

DATE: September 27, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-00775

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Sabrina E. Redd, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a relatively long history of financial irresponsibility that he has only recently begun to resolve. Clearance is denied.

STATEMENT OF THE CASE

On December 12, 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 an undated response to the SOR, admitted all SOR allegations, and requested a hearing.

The case was assigned to me on May 31, 2006. A notice of hearing was issued on June 13, 2006, scheduling the hearing for July 11, 2006. 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 five documentary exhibits that were marked as Applicant's Exhibits (AE) 1-5, and admitted into the record without objection. The transcript was received by DOHA on July 18, 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 31 years old, and has been employed by a defense contractor as an electronics technician since October 2001. He graduated from high school in 1995. He served on active duty with the U. S. Marine Corps from March 1996 until March 2000, attained the rank of corporal (paygrade E-4), and was awarded an honorable discharge. He was employed as a cable technician by two different companies outside the defense industry from March 2000 until October

2001. Applicant has been married since July 2005.

SOR subparagraph 1.a alleges an account that was charged off in the amount of \$884.00. The date of last activity reported in Applicant's September 2005 credit report (GE 4) for this account is December 2001. Applicant testified he contacted this creditor the month before the hearing but has not made any payment on the debt.

Subparagraph 1.b alleges an account that was charged off in the amount of \$7,209.00. The September 2005 credit report indicates Applicant disputed this account after resolution. The date of last activity is reported as June 2003. Applicant's testimony indicates the dispute about this account is that he believes he only owes the creditor \$5,000. He also testified he attempted to contact the creditor, but the creditor has gone out of business. However, he also claims to have sent this creditor \$1,000.00.

The creditor alleged in subparagraph 1.c agreed to accept a single payment of \$3,315.04 in full satisfaction of the \$11,033.00 debt that Applicant owed on the deficit after the sale of his repossessed automobile. Applicant paid the agreed upon settlement in January 2006. He fully satisfied the \$233.00 delinquent debt alleged in subparagraph 1.d in February 2006.

Applicant claims to have paid the debt alleged in subparagraph 1.e, but failed to present any proof of payment. He denies liability for the \$3,960.00 debt alleged in subparagraph 1.f and claims to not recognize this creditor. However, he filed a Chapter 13 bankruptcy petition in May 2003, listed this creditor therein with an identical balance owing, and stated the debt arose from a broken apartment lease. Further, he included a statement from this creditor as an attachment to his answers to interrogatories (GE 3) that indicates he made a payment to the creditor in the amount of \$100.00 in or about arch 2005.

The Chapter 13 bankruptcy petition Applicant filed in 2003 was dismissed on August 14, 2003. The Trustee's objection to confirmation of the proposed Chapter 13 plan was based upon the fact, among others, that the proposed plan would extend beyond 60 months. (GE 6)

Applicant attributes his financial problems, at least in part, to the breakup of his marital engagement in 2004. He indicated he and his fiancée made purchases in contemplation of marriage, including the furniture that is the subject of the debt alleged in subparagraph 1.b, that he could not afford after they went their separate ways. However, almost all of the debts listed in the SOR became delinquent before their separation. Applicant also testified the delinquent debts were caused by his financial irresponsibility.

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⁾

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Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.

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.

The SOR alleges more than \$24,000.00 in delinquent debt that Applicant failed to deal with for several years. He attempted to seek Chapter 13 bankruptcy protection in May 2003, only to have the petition dismissed because the proposed plan would take too long to complete. He thereafter did little or nothing to resolve any of the delinquent accounts until recently. 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-fiancee chose to live. Following the breakup of their relationship he failed to take meaningful action to resume a financially responsible lifestyle until very recently. While he has resolved several of the delinquent debts, others remain outstanding. 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-g: 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.