

KEYWORD: Financial

DIGEST: The SOR alleges Applicant has approximately \$15,000.00 in debt owing to eight creditors that has either been charged off as bad debts or submitted for collection. He has done little to satisfy most of the creditors despite having the means to do so and knowing for almost two years that his financial problems created a security concern. Clearance is denied.

CASENO: 04-10824.h1

DATE: 02/13/2006

DATE: February 13, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-10824

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The SOR alleges Applicant has approximately \$15,000.00 in debt owing to eight creditors that has either been charged off as bad debts or submitted for collection. He has done little to satisfy most of the creditors despite having the means to do so and knowing for almost two years that his financial problems created a security concern. Clearance is denied.

STATEMENT OF THE CASE

On June 28, 2005, 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 a security concern under Guideline F (financial considerations). Applicant submitted a response to the SOR that was received by DOHA on July 29, 2005, admitted all SOR allegations except those contained in subparagraphs 1.c., 1.d. and 1.f., and requested a hearing.

The case was assigned to me on August 26, 2005. A notice of hearing was issued on October 3, 2005, scheduling the hearing for October 27, 2005. The hearing was conducted as scheduled. The government submitted six documentary exhibits that were marked as Government Exhibits (GE) 1-6, and admitted into the record without objection. Applicant testified and submitted six documentary exhibits that were marked as Applicant's Exhibits (AE) 1-6, and admitted into the record without objection. The transcript was received by DOHA on November 14, 2005.

PROCEDURAL MATTERS

Department Counsel moved at the hearing to amend the SOR by striking the last sentence of SOR subparagraphs 1.a. through 1.h., and by adding the words: *the Department of* before the word *Defense* in subparagraph 1.c. Those amendments were made on the face of the SOR without objection.

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 33 years old, and has been employed by a defense contractor as a senior security engineer since about April 2005. He was previously employed by a different defense contractor as an information assurance lead from March 2002 until April 2005, and by yet another different defense contractor as an information assurance employee from August 2001 until March 2002. He was unemployed from February 2001 until August 2001.

Applicant served on active duty in the U.S. Navy from June 1990 until February 2001 as an information systems technician. He attained the rank of petty officer first class (paygrade E-6) and was awarded an honorable discharge. Applicant possessed a top secret clearance while in the Navy and a secret clearance while employed by the various defense contractors. No prior action was taken to revoke or downgrade his security based upon adverse information.

Applicant was married in June 1993, and divorced in June 2001. He has no children or other dependents. Applicant candidly admits he and his wife were financially irresponsible during their marriage. He assumed responsibility for the marital debt at the time of their divorce, and otherwise had no continuing financial obligation to his ex-wife.

The SOR alleges eight debts, totaling approximately \$15,000.00, that have either been submitted for collection or charged off as bad debts. Applicant was questioned about his indebtedness in October 2003, and provided a statement to a special agent from the Defense Security Service in which he acknowledged his liability for most of the delinquent debts listed in the SOR. He stated at that time:

I will contact each of these creditors [sic] make arrangement to pay the accounts off. I have come to realize how important a good credit rating is and I want to make every effort to satisfy all of these accounts. (GE 5)

Rather than actually pay any of the accounts at that time, Applicant wrote to a credit reporting agency and requested an investigation of his liability for each account. (GE 2 and GE 3) The only accounts that have now been paid are the bad debt listed in subparagraph 1.c. in the amount of \$644.00 (AE 1 and AE 6), the bad debt listed in subparagraph 1.d. in the amount of \$200.00 (AE 6), and the collection account listed in subparagraph 1.f. in the amount of \$110.00 (AE 6). Each of those accounts was paid in July 2005, after issuance of the SOR. Applicant also submitted a series of E-mails that seem to indicate the debts listed in subparagraphs 1.b. and 1.e. have been combined into a single debt owing in the amount of \$3,306.84. (AE 5)

At the hearing Applicant submitted a spreadsheet (AE 3) and a document entitled *Bill History* which he testified disclosed his plans to satisfy the remaining delinquent indebtedness. He also testified he had made a number of recent payments on the accounts listed in those documents, although he failed to present any documentation in support of those claimed payments.

Applicant prepared a personal financial statement in October 2003 that disclosed a net remainder after payment of all his monthly expenses and debts of \$851.00. He testified about his current income and monthly expenses, including the payments he claims to be making on his delinquent debts, which discloses a net remainder of more than \$550.00.

Applicant's explanation for not having satisfied the debts since he was questioned about them in October 2003, revolves around a move he made to an area that had a higher cost of living than where he was living at the time he provided the statement. However, his move to the higher cost of living area did not occur until 14 months after he provided the statement, and he returned to the same area in which he was living when he provided the statement a mere six months after he had moved to the higher cost of living area.

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, with its respective DC and MC, is 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. (2) The government has the burden of proving controverted facts. (3) The burden of proof in a security clearance case is something less than a preponderance of evidence (4), although the government is required to present substantial evidence to meet its burden of proof. (5) "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence." (6) 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. (7) Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. (8)

No one has a right to a security clearance (9) and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." (10) Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security. (11)

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.

Applicant accumulated numerous delinquent accounts, totaling almost \$15,000.00, that were either submitted for collection or charged off as bad debts. He has had no one to support other than himself for the past four years. He has had more than sufficient discretionary income to satisfy those debts since at least October 2003. Until recently, he failed to do anything to rid himself of the debts except to make a feeble attempt to escape responsibility for them by challenging his liability for them through a credit reporting agency. The only efforts he made to satisfy any of the debts were payments that were made after issuance of the SOR. He testified about his plans to pay the debts in the future, and of having made recent payments on several of the accounts which remain outstanding, but failed to submit documentation in support of those alleged payments. Disqualifying Conditions (DC) 1: *A history of not meeting financial obligations*: and DC 3: *Inability or unwillingness to satisfy debts* apply in this case.

Applicant's financial problems arose from the irresponsible lifestyle he and his ex-wife chose to live. He has been divorced for more than four years and, although he assumed sole responsibility for the delinquent debt as a part of the divorce, has failed to take any reasonable and responsible action to get himself out of the financial hole he dug himself into during the marriage. His assertion that he will pay off the delinquent accounts in accordance with the payment plans he submitted rings hollow in view of his past statements and actions as regards these debts. I have considered all mitigating conditions and none apply.

Considering all relevant and material facts and circumstances present in this case, including 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 concern that exists in this case. He has not overcome the case against him nor satisfied his ultimate burden of persuasion. Guideline F is decided against Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline F: Against Applicant

Subparagraphs a-i: 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. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id* at 531.
11. *Egan*, Executive Order 10865, and the Directive.