

DATE: July 27, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-12303

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to present sufficient information to explain, extenuate, or mitigate the security concern arising from his history of not meeting financial obligations and inability to satisfy debts. His status as a debtor a few months into a Chapter 13 repayment plan is insufficient to establish a track record of prudent and responsible financial management that is consistent with holding a security clearance. Clearance is denied.

STATEMENT OF THE CASE

Applicant is challenging the Defense Department's initial decision to deny or revoke his security clearance. Acting under the relevant Executive Order and DoD Directive, [\(1\)](#) on January 19, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline F for financial considerations. Applicant replied to the SOR on March 10, 2006, and requested a hearing. The case was assigned to me on April 5, 2006. A notice of hearing was issued scheduling the hearing for May 25, 2006. Applicant appeared without counsel and the hearing took place as scheduled. DOHA received the transcript on June 2, 2006.

The record was kept open for 45 days until July 10, 2006, to allow Applicant to submit additional documentary evidence about his case, as detailed in a letter, dated May 26, 2006. [\(2\)](#) Additional matters were received as follows: Exhibit E (attorney letter); Exhibit F (proof of claim bankruptcy record, dated February 2002); Exhibit G (final order of support, dated July 1997); and Exhibit H (Chapter 13 bankruptcy summary of schedules and the individual schedules, dated January 2006). Without objections, the additional matters are admitted.

FINDINGS OF FACT

Applicant's written reply to the SOR allegations was mixed. In addition, after considering the record evidence as a whole, I make the following findings of fact.

Applicant is a 44-year-old man who is employed as a technical support senior associate for a large company engaged in defense contracting. He has worked for this company since September 2002. His job as a technician involves working on radars. He is seeking to retain a secret-level security clearance. His annual salary is about \$40,000. Applicant married in 1983 and divorced in 1992. He married his current wife in May 2000.

In September 1999, Applicant retired from 20-plus years of active duty service in the U.S. Navy. At retirement, his rank was petty officer first class, his rating was electronics technician first class, and his pay grade was E-6. He receives retirement pay of about \$1,100 monthly. He held a security clearance for many years of his military service.

Applicant has a history of financial problems.⁽³⁾ The SOR alleges a Chapter 13 bankruptcy case that was dismissed for nonpayment in 2004 and 17 delinquent accounts for a total of more than \$59,000. Three of the delinquent debts are owed to a state social services department for a total of about \$36,500.

Applicant traces the start of his financial problems back to his last assignment in the Navy when the Navy concluded he was overpaid allowances and withheld pay as a result. It took some time to clear up this problem, causing a financial hardship.

After retiring from the Navy in 1999, he discovered he had poor credit when trying to buy a house. It was suggested to him that he pursue bankruptcy as a solution. In about March 2001, Applicant filed a Chapter 13 petition in bankruptcy court. Sometime thereafter, the court confirmed a repayment plan and Applicant started making monthly payments. In September 2002, Applicant moved to his current state of residence when he accepted his current job. In October 2004, the bankruptcy court dismissed Applicant's Chapter 13 case based on failure to timely pay the bankruptcy trustee one or more payments as required by the plan. Applicant attempted to prevent this from happening by sending in money to get his payments up-to-date,⁽⁴⁾ but apparently his efforts were insufficient or untimely or otherwise deficient.

Applicant sought advice on how to proceed in light of the dismissal and felt he was getting the run around, and he did not want to file a Chapter 7 bankruptcy petition.⁽⁵⁾ Dissatisfied with the experience, he left it alone until about January 31, 2004 (after the SOR was issued), when he filed another Chapter 13 bankruptcy petition.⁽⁶⁾ The bankruptcy records Applicant submitted after the hearing are incomplete, consisting of only the summary of schedules and the individual schedules; it does not include the Chapter 13 petition or the court order, if any, confirming a repayment plan. Applicant says the repayment plan is for 36 months and that he is paying \$83 every two weeks by payroll deduction, but he submitted no documentary evidence of proof-of-payment.

The summary of schedules submitted by Applicant shows total assets of \$16,515 and total liabilities of \$66,336. The liabilities are broken down as follows: (1) \$12,990 for creditors holding secured claims (the sole claim is an abandoned vacation timeshare); (2) \$16,944 for creditors holding unsecured priority claims (of the three claims here, one is for \$4,400 for child support in another state not alleged in the SOR); and (3) \$36,402 for unsecured debt. The Schedule F for unsecured debt is 16-pages long and it lists approximately 77 claims, which includes, for example, the following: (1) a \$3,269 debt owed to a fitness company; (2) a \$976 debt owed to a telephone company; and (3) a \$557 debt owed to a utility company. His liabilities do not include a home mortgage as he rents his place of residence.

In addition, Schedules I and J list Applicant's current income and expenditures. His wife is not employed outside the home, and the current total monthly gross income is about \$4,804 with a total monthly income of \$3,872 after deductions. Total monthly expenditures are listed at \$3,694, which produces a monthly net income of about \$177.

The three largest delinquent debts alleged in the SOR are owed to a state social services department. These debts are based on Applicant's wife's children from a previous relationship, as Applicant is not the natural or adoptive father of these children. Likewise, it is doubtful that Applicant has any individual liability to the state social services department, because the alleged arrearage is for the support his wife's minor children.⁽⁷⁾ Applicant retained legal counsel to investigate and determine what amount is owed by his wife to the state social services department, and that matter is pending resolution.⁽⁸⁾

Applicant was continuously employed for 20-plus years until his retirement from the Navy in September 1999.

Thereafter, he has been continuously employed as a technician since January 2000, except for a three-month period in 2002.⁽⁹⁾ He was working for his current employer when his first Chapter 13 case was dismissed in October 2004.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on 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. A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.⁽¹⁰⁾ Instead, it is a determination that the applicant has not met the strict guidelines the President has established for granting a clearance.

BURDEN OF PROOF

The only 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.⁽¹¹⁾ There is no presumption in favor of granting or continuing access to classified information.⁽¹²⁾ The government has the burden of presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted.⁽¹³⁾ An applicant is responsible for presenting witnesses and other evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.⁽¹⁴⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁵⁾

No one has a right to a security clearance.⁽¹⁶⁾ And as noted by the Supreme Court in *Department of Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁷⁾ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

CONCLUSIONS

Under Guideline F,⁽¹⁸⁾ a security concern typically exists for two different types of situations--significant unpaid debts or unexplained affluence. 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, negligent, or careless in properly handling and safeguarding classified information.

Here, based on the record evidence as a whole, the government established its case under Guideline F. As discussed above, Applicant has a history of not meeting financial obligations as well as inability or unwillingness to pay one's just debts.⁽¹⁹⁾ Given Applicant's 2006 Chapter 13 bankruptcy case, I have not addressed each delinquent debt alleged in the SOR. Although it's quite unlikely that he has any individual liability for the debts owed to the state social services department--and favorable formal findings will be entered on these allegations--his overall financial situation is not a picture of stability. His ongoing Chapter 13 bankruptcy case is the most recent evidence on this point, as it lists \$66,336 in total liabilities, with more than \$36,000 in unsecured debt, compared with \$16,515 in total assets.

I reviewed the six mitigating conditions under the guideline and conclude none apply. In particular, I conclude that Applicant has not made a good-faith effort⁽²⁰⁾ to repay or otherwise resolve his financial problems. Assuming he has had a confirmed Chapter 13 repayment plan in place for the last few months, it is too soon to tell if he will be able to stay on course and fulfill the plan, something he failed to do in 2004. He has a thin margin of \$177 in monthly net income, and it would not take much of a bump in the road, much less a major event, to throw him off course. To sum up, Applicant's status as a debtor a few months into a Chapter 13 repayment plan is insufficient to establish a track record of prudent and responsible financial management that is consistent with holding a security clearance. Accordingly, Guideline F is decided against Applicant.

To conclude, Applicant has not met his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I have considered the whole-person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

SOR ¶ 1-Guideline F: Against Applicant

Subparagraphs a-o: Against Applicant

Subparagraphs p-r: 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.

Michael H. Leonard

Administrative Judge

1. Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended (Directive).
2. Appellate Exhibit I.
3. Exhibits 2, 3, 4, 5, 6, and 7.
4. Exhibit A.
5. R. 33.
6. Exhibits H.
7. Exhibits E, F, and G.
8. Exhibit E.
9. Exhibit 1.
10. Executive Order 10865, § 7.
11. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
12. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
13. Directive, Enclosure 3, Item E3.1.14.
14. Directive, Enclosure 3, Item E3.1.15.
15. Directive, Enclosure 3, Item E3.1.15.
16. *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) ("It is likewise plain that there is no

'right' to a security clearance, so that full-scale due process standards do not apply to cases such as Duane's.") (citations omitted).

17. 484 U.S. at 531.

18. Directive, Enclosure 2, Attachment 6.

19. Item E2.A6.1.2.1. A history of not meeting financial obligations; and Item E2.A6.1.2. 3. Inability or unwillingness to satisfy debts.

20. Item E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.