

DATE: October 4, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 06-01913

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. In addition, he is unable to rebut, explain, extenuate, or mitigate the security concern stemming from the false answers he gave about his financial record when he completed two security-clearance applications. 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 3, 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 11, 2006, and requested a hearing. The case was assigned to me June 23, 2006. The next month a notice of hearing was issued scheduling the hearing for August 8, 2006. Applicant appeared without counsel and the hearing took place as scheduled. DOHA received the transcript August 18, 2006.

I left the record open until September 5, 2006, to allow Applicant an opportunity to present documentary evidence, as he presented none during the hearing. Several matters were received as follows: (1) DD Form 214; (2) a letter from Applicant; (3) an unsigned and undated first page from a rehabilitation loan repayment agreement; (4) a letter to Applicant from U.S. Treasury Department; and (5) statement of earnings and deductions for Applicant. Without objections, these matters are admitted as Applicant's Exhibits A, B, C, D, and E, respectively.

FINDINGS OF FACT

In his written reply to the SOR, Applicant's response is mixed. Concerning the financial matters, he admits the

allegations in 1.j, 1.p, 1.t, 1.u, 1.v, and 1.w, and he denied the remaining allegations contending the debts were satisfied or in dispute. Concerning the falsification allegations, he denied deliberately providing false answers on his security-clearance applications. 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 30-year-old man who is seeking to retain a security clearance for his employment as a computer systems administrator. He has worked for his current employer since June 2004. He says his current annual salary is about \$85,000, and Exhibit E shows \$55,417 in year-to-date gross earnings as of September 1st.
2. Applicant married in 1994 and divorced in about June 2002. The marriage produced two children. For these two children, Applicant pays child support of \$750 monthly. In addition, Applicant fathered a third child with another woman. For this child, he pays court-ordered child support of \$709 monthly. According to Applicant, he is current with his child support payments and has no arrears.
3. His employment history includes military service. From September 1993 to November 2000, Applicant served on active duty in the U.S. Marine Corps. In about September 2000, Applicant received a letter of reprimand for the improper use of a government travel credit card for using it to buy \$150 of groceries for personal use. When he left active duty, his grade was sergeant (pay grade E-5). His DD Form 214 reflects an honorable discharge.
4. Applicant traces his financial problems to his first marriage when he and his wife lived beyond their means. In particular, he and his wife overextended themselves by using credit to buy furniture for a new home, clothing, etc. When children came along, they again used credit to buy more furniture, clothing for the kids, and whatnot. This situation snowballed leading to more debt and the end of his marriage.
5. Applicant has a history of financial problems, as established by the derogatory information in several credit reports. (2) For example, a February 2003 credit report reveals several past-due accounts, 17 charged-off or collection accounts for more than \$16,000, and 4 unpaid judgments for about \$846. A September 2003 credit report reveals several past-due accounts, 15 charged-off or collection accounts for more than \$15,000, and 5 unpaid judgments for about \$8,946 (including a judgment for \$8,100 filed in April 2003). The most recent credit report from June 2006 reveals derogatory information, including four unpaid judgments.
6. The SOR concerns approximately 22 delinquent debts for a total of more than \$25,000. The debts consist of five unpaid judgments as well as charged-off and collection accounts. Applicant does not dispute the amounts and dates of the debts as alleged in the SOR. (3) He explained that he denied many of the debts in his response to the SOR because he paid them. In particular, the 22 debts are broken down as follows:
 - For subparagraphs 1.a, 1.c, 1.e, 1.f, 1.g, 1.h, 1.i (which is related to 1.m and 1.s), 1.k, 1.l, 1.o, 1.r, and 1.v, he claims the debts are paid, but he presented no documentary proof-of-payment.
 - For subparagraphs 1.b and 1.h, he is disputing the debts, but he presented no documentary proof of the disputes.
 - For subparagraph 1.d, he claims this is his ex-wife's responsibility per the divorce judgment, but he presented no documentary proof to support his claim.
 - For subparagraph 1.j, he is unable to find the creditor.
 - For subparagraph 1.p, he claims he is making some payments at \$200 per month, but he presented no documentary proof-of-payment.
 - For subparagraph 1.q, a debt owed to the federal government, it was paid in 2006 by intercepting his federal tax refunds. (4)
 - For subparagraphs 1.t and 1.u, which concern the same student loans, he claims he is making payments via a rehabilitation repayment agreement. (5) The one page of the document he provided is undated and reflects a current balance of more than \$9,000. It also reflects that Applicant agreed to pay \$200 per month for at least 12 consecutive months starting in December 2005 before the loans would be eligible for rehabilitation. Applicant did not present any documentary proof-of-payment.
7. In about February 2003, Applicant completed a security-clearance application for his then employer. (6) In

completing the application, he was required to answer several questions about his financial record. He answered "no" to all questions except for Question 35 wherein he revealed a repossession within the last seven years. In response to Question 37, he denied having any unpaid judgments within the last seven years when in fact he had four unpaid judgments against him at that time. In response to Question 38 about debts over 180-days delinquent within the last seven years, he denied having any such debts when in fact he had several that fell into this category. In response to Question 39 about debts currently over 90-days delinquent, he denied having any such debts when in fact he had several that fell into this category.

8. In about January 2006, Applicant completed a security-clearance application for his current employer.⁽⁷⁾ In completing the application, he was required to answer several questions about his financial record. In response to Question 27d, he denied having any unpaid judgments within the last seven years when in fact he had five unpaid judgments against him at that time. In response to Question 28a about debts over 180-days delinquent within the last seven years, he answered "yes" and revealed a student loan debt for \$9,000 (subparagraphs 1.t and 1.u), when in fact he had several more that fell into this category. In response to Question 28b about debts currently over 90-days delinquent, he denied having any such debts when in fact he had several that fell into this category.

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 upon consideration of all the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.⁽⁸⁾ 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.⁽⁹⁾ Instead, it is a determination that the applicant has not met the strict guidelines the President has established for granting eligibility for a security 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.⁽¹⁰⁾ There is no presumption in favor of granting or continuing access to classified information.⁽¹¹⁾ The government has the burden of presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted.⁽¹²⁾ An applicant is responsible for presenting witnesses and other evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.⁽¹³⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁴⁾

No one has a right to a security clearance.⁽¹⁵⁾ 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."⁽¹⁶⁾ 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

1. The Financial Considerations Security Concern

Under Guideline F,⁽¹⁷⁾ 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, a security concern is raised 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.⁽¹⁸⁾ What's notable here is the depth and breadth of his financial problems. His delinquent indebtedness includes a debt to the federal government, student loans, judgments, and the usual consumer debts.

I reviewed the six MC under the guideline and conclude Applicant receives some credit in mitigation. It appears that some of the indebtedness is attributable to Applicant's separation and divorce,⁽¹⁹⁾ and I considered these matters. But the credit in mitigation is limited, because Applicant was a knowing and willful participant with his spouse in accruing the debts by living beyond their means during their marriage. The remaining MC do not apply. Other than the debt to the federal government, he has not presented sufficient evidence, including documentary evidence, to support his various claims. The record evidence is insufficient to establish that he has made a good-faith effort to pay or otherwise resolve his debts. Also, at this point it is too soon to tell if Applicant can establish a track record of prudent and responsible financial management.

2. The Personal Conduct Security Concern

Personal conduct under Guideline E⁽²⁰⁾ is always a security concern because it asks the central question: Does a person's past conduct justify 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, a security concern is raised under Guideline E. When answering the questions at issue about his financial record, Applicant was obliged to provide full, frank, and truthful answers. Given the depth and breadth of Applicant's financial problems, and the knowledge he demonstrated about his financial affairs during the hearing, his explanations for his answers are not credible. His minimal disclosures about his financial record are not sufficient to show that he was making a good-faith effort to provide the requested information about his financial record. For these reasons, I conclude Applicant knowingly and willfully gave false answers about his financial record in response to questions on both security-clearance applications.⁽²¹⁾ To sum up, his false answers show questionable judgment, lack of candor, unreliability, and untrustworthiness.

I reviewed the seven MC under the guideline and conclude none apply. Making false statements during the security-clearance process is a serious matter, not easily explained away, extenuated, or mitigated.

3. The Whole-Person Concept

I considered the available information in light of the whole-person concept. Applicant is a mature, serious 30-year-old man whose employment record includes several years of honorable military service in the Marine Corps, and he has held a security clearance in the past.⁽²²⁾ He has a history of failing to fulfill his financial obligations, which is ongoing and likely to continue.⁽²³⁾ Although his debts did not arise from gambling, substance abuse, or other conduct that would increase security concerns, most of his debts arose due to living beyond his means during his marriage.⁽²⁴⁾ He claims many of the debts are paid, but he did not present satisfactory proof-of-payment.⁽²⁵⁾ More troubling, however, are his false answers on two security-clearance applications, which are serious matters.⁽²⁶⁾

Considering the record evidence as a whole--his ongoing financial problems, his failure to present documentary

proof-of-payment to support his claims, and the serious concerns arising from his false statements on his security-clearance applications--I conclude Applicant failed to present sufficient evidence to rebut, explain, extenuate, or mitigate the security concerns arising under Guidelines F and E. And he has not met his ultimate burden of persuasion to obtain a favorable clearance decision.

FORMAL FINDINGS

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

SOR ¶ 1-Guideline F: Against Applicant

Subparagraphs a-w: Against Applicant

SOR ¶ 2-Guideline E: Against Applicant

Subparagraphs a-g: 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.

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. Exhibits 3, 4, 5, and 6.
3. R. 97.
4. Exhibit 3 at 2; Exhibit D.
5. Exhibit C.
6. Exhibit 2.
7. Exhibit 1.
8. Directive, Item E2.2.1.
9. Executive Order 10865, § 7.
10. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
11. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
12. Directive, Enclosure 3, Item E3.1.14.
13. Directive, Enclosure 3, Item E3.1.15.
14. Directive, Enclosure 3, Item E3.1.15.
15. *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a

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security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10 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)).

16. 484 U.S. at 531.

17. Directive, Enclosure 2, Attachment 6.

18. Directive, 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.

19. Directive, Item 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).

20. Directive, Enclosure 2, Attachment 5.

21. Directive, Item E2.A5.1.2.2. 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.

22. Directive, Item E2.2.1.4. The individual's age and maturity at the time of the conduct.

23. Directive, Item E2.2.1.9. The likelihood of continuation or recurrence.

24. Directive, Item E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation.

25. Directive, Item E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes.

26. Directive, Item E2.2.1.1. The nature, extent, and seriousness of the conduct.