

DATE: October 31, 2006

---

In re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 05-02415

## **DECISION OF ADMINISTRATIVE JUDGE**

**HENRY LAZZARO**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Ray T. Blank, Jr., Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant has numerous delinquent debts he failed to disclose in a security clearance application he submitted. Clearance is denied.

### **STATEMENT OF THE CASE**

On October 31, 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 security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). Applicant submitted a response to the SOR that was received by DOHA on November 18, 2005. He admitted the allegations contained in SOR subparagraphs 1.b and 1.e, denied all other allegations, and requested a clearance decision based on the written record without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on June 27, 2006, that was mailed to Applicant on June 29, 2006. Applicant submitted a response to the FORM, dated July 15, 2006, that was forwarded to Department Counsel on August 9, 2006. Department Counsel indicated he did not object to the admissibility of the additional materials submitted by Applicant. The case was then assigned to another administrative judge on August 18, 2006, and reassigned to me October 31, 2006, due to caseload considerations.

### **FINDINGS OF FACT**

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

Applicant is 30 years old, and has been married since July 2004. He was previously married from June 1995 until he was divorced sometime in 2002. Applicant did not indicate in the security clearance application he submitted (SF 86) in

August 2003, in either of the statements provided to investigators from the Defense Security Service (DSS), in his answer to the SOR (answer), or in his response to the FORM (response) that he has any children from either of these marriages.

Applicant served on active duty in the U.S. Navy as a mess management specialist from July 1994 until March 2002. He was employed as logistics technician by the Navy from February 2002 until June 2002, as a customs broker by a civilian employer from June 2002 until February 2003, and by a defense contractor from February 2003 until an unknown date. The credit report he submitted with his response to the FORM indicates he has been employed in the logistics field by a civilian employer since April 2004. Applicant attended a technical college from June 1999 until May 2000, but did not earn a degree or diploma from that institution.

SOR subparagraph 1.a alleges a charged off account in the amount of \$802.00. In his answer, Applicant claimed this debt belonged to his ex-wife, she agreed to assume responsibility for it in their "informal divorce agreement," and he identified this debt as a duplicate of the debt alleged in SOR subparagraph 1.j. In his response he stated he was continuing to negotiate with the creditor to have the account deleted from his credit report. This debt appears in Applicant's July 2006 credit report under the name of the creditor listed in SOR subparagraph 1.j as a collection account with a balance owing in the amount of \$956.00, and as having been updated in June 2006.

SOR subparagraph 1.b alleges a collection account in the amount of \$69.00. In his answer, Applicant claimed this account was paid in full. In his response he again claimed the account is paid in full and that he submitted an investigation in July 2006 to have it listed as a paid account in his credit report. Applicant's July 2006 credit report indicates this account remains as an open collection account, having been placed for collection in November 2004, with a balance owing in the amount of \$69.00, and having been updated in August 2005.

SOR subparagraph 1.c alleges a collection account in the amount of \$414.00. In his answer, Applicant claimed this account belonged to his ex-wife and she agreed to assume responsibility for it in their "informal divorce agreement." In his response, Applicant stated he was continuing to negotiate with the creditor to have the account deleted. Applicant's July 2006 credit report discloses this account remains listed as a collection account with a balance owing in the amount of \$414.00, that the account information is disputed by the consumer, and the account was verified in June 2006.

SOR subparagraph 1.d alleges a collection account in the amount of \$76.00. In his answer, Applicant claimed this account belonged to his ex-wife and is a duplicate of the account listed in SOR subparagraph 1.c. Although the "list" and "rptd" dates and letters "PCS" after the creditors' names are identical in Applicant's August 2005 credit report for this account and the account listed in SOR subparagraph 1.c, there is no other information that would allow for a conclusion they are the same account. In his response, Applicant indicated this account has been deleted. This account does not appear in Applicant's July 2006 credit report.

SOR subparagraph 1.e alleges a collection account in the amount of \$82.00. In his answer, Applicant claimed this account was paid in full and he was working with the creditor to have it cleared from his credit report. In his response, Applicant again claimed the account was paid in full and that he had submitted an investigation in July 2006 to have it updated and reported as paid in full. Applicant's July 2006 credit report lists this account as an open collection account, having been placed for collection in May 2005, with a balance owing in the amount of \$82.00, and having been updated in July 2005.

SOR subparagraphs 1.f, 1.g, and 1.h are all collection accounts owing to the same creditor with a total amount owing of \$3,210.00. In a statement he provided to a DSS special agent in February 2005, Applicant claimed the two smaller accounts apparently belonged to his ex-wife. He made no such claim about the account that is now owing in the amount of \$1,983.00. In his answer, Applicant claimed all three accounts belonged to his ex-wife and she agreed to assume responsibility for them in their "informal divorce agreement." In his response, Applicant indicated he had been deleted as the account holder on all three accounts. Only one of the three accounts, the one listed in SOR subparagraph 1.h, owing in the amount of \$681.00, appears in Applicant's July 2006 credit report. That report lists the account as a charged off bad debt that was opened in February 2000, closed in August 2002, and updated in October 2005.

SOR subparagraph 1.i alleges a collection account in the amount of \$13,520.00. In a statement he provided to a DSS special agent in February 2005, Applicant stated he and the agent were unsuccessful in their attempt to contact the

creditor to determine an appropriate settlement, but that he would continue trying. In his answer, Applicant claimed this account belonged to his ex-wife and she agreed to assume responsibility for it in their "informal divorce agreement." In his response, Applicant claimed he was continuing to negotiate with the creditor to be deleted from the account. Applicant's July 2006 credit report lists this account as a charged off bad debt that was opened in August 2003, closed in February 2003, with a balance owing in the amount of \$13,520.00, and having been updated in July 2006.

Applicant submitted an SF 86 in August 2003, in which he answered "No" to questions asking if he had any property repossessed within the previous seven years, was currently more than 90 days delinquent on any debts or if he had been more than 180 days delinquent on any debts in the preceding seven years. In the DSS statement he provided in February 2005, Applicant explained he did not list the debts alleged in the SOR because he didn't have a credit report available when he completed the SF 86, and:

"I knew the DSS would obtain a current CBR which would report all of my delinquent accounts, and I would be interviewed about them. So rather than try to guess at the information I opted [sic] not list any adverse credit."

In his answer and response, Applicant claimed he had not had any property repossessed and was unaware of the financial delinquencies because they were the result of his ex-wife not fulfilling her part of their divorce agreement.

Applicant's January 2005 credit report lists a mortgage foreclosure as a repossession with a date of last activity occurring in January 2003 and a balance owing in the amount of \$67,178.00. In a statement he provided to a DSS investigator in May 2004, Applicant acknowledged the foreclosure and stated it was due to his transferring jobs to a different state and being unable to continue paying the mortgage and also rent on an apartment. Applicant's SF 86 discloses that move occurred in February 2002. The January 2005 credit report also discloses the date of last activity on most of the accounts that are alleged in the SOR occurred between mid-2002 and early 2003.

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

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

### **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.

As alleged in the SOR and evidenced by Applicant's credit reports, Applicant allowed numerous accounts, totaling more than \$19,000.00, to be either charged off as a bad debt or submitted for collection. Most of those accounts remain delinquent. Disqualifying Conditions (DC) 1: *A history of not meeting financial obligations* and DC 3: *Inability or unwillingness to satisfy debts* apply.

Applicant claims to have paid two of the accounts in full. However, both still appear in his July 2006 credit report. Further, he submitted no proof of payment of those accounts, even after he received the FORM in which Department Counsel pointed out Applicant's failure to submit evidence of a good faith effort to repay creditors or otherwise resolve debts.

Applicant claims most of the accounts belong to his ex-wife and she agreed to assume sole responsibility for them in their "informal divorce agreement." Whatever an informal divorce agreement may be, it is noteworthy that Applicant failed to submit any evidence in support of that assertion, including a copy of a formal divorce decree or formal separation agreement. Further calling into question Applicant's credibility about the status of his debts are the inconsistent statements he made about several of the accounts. I have considered all Guideline F 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.

Applicant deliberately provided false answers to questions inquiring about debts that were more than 90 and 180 days delinquent in the SF 86 he submitted. In the statement he provided in February 2005, Applicant attributed the incorrect answers to his decision to not list any debts because he didn't have a credit report available to him, knew DSS would obtain a current credit report, and therefore opted not to provide any information rather than guess about his delinquent accounts. In his answer and response, Applicant attributed the omission to his being unaware that his ex-wife was not living up to her part of their informal divorce agreement. Considering their contradictory content and inherent improbability, neither of Applicant's explanations is credible.

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. I have considered all mitigating conditions under Guideline E, and none apply. However, it is unclear that Applicant should have been expected to provide information about his mortgage foreclosure in response to a question inquiring about repossessions. SOR subparagraph 2.a is decided for Applicant.

The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Having done so, I conclude that Applicant has failed to present sufficient evidence of refutation, extenuation, and mitigation to overcome the case against him. Accordingly, Guideline F and Guideline E are decided against Applicant.

### **FORMAL FINDINGS**

SOR ¶ 1-Guideline F: Against Applicant

Subparagraphs a-j: Against Applicant

SOR ¶ 2-Guideline E: Against Applicant

Subparagraph a: For Applicant

Subparagraphs b-c: 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.