guideline E for personal conduct.

Applicant submitted two sworn answers to the SOR, dated August 4, 2005, and September 6, 2005. He admitted all Guideline F allegations, denied all Guideline E allegations, and requested a hearing.

This case was assigned to another administrative judge on November 10, 2005, who scheduled a hearing for December 20, 2005. Applicant's request for a continuance was granted on December 12, 2005, and the case was reassigned to me on December 13, 2005, due to the reassignment of regions. A notice of hearing was issued on February 13, 2006, rescheduling the hearing for February 22, 2006. ⁽²⁾

The hearing was conducted as rescheduled. The government submitted nine documentary exhibits that were marked as Government Exhibits (GE) 1-9. Applicant's objection to GE 8 was sustained. The remaining government exhibits were admitted into the record without objection. Applicant testified, called two witnesses to testify on his behalf, and submitted three documentary exhibits that were marked as Applicant's Exhibits (AE) 1-3, and admitted into the record without objection. The transcript was received March 3, 2006.

FINDINGS OF FACT

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

Applicant is 51 years old and has been employed as a jet engine mechanic by a defense contractor since November 2002. He was previously employed as a civil servant jet engine mechanic by the U.S. Air Force from November 1981 until he retired in November 2002. Applicant served on active duty in the U.S. Air Force from January 1974 until January 1980, attained the rank of Senior Airman (paygrade E-4), and was honorably discharged.

Applicant has held a security clearance for all but four years since he enlisted in the Air Force. No complaints have ever been made alleging he mishandled or otherwise risked the compromise of classified information. Applicant's witnesses and certificates establish he is considered to be a good worker and has earned a reputation for being reliable, honest, loyal, and forthright.

Applicant was married in July 1974 and divorced in May 1985. That marriage produced one son who is now 32 years old, and for whom Applicant never was required to pay child support. Applicant has been remarried since May 1996. He has two stepchildren from his current marriage, ages 21 and 15.

Applicant prepared a financial statement in December 2003, and listed his net monthly income, including retirement pay, as \$4,600.00, his wife's net monthly income as \$1,800.00, and their combined net remainder after paying all living expenses as \$2,689.00 (GE 2). He prepared a handwritten document that supposedly lays out his monthly income and expenditures that was admitted as GE 9. Although that document was copied in such a fashion as to omit a number of his claimed expenditures, it does disclose a claimed net monthly remainder of almost \$500.00.

Applicant testified he and his wife maintain separate accounts. She is still employed, earns a gross income of approximately \$2,800.00 per month, and uses her entire income to service approximately \$30,000.00 in credit card debt she has accumulated. Applicant testified he pays all household expenses, some of her bills, including a \$499.00 per month recreational vehicle loan, and uses at least a portion of the remainder to pay off his delinquent accounts.

Applicant accumulated a number of delinquent credit card accounts during the 1990s by using credit that was offered to him as a supplement to his income. Although he attempted to suggest the bills were the result of his first marriage, none of them were even opened until years after he was divorced and had no continuing financial responsibility to his first wife and their child.

The SOR lists three collection accounts, totaling \$9,348.00, and four accounts that were charged off as bad debts, totaling \$11,167.00. All of the listed accounts were either submitted for collection or charged off as bad debts between April 2001 and July 2003.

Applicant claims he has made payments on the \$5,846.00 collection account listed in subparagraph 1.a and that he now only owes that creditor about \$1,700.00. However, his November 2005 credit report discloses the balance owing has actually increased to \$6,160.00. He admits he has not made any payment on the charged off account in the amount of \$4,563.00 that is listed in subparagraph 1.b. Applicant testified he may have made some payments on the charged off account in the amount of \$3,272.00 listed in subparagraph 1.c, but his November 2005 credit report disclosed the identical balance still owing.

Applicant was uncertain if he had made any payment on the \$300.00 charged off account listed in subparagraph 1.d. His November 2005 credit report lists the same balance owing. The November 2005 credit report verifies Applicant's testimony that he paid the collection account that was owing in the amount of \$1,703.00 listed in subparagraph 1.e, and that he has made some payments on the collection that was owing in the amount of \$1,799.00 listed in subparagraph 1.f. Finally he claims to have paid the account that was charged off in the amount of \$3,032.00 that is listed in subparagraph 1.g. While that account does not appear in the November 2005 credit report, Applicant failed to submit any documentation in support of his claim to have paid the account.

Applicant entered into a repayment plan in December 1999 through a credit counseling service to repay \$32,336.09 in mostly credit card debt (GE 4). He made fairly regular payments of about \$610.00 per month into the plan (missing payments in June and November 2000) until he quit making payments entirely in August 2001. His reason for dropping out of the plan was because he decided he could not afford to keep up the payments. At the time he quit the plan, he still owed \$20,110.43 to the listed creditors (GE 4). Applicant did not make any payments to the creditors included in the plan until sometime after he submitted a security clearance application in December 2002.

Applicant signed and swore to the contents of a security clearance application (SF 86) on December 11, 2002. Therein he verified that his answers were true, complete, and correct to the best of his belief and knowledge. In the SF 86, he answered "No" to questions asking if he was then currently more than 90 days delinquent on any debt, or if in the preceding seven years he had more than 180 days delinquent on any debt. All of the debts listed in the SOR, excepting possibly the debt listed in subparagraph 1.g, should have been listed in response to one or both of those questions.

Applicant testified he was unaware he had any delinquent accounts at the time he submitted the SF 86. His explanation for that belief is he had not received a request for payment from any of the creditors included in the repayment plan after he quit the plan, and, thus, he figured the debts were charged off and "the company has taken one on the jaw, so to say, and that the - - that the debt has gone away." (Tr. pp. 38-39)

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 E, pertaining to personal 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.⁽³⁾ The government has the burden of proving controverted facts.⁽⁴⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence⁽⁵⁾, although the government is required to present substantial evidence to meet its burden of proof.⁽⁶⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁷⁾ 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.⁽⁸⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

No one has a right to a security clearance⁽¹⁰⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹¹⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹²⁾

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 abused credit cards at least through the 1990s, and failed to complete a repayment plan with the creditors that was negotiated on his behalf by a consumer credit counseling service in December 1999. Most of the accounts remain delinquent at present with little having been done to satisfy most creditors. Disqualifying Conditions (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debt* apply.

Applicant dropped out of a repayment plan in 2001 that would have resolved his financial problems because he did not believe he could continue making the required payments. His November 2005 credit report corroborates his claim to have satisfied in full or in part two of the creditors. However no payment has been made to some delinquent creditors, and Applicant failed to present any evidence to support his assertions that he

made payments to others, which assertions are rebutted by the November 2005 credit report. Finally, Applicant's wife's excessive credit card debt that consumes her entire income and requires Applicant to make payments on her other debts, despite their supposed separate accounting practices, creates serious questions about what the financial future holds for this household. I have considered all mitigating conditions and none apply.

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Applicant's explanation for failing to disclose his delinquent accounts in the SF 86 is not credible. Having dropped out of a repayment plan a mere 16 months before he submitted the SF 86, and then not having made any payments on the \$20,000.00 in debt that remained owing, Applicant was certainly aware of his delinquent accounts. His explanation that he believed the creditors had "taken one on the jaw, so to say," hardly justifies his failure to disclose to the government he had debts that were more than 180 days delinquent in the preceding seven years or that those debts were more than 90 days delinquent when he submitted the SF 86.

Applicant's false answers severely undermine the ability to place trust and confidence in him and create a significant security concern. DC 2: *The deliberate omission, concealment, or falsification of relevant and material fact 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. I have considered all mitigating conditions and none apply.

Considering all relevant and material facts and circumstances present in this case, including the testimony and evidence provided by Applicant, 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 mitigate the security concerns present in this case. He has failed to overcome the case against him or satisfy his ultimate burden of persuasion. Guideline F and Guideline E are decided against Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline F: Against Applicant

Subparagraphs a-g: Against Applicant

SOR ¶ 2-Guideline E: Against Applicant

Subparagraphs a-b: 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. Applicant waived the 15-day notice requirement (Tr. pp. 14-15).
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
5. *Department of the 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. *Id* at 531.
12. *Egan*, Executive Order 10865, and the Directive.