

DATE: January 26, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-17282

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Emilio Jaksetic, Esq. , Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

In the mid-1990s when he was a sailor, the Navy revoked Applicant's security clearance due to financial issues. During 2004-2006, Applicant experienced further financial problems, to include money judgments taken against him for thousands of dollars, a delinquent credit card account for \$4,683, a charged-off credit card account for \$2,836, and a collection account for \$542. He has just begun the process of resolving his indebtedness. His efforts, while commendable, are not sufficient to rebut, explain, extenuate, or mitigate the security concern under Guideline F for financial considerations. Clearance is denied.

STATEMENT OF THE CASE

Applicant contests the Defense Department's preliminary decision 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 August 30, 2006. The SOR--which is in essence the administrative complaint--details the factual basis for the action and alleges security concerns under Guideline F for financial considerations and Guideline E for personal conduct (falsification). Applicant timely replied to the SOR and requested a hearing.

The case was assigned to me on November 3, 2006, and a notice of hearing was issued scheduling the case for December 6, 2006. Applicant appeared without counsel and the hearing took place as scheduled. DOHA received the hearing transcript on December 15, 2006.

Per Applicant's request, the record was left open until Monday, January 8, 2007, to allow him to submit documentary evidence, as he did not submit any during the hearing. He did so in a timely manner and those matters were forwarded to me by department counsel who voiced no objections to Applicant's post-hearing submission, which consists of the following: (1) Exhibit A-an undated, handwritten document signed by Applicant; (2) Exhibit B-a letter, dated January 4, 2007, to Applicant from a financial counseling organization with attachments; (3) Exhibit C-two letters to Applicant

from the Department of Veterans Affairs (VA), each dated in December 2006. Exhibits A, B, and C are admitted.

FINDINGS OF FACT

Under Guideline F, the SOR alleges that Applicant is indebted to six creditors for delinquent or unpaid debts for more than \$18,000 in total. In addition, it alleges that the Navy had previously revoked Applicant's security clearance he held as a sailor due to his history of not meeting his financial obligations. In reply to the SOR, Applicant admitted all allegations under Guideline F, and his admissions are incorporated herein as findings of fact.

Under Guideline E, the SOR alleges that Applicant made deliberately false statements on a security-clearance application when answering three questions about his financial record. In reply to the SOR, Applicant denied the falsification allegations. After presenting its evidence, the government conceded that the evidence did not support the falsification allegations and requested favorable findings be made under Guideline E (R. 31-33). Based on that concession, the falsification allegations will not be discussed further. In addition, I make the following findings of fact.

1. Applicant is a 41-year-old aircraft mechanic. He has worked in this job since July 2004. He is seeking to obtain a security clearance for his employment with a defense contractor.
2. He has been married since 1985. He and his wife have a daughter who is now about 20 years old. His wife is not employed outside the home.
3. He served as a sailor in the U.S. Navy during 1983-2003. He retired as a petty officer first class (paygrade E-6) after more than 20 years of honorable service.
4. Applicant's history of financial problems started when he was in the Navy. His financial problems led the Navy to take unfavorable action against him. In October 1996, the Navy revoked Applicant's security clearance based on financial issues. In doing so, the Navy noted that they had not received a response from Applicant (Exhibit 2).
5. He appealed the Navy's decision, and the administrative appeal process included a personal appearance or hearing before a DOHA administrative judge (Exhibit 3). In March 1997, the Navy appellate authority considered Applicant's appeal and upheld the revocation. In doing so, the Navy noted that although Applicant had entered into a repayment plan with a financial counseling organization in September 1996, he had failed to provide documentation, as requested by the Navy appellate authority, to demonstrate ongoing compliance with the plan (Exhibit 3).
6. In December 2004, as part of the background investigation, a credit report was obtained and it revealed unfavorable information (Exhibit 8). For example, the public record section of the document reports three unpaid judgments against Applicant for thousands of dollars. An additional credit report was obtained in July 2006, and it further reveals or confirms Applicant's unfavorable financial history (Exhibit 9). Of note, it reports an additional judgment, not alleged in the SOR, taken against Applicant for \$476. The judgment was obtained in October 2004 and satisfied in April 2006.
7. The SOR alleges indebtedness to six creditors for delinquent or unpaid debts for more than \$18,000 in total. Each debt is discussed below.
8. The \$3,470 debt in SOR subparagraph 1.a is for a judgment taken against Applicant in September 2004 by a furniture store (Exhibit 4). Applicant agrees this is a valid debt and the judgment was taken when he fell behind on payments. To date, the judgment has not been satisfied.
9. The \$4,683 debt in subparagraph 1.b is for a delinquent credit card account. Applicant agrees this is a valid debt and the account became delinquent when he fell behind on payments. To date, this account is outstanding.
10. The \$542 debt in subparagraph 1.c is for a collection account. Although he admitted to this indebtedness in his reply to the SOR, at the hearing he said he had no idea about this account. The account appears as a collection account in the July 2006 credit report (Exhibit 9 at 2), and Applicant has not provided any documentary evidence to refute it.
11. The \$6,058 debt in subparagraph 1.d is for a judgment taken against Applicant in September 2004 by a finance

company (Exhibit 5). The judgment amount was \$10,196, and the balance has been reduced by garnishment (Exhibits 6 and 7). The basis for the debt is money owed on a car loan after repossession. As of March 30, 2006, the total amount owed on the judgment was \$6,640 (Exhibit 7). To date, the judgment has not been satisfied.

12. The \$2,836 debt in subparagraph 1.e is for a credit card account with a credit union. It was charged off in about August 2005. He agrees this is a valid debt and the account became delinquent when he fell behind on payments. To date, this account is outstanding.

13. The \$1,000 debt in subparagraph 1.f is for a judgment taken against Applicant in October 2004 by a finance company. The state court vacated the judgment in March 2006, and Applicant paid the account (Exhibit 10).

14. As an explanation for his recent financial problems, Applicant points to two interrelated circumstances (R. 44-46). First, in 2002, his mother-in-law and her grandson moved in and lived with Applicant for about two years. This increased household expenses. Second, at some point after his mother-in-law moved in, Applicant and his wife separated for a period.

15. Currently, his annual salary as an aircraft mechanic is about \$42,000. He also receives military retirement pay. In addition, starting January 1, 2007, he receives \$984 monthly from the VA for service-connected disabilities rated at 60% (Exhibit C). The effective date of this entitlement is April 1, 2006, so he expects to receive a lump-sum payment for the nine months for which he did not receive the disability entitlement.

16. Other than the lump-sum payment, which he should receive in the next 90 days, Applicant's financial assets are slim. At the hearing, he estimated he had less than \$100 in a savings account and less than \$100 in a checking account. He estimated he had about \$5,000 in a 401(k) retirement account. He is currently repaying a loan taken from the 401(k) account. He drives a truck that was a cash purchase. His wife's vehicle was bought using credit, and at the hearing he was one month behind on the loan.

17. After the hearing, on about January 4, 2007, Applicant met with a financial specialist from a financial counseling organization (Exhibit B). The meeting produced an action plan, budget, and a debt-management program (DMP). The action plan shows Applicant has a total monthly income of \$4,155, and after expenses there is a surplus of about \$865. The surplus will be used to pay \$600 per month for 18 months on the DMP. Of the \$600, a \$35 fee is deducted resulting in payment of \$565 to the creditors, and the first payment was to begin January 7th.

18. A review of the DMP shows it includes three creditors for a total of \$10,839. The three creditors are those described in subparagraphs 1.a, 1.b, and 1.e. It appears Applicant intends to use the lump-sum payment to resolve the unpaid judgment in subparagraph 1.d (Exhibit A). The DMP does not address the smallest debt in the SOR, the \$542 collection account in subparagraph 1.c.

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, ⁽¹¹⁾ 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, a security concern is raised by significant unpaid debts. Applicant has a history of not meeting financial obligations as well as inability or unwillingness to pay just debts. ⁽¹²⁾ The record evidence shows a pattern of Applicant not fulfilling his financial obligations. This pattern is established by the Navy's revocation of his security clearance due to financial issues in the mid-1990s, and the recent money judgments taken against him and the other delinquent accounts.

I reviewed the MCs under the guideline and conclude that Applicant receives some credit in mitigation. Each MC is discussed below.

The first MC--the behavior was not recent--does not apply. His financial problems are current and ongoing, as opposed to matters from the distant past.

The second MC--it was an isolated incident--does not apply. His financial problems started in mid-1990s when he was in the Navy and cropped up again recently. These circumstances suggest a pattern of behavior.

The third MC--the conditions that resulted in the behavior were largely beyond the person's control--applies in his favor. The increase in living expenses due to the addition of his mother-in-law and her grandson, coupled with the separation of Applicant and his wife, likely contributed to his financial problems. These two circumstances roughly parallel his most recent financial problems.

The fourth MC--the person has received or is receiving counseling for the problem and there are clear indications that problem is being resolved or is under control--does not apply. It's true that he is now receiving counseling and assistance to put his financial house in order and address his indebtedness. But at this point, it is too soon to say that there are clear indications that the problem is being resolved or is under control, because Applicant met with the counselor on January 4th and was to make his first payment on the DMP a few days ago on January 7th. Time will tell if he will follow through and get his financial problems under control.

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

The sixth MC--the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts--applies somewhat. By seeking financial counseling and entering into a DMP, Applicant has initiated an effort to address his indebtedness. The same is true for his plan to use the lump-sum payment from the VA to address the unpaid judgment not included in the DMP. But the credit in mitigation is limited because he has just begun the process. Again, time will tell.

Viewing the record evidence as a whole, here we have an individual who had his security clearance revoked in the mid-1990s due to financial issues. His recent financial problems are well documented, and, to some extent, are understandable given the family circumstances that contributed to his financial problems. But he was slow to act in resolving his financial problems and it looks like he did so only when under pressure from this case. Indeed, Applicant had not met with a financial counselor before the hearing. Although he is commended for taking the first steps, his efforts so far are not enough to resolve the security concern stemming from his history of financial problems. What's missing here is a demonstrated consistent payment record, along with a substantial improvement in his overall financial situation, that would signal that he is serious about fixing his financial problems. The DMP is a good start, but it's a 18-month plan, and it is now too early to make any predictions if he will stick to the plan. At this point, given all the facts and circumstances, the likelihood of continuation or recurrence of his financial problems is high.

In conclusion, I have weighed the favorable and unfavorable information, and I conclude that Applicant has failed to rebut, explain, extenuate, or mitigate the financial considerations security concern based on his significant unpaid debts. Likewise, he did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, I also considered Applicant's case under the whole-person concept, which a detailed discussion thereof would not change the outcome of this case.

FORMAL FINDINGS

Here are my conclusions for each allegation in the SOR:

SOR ¶ 1-Guideline F: Against Applicant

Subparagraphs a-e & g: Against Applicant

Subparagraph f: For 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. Directive, Enclosure 2, Item 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 (July 11, 1997) at p. 2.
5. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
6. Directive, Enclosure 3, Item E3.1.14.
7. Directive, Enclosure 3, Item E3.1.15.
8. Directive, Enclosure 3, Item 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.") (citations omitted).

10. 484 U.S. at 531.

11. Directive, Enclosure 2, Attachment 6 (setting forth the disqualifying and mitigating conditions).

12. 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.