

DATE: March 30, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-14521

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Jennifer I. Goldstein, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated his history of financial problems by initiating a good-faith effort to repay overdue creditors or otherwise resolve the debts. Clearance is granted.

STATEMENT OF THE CASE

Applicant contests the Defense Department's intent to deny or revoke his eligibility for a security clearance. Acting under the relevant Executive Order and DoD Directive, ⁽¹⁾ the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant on November, 17, 2006. The SOR--which is in essence the administrative complaint--details the factual basis for the action and alleges a security concern under Guideline F for financial considerations.

Concerning the guidelines, this case is brought under the revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information approved by the President on December 29, 2005. The revised guidelines were then modified by the Defense Department, effective September 1, 2006. They supersede or replace the guidelines published in Enclosure 2 to the Directive and Appendix 8 to DoD Regulation 5200.2-R. They apply to all adjudications and other determinations where an SOR has been issued on September 1, 2006, or thereafter. Both the Directive and the Regulation are pending formal amendment.

Applicant timely replied to the SOR and requested a hearing. The case was assigned to me February 8, 2007. A notice of hearing was issued scheduling the case for February 27, 2007. The hearing took place as scheduled. DOHA received the hearing transcript March 9, 2007.

At Applicant's request, the record was kept open until March 16, 2007, to allow him to submit additional documentary evidence. He submitted matters in a timely manner and those matters were forwarded to me by department counsel who voiced no objections. His post-hearing submissions are admitted as follows: a six-page divorce decree as Exhibit G, an

eight-page document concerning child support as Exhibit H, a two-page bank account statement as Exhibit I, and a two-page payroll statement as Exhibit J.

FINDINGS OF FACT

Under Guideline F, the SOR alleges Applicant has delinquent consumer debts, which he does not dispute. Applicant's admissions are incorporated herein. I make the following findings of fact set forth below in numbered paragraphs.

1. Applicant is a 44-year-old engineer who is seeking to retain a security clearance. He earned a B.S. in aeronautical engineering in 1989. He has since worked as an engineer for the same aerospace company for the last 18 years. His annual salary is about \$70,000.

2. He completed a security-clearance application in December 2004 (Exhibit 1). In doing so, Applicant disclosed derogatory information about his financial record in response to Questions 38 and 43. In response to Question 38, he reported that he had two accounts that were over 180-days delinquent in the last seven years. In response to Question 43--which allows an applicant to make any additional remarks--Applicant reported the following about his financial record:

In the past four years I have had a very difficult time financially. I did not want there to be any questions regarding my character.

In July of 2000 I was divorced. It was extremely difficult time for me financially and emotionally. Legal fees and child support ate up most of my income and I was not able to cover living expenses and debt from my marriage. It was then I came to rely on credit cards to cover the bases and I just dug myself deeper and deeper in debt. It all caved in on me about a year ago [2003]. I was unable to cover the support, credit bills and come out with much left to live on. It became impossible to do it all, I allowed everything to slide and I went into a serious depression.

It has taken almost a year to start to rebuild my life. I have regained control of my health and am now working the repayment of my debt. I still have an extremely long way to go but I am gradually gaining control of my life and finances again.

I felt it was important to explain this to you. Although I am not proud of what I did, I admit I am gaining control again. Thank you (Exhibit 1 at 8).

3. Thereafter, the Defense Department granted Applicant a security clearance at the secret-level. In July 2006, Applicant's employer submitted an adverse information report (Exhibit 2). It reported that they had received a garnishment order against Applicant stemming from a judgment issued by a local court in the amount of \$1,860.19.

4. Applicant has a history of financial problems, as evidenced by delinquent consumer debts reflected in credit reports (Exhibits 3, 4, and 5). The SOR alleges Applicant has five delinquent accounts for a total of nearly \$12,000. Two accounts (SOR subparagraphs 1.a and 1.e) concern the same debt. The accounts are discussed below.

5. SOR subparagraph 1.a concerns a \$983 collection account (Exhibits A, D, E, and F). Applicant became indebted to a bank when he accepted a check-in-the-mail loan or offer of credit in July 2002. He defaulted on payment, and the original creditor sold the debt to a collection agency. In February 2005, the collection agency sued Applicant seeking the balance of \$983.42 plus interest of \$309. In July 2005, the local court awarded the collection agency a judgment against Applicant in the total amount of \$1,637.31, with interest at 12% per annum. This judgment was the basis for the garnishment mentioned above. Applicant paid this account in full by making two payments (R. 30-35). The largest payment was made via a garnishment of Applicant's annual bonus. The second payment for \$469.52 was made in February 2007.

6. SOR subparagraph 1.b concerns an \$8,895 charged-off credit card account (Exhibits A, B, and I). On February 20, 2007, Applicant started a repayment plan making \$500 monthly payments until the account is paid. His check cleared his account on March 2, 2007 (Exhibit I at 1).

7. SOR subparagraph 1.c concerns a \$106 collection account (Exhibits A, C, and I). Applicant resolved this account by paying \$112.09 in January 2007 (Exhibit I at 2).

8. SOR subparagraph 1.d concerns a \$53 collection account for telephone services. This account remains unpaid. Applicant has contacted the creditors in an effort to track down the account and pay it. He has been unable to find any record of this account (Exhibit A; R. 40-42).

9. SOR subparagraph 1.e concerns a judgment against Applicant for \$1,860. This is the same indebtedness covered in subparagraph 1.a.

10. Applicant married in 1991 and divorced in 2000 (Exhibits 1 and G). He and his first wife had two children, sons now 10 and 8 years old. As a result of the divorce, the court ordered Applicant to pay child support of \$1,465 per month. In August 2006, the order was amended reducing the payment to \$965 per month (Exhibit H). The child-support payments are withheld from his salary and he is current.

11. Applicant remarried in March 2006. He believes he is now over the grief in his life (R. 24), and he credits his current wife with helping him overcome the difficult times he experienced after his divorce. His wife is employed by the same aerospace company. Together they have a household income slightly higher than \$100,000 per year. His wife has a developmentally-disabled daughter who receives about \$900 per month from the state and that money is used for her care. Applicant and his wife own a home, although the mortgage is in her name. It appears Applicant and his wife are sharing living expenses.

12. Applicant no longer has or uses credit cards. He manages his day-to-day finances with a checking account and a debit card. He has a line-of-credit with his company for \$10,000, which he is repaying. Otherwise, he has no loans. He has participated in his company's 401(k) savings plan during his 18 years of employment. Although he paid about half of it to his first wife when they divorced, the current balance of the 401(k) account is about \$125,000. He does not have a loan against the account. He is current with his obligations to file federal and state income-tax returns, and he does not have a delinquent tax bill with federal or state tax authorities.

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.⁽²⁾ 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.⁽³⁾ 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.⁽⁴⁾ There is no presumption in favor of granting or continuing access to classified information.⁽⁵⁾ The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.⁽⁶⁾ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.⁽⁷⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

No one has a right to a security clearance.⁽⁹⁾ 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."⁽¹⁰⁾ 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, a concern typically exists due to significant unpaid debts. Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. 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 by significant unpaid debts. Applicant has a history of financial problems, as evidenced by the delinquent consumer debts, one of which resulted in a lawsuit. His derogatory financial record is a security concern because it indicates an inability or unwillingness to satisfy debts and a history of not meeting financial obligations.

I reviewed the mitigating conditions (MC) under the guideline and conclude he receives credit in mitigation. Each MC is briefly summarized and discussed below.

The first MC--the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur--applies somewhat. His financial problems are not yet fully resolved, and his financial problems involved multiple delinquent debts. But his financial problems occurred as a byproduct of his divorce. Since then, he remarried in 2006, his child-support payment was reduced about \$500 per month in 2006, and he is working at turning his financial situation around. Viewed in this light, his behavior occurred under such circumstances that it is unlikely to recur and does not cast doubt on his current security suitability.

The second MC--the conditions that resulted in the behavior were largely beyond the person's control--does not apply. Although his financial problems were due to his divorce, the evidence does not support a conclusion that Applicant acted reasonably under the circumstances. Understandably, Applicant experienced financial and emotional trauma due to his divorce, but he did not act with due diligence when things turned sour. He should have done more sooner.

The third MC--the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control--applies in part. Applicant offered no evidence to support application of the first clause of this MC. But the record evidence does show that Applicant's financial problems are being resolved or are under control.

The fourth MC--the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts--applies. Applicant has paid off the collection account that resulted in the judgment (SOR subparagraphs 1.a and 1.e), he paid off the \$106 collection account (SOR subparagraph 1.c), his efforts to contact the creditors on the \$53 collection account have been unsuccessful (SOR subparagraph 1.d), and he has entered into a repayment plan for the largest delinquent debt, and he made his first \$500 monthly payment in February 2007 (SOR subparagraph 1.b). Taken together, his actions are sufficient to qualify for initiating a good-faith effort within the meaning of the MC. Although he has just made the first payment on the repayment plan, it's likely that he will follow through given his available household income of more than \$100,000 per year along with a sizeable asset (the 401(k) account) to tap if a lump-sum payment becomes necessary.

The fifth MC--the individual has a reasonable basis to dispute the legitimacy of the past-due debt--is not applicable here.

The sixth MC--the affluence resulted from a legal source--is not applicable here.

I have also considered the record evidence as a whole in light of the whole-person concept. Applicant is 44 years old and sufficiently mature to make thoughtful, prudent decisions about his financial situation. Facing the not uncommon financial and emotional strains after his divorce, Applicant let some of his financial obligations slide into delinquency. Plainly, he was irresponsible and exercised poor judgment in doing so. Nevertheless, he has presented sufficient

evidence to justify a favorable decision for several reasons.

First, he has put his divorce behind him and moved on with his life by remarrying and taking on those responsibilities. Second, he continues to fulfill his child-support obligation for his two sons. Third, he initiated action to resolve all the debts in the SOR and has been successful for the most part. Fourth, concerning the largest delinquent debt, he has a plan for resolving it with \$500 monthly payments and should pay it off in another 17 months. Fifth, he has documented his actions taken to resolve his indebtedness (Exhibits A-J). And sixth, the record evidence shows a measurable improvement to his situation.

After weighing the favorable and unfavorable evidence, I conclude that Applicant has overcome the case against him. He has shown that he is serious about resolving his past financial problems. Although he has not presented a perfect case in mitigation by paying off all debts in the SOR, ⁽¹¹⁾ he has presented sufficient information to explain, extenuate, or mitigate the financial considerations security concern. Likewise, he has met his ultimate burden of persuasion to obtain a favorable clearance decision.

FORMAL FINDINGS

Here are my conclusions for each allegation in the SOR:

SOR ¶ 1-Guideline F: For Applicant

Subparagraphs a-e: For Applicant

DECISION

In light of all the facts and circumstances, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

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. Directive, Enclosure 2, ¶ E2.2.1 (setting forth nine factors to consider under the whole-person concept).
3. Executive Order 10865, § 7.
4. ISCR Case No. 96-0277 (App. Bd. Jul. 11, 1997).
5. ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).
6. Directive, Enclosure 3, ¶ E3.1.14.
7. Directive, Enclosure 3, ¶ E3.1.15.
8. Directive, Enclosure 3, ¶ E3.1.15.
9. *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.").
10. *Egan*, 484 U.S. at 531.
11. ISCR Case No. 02-25499 (Ap. Bd. Jun. 5, 2006) (Applicant was not required, as a matter of law, to establish that he

had completely paid off his indebtedness).