

DATE: September 27, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-12568

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

J. Theodore Hammer, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to present sufficient evidence to explain, extenuate, or mitigate the security concern arising from his history of financial irresponsibility. He currently has more than \$35,000 in delinquent debt with no plans in place to pay or otherwise resolve his indebtedness. Concerning the personal conduct matters, however, the record evidence is not sufficient to prove that Applicant deliberately provided false answers to three questions about his financial record on a security-clearance application. Clearance is denied.

STATEMENT OF THE CASE

Applicant is challenging the Defense Department's preliminary decision to deny or revoke his security clearance. Acting under the relevant Executive Order and DoD Directive, [\(1\)](#) on April 21, 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 security concerns under Guideline F for financial considerations and Guideline E for personal conduct (falsification). Applicant replied to the SOR on May 12, 2006, and requested a hearing. The case was assigned to me June 23, 2006. Thereafter, a notice of hearing was issued scheduling the hearing for August 7, 2006. Applicant appeared without counsel and the hearing took place as scheduled. DOHA received the transcript August 18, 2006.

FINDINGS OF FACT

In his written reply to the SOR, Applicant admitted the SOR allegations except for subparagraph 1.a, which he asserts was a judgment paid through a garnishment. His admissions are incorporated herein as findings of fact. In addition, after considering the record evidence as a whole, I make the following findings of fact.

1. Applicant is a 34-year-old married man who is seeking a security clearance for his employment with a company engaged in defense contracting. He works in the shipbuilding industry as an insulator. He earns an hourly wage, and he

estimates his gross income for 2005 was about \$37,000. He has worked for this company since about June 2002.

2. Applicant is married to his second wife who is not employed outside the home. They have two children (which includes one stepchild), ages 15 and 5. Both children reside in Applicant's home.

3. Applicant has a history of financial problems dating back to his service as an enlisted man in the U.S. Navy from July 1994 to September 2000. He and his first wife were married in December 1996 and divorced in June 1998. During this brief marriage, they started living beyond their means. This continued when Applicant married his second wife in December 1999. He was administratively separated, with a general discharge, during his second enlistment in September 2000 due to financial problems.

4. The SOR concerns approximately 40 delinquent debts for a total of more than \$35,000. The debts consist of five unpaid judgments as well as charged-off, collection, or past-due accounts. In his Answer, Applicant admitted the debts except he claimed one judgment (subparagraph 1.a) was paid. At the hearing, Applicant explained that none of the other debts had been paid, nor had he made any payment arrangements. Likewise, he has not engaged in any settlement discussions. And he had not consulted or hired a financial advisor or counselor to assist him in paying or otherwise resolving the debts. Finally, Applicant did not offer any documentary information in support of his case.

5. Concerning Applicant's claim that one judgment (subparagraph 1.a) was paid, the record evidence indicates otherwise. A credit report from January 2006 shows this judgment for \$1,058 is unpaid (Exhibit 2 at 35-36). Other documentary information indicates the judgment's status is open, which I take to mean unpaid (Exhibit 4 at 7). Given the documentary evidence, I find the judgment in subparagraph 1.a is unpaid.

6. In addition to the five unpaid judgments addresses in the SOR, the record evidence reveals seven judgments in Applicant's state of residence (Exhibit 4). Of the seven, one has been satisfied (Exhibit 4 at 4).

7. Applicant admitted that he has lived beyond his means over the years (R. 70). Also, he admitted that money was a source of conflict in his marriages, as he would prefer to deal in cash while his spouses have preferred to use credit. As of the hearing, Applicant had about \$5.00 in a savings account and no other money in financial accounts other than a few thousand dollars in a 401(k) retirement account.

8. In December 2003, Applicant completed a security-clearance application (Exhibit 1). In signing the application, Applicant certified that his statements were true, complete, and correct to the best of his knowledge and belief and made in good faith, and that he understood that a false statement could be punished by federal law. In completing the application, he was required to answer several questions about his financial record. In response to Question 34 about wage garnishments within the last seven years, he stated he had one in 2001. In response to Question 35 about repossessions within the last seven years, he stated he had one in 1999. In response to Question 37 about unpaid judgments within the last seven years, he stated he had one in 1999. In response to Question 38 about debts over 180-days delinquent within the last seven years, he stated a credit card account fell into this category. In response to Question 39 about debts currently over 90-days delinquent, he stated a credit card account fell into this category.

9. Applicant denies the falsification allegations concerning Questions 37, 38, and 39. During his testimony, he explained that he and his wife completed the application based on memory and did not refer to any documentation. He denied any intention to hide or cover up his financial record.

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. ⁽²⁾ 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.⁽³⁾ There is no presumption in favor of granting or continuing access to classified information.⁽⁴⁾ The government has the burden of presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted.⁽⁵⁾ An applicant is responsible for presenting witnesses and other evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.⁽⁶⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁷⁾

No one has a right to a security clearance.⁽⁸⁾ 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."⁽⁹⁾ 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,⁽¹⁰⁾ 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 established above, Applicant has a history of not meeting financial obligations as well as inability or unwillingness to pay one's just debts.⁽¹¹⁾ What's notable here is the depth of the financial hole he dug for himself. Comparing his debt (more than \$35,000) with his income (about \$37,000 in 2005) shows that his debt is seriously out-of-control. Indeed, Applicant is in such a deep financial hole that the likelihood of successfully extracting himself from it is remote.

I reviewed the six mitigating conditions under the guideline and conclude none apply. Applicant has not paid or otherwise resolved any of the 40 or so delinquent debts. And he is without any reasonable plan in place to manage his delinquent debt other than his good intentions. In other words, the record evidence shows his financial irresponsibility is ongoing and not a thing of the past. At this time, the record evidence 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.

Personal conduct under Guideline E⁽¹²⁾ 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. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance or in other official matters is a security concern. It is deliberate if it is done knowingly and willfully.

An omission of relevant and material information is not deliberate if the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or genuinely thought the information did not need to be reported.

Here, based on the record evidence as a whole, the government did not establish its case under Guideline E. I am not persuaded that Applicant's omissions from Questions 37, 38, and 39 were deliberate. In particular, I note that he disclosed derogatory financial information in response to five of the seven questions about his financial record. His disclosures indicate he was attempting to provide at least some of the requested information. My impression of Applicant is that he simply did not have a firm grasp on the particulars of his financial situation and did the best he could working from memory. Taken as a whole, the record evidence is not sufficient to prove that Applicant gave deliberately false answers in response to Questions 37, 38, and 39. Accordingly, Guideline E is decided for Applicant.

To conclude, Applicant failed to present sufficient evidence to explain, extenuate, or mitigate the security concern arising from his history of not meeting financial obligations and inability or unwillingness to satisfy debts. And he 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-pp: Against Applicant

SOR ¶ 2-Guideline E: For Applicant

Subparagraphs a-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.

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. Executive Order 10865, § 7.
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
5. Directive, Enclosure 3, Item E3.1.14.
6. Directive, Enclosure 3, Item E3.1.15.
7. Directive, Enclosure 3, Item E3.1.15.
8. *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).
9. 484 U.S. at 531.
10. Directive, Enclosure 2, Attachment 6.
11. Item E2.A6.1.2.1. A history of not meeting financial obligations; Item E2.A6.1.2.3. Inability or unwillingness to satisfy debts.
12. Directive, Enclosure 2, Attachment 5.

