

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has at least \$40,000 in delinquent credit card debt that he did virtually nothing to resolve until filing for Chapter 13 bankruptcy protection in or about December 2005. His explanation for not disclosing the full extent of his outstanding delinquent debt in a security clearance application he submitted in September 2003 is not credible. He has failed to mitigate the security concerns caused by his financial considerations and personal conduct. Clearance is denied. CASENO: 05-02360.h1

DATE: 05/12/2006

DATE: May 12, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-02360

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Sabrina Redd, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has at least \$40,000 in delinquent credit card debt that he did virtually nothing to resolve until filing for Chapter 13 bankruptcy protection in or about December 2005. His explanation for not disclosing the full extent of his outstanding delinquent debt in a security clearance application he submitted in September 2003 is not credible. He has failed to mitigate the security concerns caused by his financial considerations and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On August 25, 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 a sworn answer to the SOR that was received by DOHA on September 28, 2005. He admitted the SOR allegations contained in subparagraphs 1.a through 1.e, denied the allegations contained in subparagraph 1.f, and 2.a through 2.c, and requested a hearing.

This case was assigned to me on January 20, 2006. A notice of hearing was issued on February 13, 2006, scheduling the hearing for February 28, 2006. The hearing was conducted as scheduled. The government called one witness and submitted five documentary exhibits that were marked as Government Exhibits (GE) 1-5, and admitted into the record without objection. Applicant testified and did not submit any documentary evidence. The transcript was received March 9, 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 54 years old, has a high school and trade school education, and has been employed by a government contractor since September 1980. He served on active duty in the U.S. Army from August 1969 until February 1972, attained the rank of either Sergeant or Specialist 5 (paygrade E-5), and received an honorable discharge. He has held a security clearance for approximately the past ten years.

Applicant was first married in April 1973, and widowed in August 1990. He has three children from that marriage, ages 33, 26 and 16. He remarried in February 1991, and that marriage ended in divorce in November 1997. He remarried again in December 1997, and has been separated from his third wife since about June 2001. Applicant does not have any children from either his second or third marriage.

Applicant has at least \$44,000 in delinquent credit card debt from at least three credit cards that were charged off as bad debts in March and May 2000.⁽²⁾ Although his testimony is somewhat confusing on the issue, Applicant does admit the credit cards were opened by him and that both he and his estranged wife made charges on the account. However, he denies knowing he was that far in debt, or, with the exception of the one account he listed in the security clearance application he submitted in September 2003, that the accounts were delinquent.

The SOR also alleges a collection account in the amount of \$116.00 that was placed for collection in May 2001. Applicant admitted he had an account with the creditor for pager service. However, he claims to have returned the pager to the company and denies owing anything on the account. He did not provide any explanation as to why the collection account appears on his credit report or testify about any action he has taken to have it removed.

A contract investigator interviewed Applicant about his delinquent accounts in or about June 2004. That investigator's employer's contract was later terminated based upon substandard performance. As a result of the termination of the contract, Applicant was re-questioned about his financial situation by a special agent from the Office of Personnel Management in or about February 2005. Despite being made aware through these interrogations that his finances created a security concern, Applicant did nothing to resolve the accounts until he filed for Chapter 13 bankruptcy protection in or about December 2005.

Applicant testified he is paying \$139.00 per week into a Chapter 13 plan, although from his testimony it does not appear the plan had actually been finalized at the time of the hearing. He did not offer any documentary evidence concerning the plan. Thus, it is unknown how much debt is included or how long it will take to satisfy the plan if Applicant makes all payments required under the plan.

Applicant denied deliberately failing to disclose the full extent of his delinquent debt in the security clearance application he submitted in September 2003. However, he testified he and his estranged wife obtained a legal separation sometime in 2001, and, under the terms of the separation, he was required to pay his debts, which included the delinquent credit cards he had opened and that are listed in the SOR. He then attempted to explain that, despite the court order, he remained unaware of the delinquent debts because the bills still went to his wife's residence and she never provided him with the bills or any other notices that pertained to the credit cards.

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 has more than \$44,000 in credit card debt that has been delinquent for more than five years. He did nothing to resolve the debt until he filed for Chapter 13 bankruptcy protection in or about December 2005. Disqualifying Conditions (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debt* apply in this case.

Applicant did nothing to resolve his delinquent accounts until he finally filed for Chapter 13 bankruptcy protection in or about December 2005, despite a court order having been issued in a marital separation agreement almost five years ago. He presented no documentation about the terms and conditions of the Chapter 13 bankruptcy, and testified it was not even going to be finalized until sometime after the hearing. There is no way of knowing based upon the record evidence if a plan has been approved, and absolutely no basis for predicting that Applicant will comply with the terms of a plan if one is approved. Accordingly, he is not entitled to application of Mitigating Condition (MC) 6: *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*. The remaining mitigating conditions clearly have no application to the facts of this case.

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.

Approximately two years before Applicant submitted an SF 86 in September 2003, a court order was entered that assigned the delinquent marital credit card debt listed in the SOR to him. Having listened to Applicant's testimony, and viewed his appearance and demeanor while testifying, I am satisfied he fully understood the questions contained in the SF 86 and that he was aware of the delinquent debt that was not listed. His explanations for failing to disclose the full extent of his delinquent accounts in the SF 86 are not credible. However, the record creates sufficient doubt about the content and reliability of the interview conducted in June 2004 to preclude a finding that Applicant deliberately provided false information to the contract investigator who conducted the interview.

Applicant's false and incomplete answers in the SF 86 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 facts 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 in this case. I have considered all potential mitigating conditions and none apply.

Considering all relevant and material facts and circumstances present in this case, including Applicant's testimony, 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 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-f: Against Applicant

SOR ¶ 2-Guideline E: Against Applicant

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: For 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. The debts listed in SOR subparagraphs 1.c and 1.d, totaling approximately \$45,000, appear from the credit reports admitted into evidence, most notably the entries in GE 2 relating to the Chapter 13 bankruptcy, and Applicant's testimony to be duplicates of the accounts listed in SOR subparagraphs 1.b and 1.d. Accordingly, they are not included in the total debt I find to be delinquent.
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.