

DATE: November 25, 2005

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-03470

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Richard Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 52-year-old analyst/engineer who has worked for the same federal contractor since 2003, but worked for federal contractors in the past, and held a security clearance for 16 years. Applicant had a series of unfortunate events intervene in his life, to include over two years of unemployment, divorce, injury, accident, and identity theft. Applicant's financial situation was fragile, but he was unaware certain debts had not been paid until his security clearance became an issue. Applicant has aggressively either resolved his delinquent debts, has payment plans, or his insurance company is addressing them with regard to his medical expenses. Applicant's debts became delinquent subsequent to him filling out his security clearance application. He has successfully mitigated Guidelines F and E. Clearance is granted.

STATEMENT OF CASE

On July 26, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR, which are in essence the administrative complaint, alleged a security concern under Guideline F, financial considerations, and Guideline E, personal conduct. In a sworn statement, dated August 18, 2005, Applicant denied all the allegations in the SOR, and requested a hearing.

The case was assigned to me on September 9, 2005. A notice of hearing was issued on August 29, 2005, scheduling the hearing for October 24, 2005. The hearing was conducted as scheduled. The government submitted five exhibits that were marked as Government Exhibits (GE) 1-5. The exhibits were admitted without objection. Applicant testified on his own behalf, and submitted eleven exhibits that were marked as Applicant's Exhibits (AE) A-K. The exhibits were admitted without objection. Department Counsel moved to amend SOR allegations 2.a. and 2.b., substituting the date December 23, 2002 for April 30, 2003. Applicant did not object and the motion was granted. The transcript was received on November 9, 2005.

FINDINGS OF FACT

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

Applicant is a 52-year-old analyst/engineer who has worked for the same federal contractor since 2003. Applicant has been employed in the past by other federal contractors and held a security clearance from 1984 to 2000. Applicant was laid off from a job in 2000, and his security clearance was discontinued. Due to the length of time in between federal contracting jobs Applicant was required to reapply for a clearance. Applicant is divorced and the father of a grown daughter.

In 2000, Applicant was laid off by his employer of 17 years. Applicant remained out of work for over two years. During this same period Applicant had his identity stolen. Applicant was directed to contact the Federal Bureau of Investigation, which he did. The culprits were later caught. Applicant was able to resolve most of the inaccuracies resulting from this incident except for one that is alleged in SOR 1.l. Although he has his own current account with this creditor, the one alleged is not his debt.

In 2001, after a period of separation, Applicant and his wife of twenty-three years divorced. They mutually agreed that she would receive the majority of the settlement from the sale of their house and Applicant would receive a small portion. It was also agreed Applicant would not pay alimony, but would be responsible for paying for their daughter's college education, which he did.

Applicant decided to move to seek better employment opportunities. He was hired by a small company. His job was commission based. While working he was injured on the job and required surgery. He received worker's compensation during this time, but because he had only worked for them for a short period of time and the job was commission based, he received only \$200.00 a week. Because Applicant required lengthy rehabilitation and was unable to work, he was laid off. While recuperating Applicant had a medical complication attributed to his injury. His employer disputed it was work-related. Applicant was required to pay the medical expenses associated with the complication through his private insurer. Applicant also was involved in a car accident during this time period, which resulted in injuries that required medical care. SOR allegations 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.i., 1.j., all deal with medical expenses associated with all of Applicant's medical issues. SOR allegation 1.h. has been paid.⁽²⁾ Applicant was unaware that there were issues with his medical bills as he had assumed the insurance company paid the bills. Applicant's private insurer disputed some expenses charged by the medical facilities. One of the medical facilities turned the debt over to a collection agency prior to resolving it with the insurance company. Applicant was unaware of this until presented with the allegations of his delinquent debts in the SOR. Applicant has paid some of the medical debts,⁽³⁾ however because the allegations only list the creditor generically (i.e. medical) it is too difficult to marry up the allegations with the specific payments he has made. Instead, Applicant used a current credit report to resolve each delinquent medical debt listed. The medical debts that are not yet paid, are being resolved by either the Applicant's insurance company or Applicant is making payments.

Applicant disputes SOR allegation 1.k. as having been paid. This debt is for a rental car that Applicant was billed twice for, once by the credit card company and once by the rental car company. Applicant paid the original debt, disputed the issue with the credit card company and they have removed it from his credit report. This debt is resolved.

Applicant completed a security clearance application on December 23, 2002.⁽⁴⁾ He subsequently was offered a new job, and was required to relocate. He did so on short notice. He advised the post office of his forwarding address. All of his mail did not get forwarded, including notices for delinquent debts. The allegations in SOR 1.a-1.-1.n, except 1.j., allege the subject debts became delinquent after Applicant filled out his SCA. The debts were not delinquent at the time he filled out the SCA. Government counsel conceded this point.

Applicant disputes SOR allegation 1.i. as having been paid. It is no longer listed on his credit report. Applicant disputes SOR allegation 1.m. as being delinquent. Applicant admits the debt, but claims the credit card company incorrectly charged him interest when he was supposed to have the account interest-free for a year. Applicant has resolved the issue and is current on the payments.⁽⁵⁾ Applicant claims he paid the debt in SOR allegation 1.n., but it has not yet cleared the credit report. Applicant had a receipt for the payment, but mistakenly sent the original to the creditor and does not have a copy.⁽⁶⁾

When Applicant learned of the delinquent debts on the SOR he ordered a current credit report and began to address each debt that was listed on it. When Applicant became aware that his insurance company had not paid his medical bills, he took action to have them resolved. Applicant was aware that his finances were fragile during the time of his unemployment and later after getting a job. In 2003, when Applicant started a new job he was not fully aware of how often he would be traveling. It turned out he is on the road over 50% of the time. Often he does not receive reimbursement for his travel expenses before the invoices arrive, thereby causing him to pay for the expenses with his own money and wait to be repaid. Applicant is committed to paying all of his bills.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline F, pertaining to financial considerations, and Guideline E, person conduct, with their respective DC and MC, apply in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. 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.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁷⁾ The government has the burden of proving controverted facts.⁽⁸⁾ The burden of proof is something less than a preponderance of evidence.⁽⁹⁾ 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.⁽¹⁰⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹¹⁾

No one has a right to a security clearance⁽¹²⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹³⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹⁴⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹⁵⁾ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of all the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline F- Financial Considerations-a security concern exists when a person has significant delinquent 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.

Guideline E-Personal Conduct is a security concern when an individual's conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a prima facie case for disqualification under Guideline F. The government failed to establish a prima facie case for disqualification under Guideline E.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*), apply in this case. Applicant has debts that he did not timely pay. The debts date from approximately ay 2002 to the present.

I considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC E2.A6.1.3.3 (*The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). I conclude they both apply.

Applicant lost his job, was unemployed for over two years, was separated and then divorced, paid for his daughters college, had his identity stolen, and had a job related injury, all within a period of three years. Each issue created financial issues. Applicant managed to stay solvent, however after he was injured on the job, and had a medical complication, there was a dispute regarding payment with his employer. Applicant eventually had his private insurer cover the expenses. He also had a car accident, that resulted in injuries that required medical care. Applicant's intervening move also caused him not to receive all his mail. FC MC E2.A6.1.3.3 applies. Applicant was unaware until he received the SOR that there were issues with his finances, especially his medical bills. Once he became aware he worked with his insurance company to resolve the debts. Some are paid, some are being resolved, and some are in a payment plan. Applicant ordered a credit report and set out to resolve all of his delinquent debts. He had debts removed from the report that were inaccurate or not his. One of the debts was left over from when his identity was stolen. Applicant has in good faith either resolved his delinquent debts, or is engaged in resolving them through his insurance company, or is resolving them through payment plans.

I have considered all the evidence regarding Applicant's personal conduct when filling out information on his SCA. SOR allegations 2.a. and 2.b. were amended to change the date Applicant signed his SCA, which was December 23, 2002. All but SOR 1.j. allege debts that became delinquent after the date he signed the SCA. Therefore, Applicant did not falsify material facts on his SCA because the facts did not exist at the time he signed the document. The government conceded this issue. I find for Applicant regarding Guideline E.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I find Applicant has successfully mitigated the security concerns raised by the financial consideration and personal conduct concerns. Therefore, I am persuaded by the totality of the evidence in this case, that it is clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline F and Guideline E are decided for Applicant.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1 Financial Considerations (Guideline F) FOR THE APPLICANT

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

Subparagraph 1.f. For the Applicant

Subparagraph 1.g. For the Applicant

Subparagraph 1.h. For the Applicant

Subparagraph 1.i. For the Applicant

Subparagraph 1.j. For the Applicant

Subparagraph 1.k. For the Applicant

Subparagraph 1.l. For the Applicant

Subparagraph 1.m. For the Applicant

Subparagraph 1.n. For the Applicant

Paragraph 2 Personal Conduct (Guideline E) FOR THE APPLICANT

Subparagraph 2.a. For the Applicant

Subparagraph 2.b. For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

2. AE E.

3. AE C through H.

4. GE 2.

5. GE 5.

6. Transcript (Tr.) at 24-26.

7. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
8. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
9. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
10. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, ¶ E3.1.15.
11. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15
12. *Egan*, 484 U.S. at 531.
13. *Id.*
14. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
15. Executive Order 10865 § 7.