

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has mitigated the financial and personal conduct security concerns that existed in this case. Clearance is granted.

CASENO: 05-03539.h1

DATE: 05/25/2006

DATE: May 25, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-03539

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Sabrina Redd, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has mitigated the financial and personal conduct security concerns that existed in this case. Clearance is granted.

STATEMENT OF THE CASE

On July 29, 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 (financial considerations) and Guideline E (personal conduct). Applicant submitted a sworn answer to the SOR, dated August 22, 2005, admitted the Guideline F allegations, denied the Guideline E allegations, ⁽²⁾ and requested a hearing.

This case was assigned to me on January 19, 2006. A notice of hearing was issued on February 13, 2006, scheduling the hearing for February 28, 2006. ⁽³⁾ 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 eight documentary exhibits that were marked as Applicant's Exhibits (AE) 1-8, and admitted into the record without objection. The transcript was received on March 8, 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 46 years old and has been employed as a mechanic by a defense contractor since March 2004. He was steadily employed by a different company from 1987 until June 2000, when he was laid off. He remained unemployed until about October 2002, but did attend school and earn a certificate as an airframe and power plant mechanic during those years. From about October 2002, until he was hired by his present employer, Applicant worked sporadically on contract assignments at various locations around the country. He has never held a security clearance.

Applicant escaped from South Viet Nam with two of his brothers when that country fell to Communist North Viet Nam in 1975. He eventually made his way to the United States and became a U.S. citizen in September 1986. The remainder of his immediate family has since immigrated to the United States. Applicant married a Vietnamese immigrant in July 1989, and that marriage ended in divorce in June 1999. He has a nine-year-old son from the marriage. While Applicant is able to read, write, and understand English, it is obvious from his testimony that English is his second language.

SOR subparagraph 1.a lists a collection account owing in the amount of \$12,506.00. The information contained in GE 4-6 disclose this account was opened in August 1998, listed as having been charged off at least as of June 2003, and was paid off in September 2005. The account had a \$0 balance as of January 2006. Applicant explained the account became delinquent during the time he was unemployed and/or underemployed.

SOR subparagraph 1.b lists a collection account owing in the amount of \$15,177.00. GE 4-6 disclose this account was listed as having been submitted for collection at least as of June 2003, and was transferred to the creditor listed in the SOR at least as of June 2005. The earliest listed date for any activity related to this account is the date of last activity being December 2000. Applicant has consistently and credibly asserted this account was opened by his ex-wife misusing his name and social security number without his knowledge after their divorce.

Applicant failed to list the delinquent accounts listed in the SOR in a security clearance application (SF 86) he submitted in May 2003. He credibly explained he was unaware of the existence of the account listed in subparagraph 1.b when he submitted the SF 86. Regarding the account listed in subparagraph 1.a, Applicant indicated in his response to the SOR and in a statement he provided in February 2005 (GE 2) that he had not reviewed a credit report before submitting the SF 86 and was unaware of the delinquency. He testified he attempted to make some payments on this account while unemployed/underemployed but got behind sometime between 2002 and 2003 (Tr. p. 36). In attempting to explain why he did not list the account in the SF 86, Applicant testified as follows:

JUDGE LAZZARO: The debt that you paid off, how was it that you didn't know it was delinquent when you filed your security clearance application?

THE WITNESS: I do not completely understanding when I fill out - -

JUDGE LAZZARO: Say that over again.

THE WITNESS: I am not clearly understanding when I fill out the Form 86 at the time I fill out the Form 86, and I do not have my report, credit report at the time I fill out the form.

JUDGE LAZZARO: What didn't you understand about the question?

THE WITNESS: I do not understand the delinquent 180, and 90 because I never got that kind of question in my mind all my life?

JUDGE LAZZARO: What did you think it was asking about?

THE WITNESS: I think it ask me about am I short on my money at this time, or I got understanding what I owe. (Tr. pp. 43-44)

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.⁽⁴⁾ The government has the burden of proving controverted facts.⁽⁵⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence⁽⁶⁾, although the government is required to present substantial evidence to meet its burden of proof.⁽⁷⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁸⁾ 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.⁽⁹⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁰⁾

No one has a right to a security clearance⁽¹¹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹²⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹³⁾

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 acts to generate funds.

Applicant has consistently and credibly explained that the account listed in subparagraph 1.b was opened by his ex-wife after their divorce without his knowledge. However, he was responsible for allowing the account listed in SOR subparagraph 1.a to become delinquent and ultimately submitted for collection while he was unemployed and/or underemployed. Disqualifying Conditions (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debt* apply.

Applicant has satisfied the sole delinquent account properly chargeable to him. Mitigating Conditions (MC) 3: *The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment . . .)*; and MC 6: *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts 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. 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.

Applicant's explanations for not disclosing the delinquent account properly chargeable to him in the SF 86 he submitted are credible. In making that determination, I have carefully considered his appearance and demeanor while testifying, the substance of his testimony and statements, the fact that English is clearly his second language, and his obvious lack of sophistication in such matters. Applicant did not deliberately provide false information or fail to disclose accurate information when he submitted the SF 86. No disqualifying condition applies under Guideline E.

Considering all relevant and material facts and circumstances present in this case, including the testimony and evidence provided by Applicant, 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 mitigated the security concerns in this case. He has overcome the case against him and satisfied his ultimate burden of persuasion. Guideline F and Guideline E are decided for Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline F: For Applicant

Subparagraph a: For Applicant

Subparagraph b: For Applicant

SOR ¶ 2-Guideline E: For Applicant

Subparagraph a: For Applicant

Subparagraph b: For 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.

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. Although Applicant wrote "I admit" next to each Guideline E allegation in his response, it is clear from the explanations he provided in the accompanying letter that he was denying the gravamen of the allegation, i.e., that he "deliberately" provided false information.
3. Applicant received actual notice of the hearing date more than 15 days in advance of the hearing and was prepared to proceed on the hearing date despite not having received written notice more than 15 days in advance of the hearing (Tr. pp. 14-16).
4. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
5. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
6. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
7. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
8. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
9. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
10. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.
11. *Egan*, 484 U.S. at 528, 531.
12. *Id* at 531.
13. *Egan*, Executive Order 10865, and the Directive.