

DATE: January 16, 2007

---

In re:

-----

SSN: -----

Applicant for Security Clearance

---

CR Case No. 06-17754

## **DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL H. LEONARD**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Emilio Jaksetic, Esq., Department Counsel

#### **FOR APPLICANT**

Christiane G. Burrell, Esq.

### **SYNOPSIS**

Applicant owes about \$23,000 to multiple creditors for multiple debts, and he does not have a plan in place to address his delinquent or unpaid indebtedness. He failed to present sufficient evidence 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, [\(U\)](#) on August 29, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) detailing the basis for its action. The SOR--which is in essence the administrative complaint--alleges a security concern under Guideline F for financial considerations. 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 5, 2006. Applicant appeared with counsel and the hearing took place as scheduled. DOHA received the hearing transcript on December 13, 2006.

### **FINDINGS OF FACT**

The SOR alleges that Applicant is indebted to multiple creditors for multiple delinquent or unpaid debts for about \$23,000 in total. In reply to the SOR, Applicant admitted the indebtedness as alleged in subparagraphs 1.a-1.o. In addition, I make the following findings of fact.

1. Applicant is a 35-year-old man who works at a shipyard as a radiological control monitor. He is currently in a trainee status. He has worked in this job since May 2005, and he has worked at the shipyard since March 2004. He is a third-generation shipyard employee following his father and grandfather at the shipyard. He is seeking to obtain a security

clearance for his employment.

2. Applicant is married to a 35-year-old woman, and they are the parents of a two-year-old daughter. Applicant and his wife married in 2002, although they have been a couple for about a decade. Applicant is a high-school graduate. He attended college for about two years during 1988-1990, but he did not complete a course of study or earn a degree.

3. To obtain a security clearance, Applicant completed and submitted a security-clearance application in February 2004 (Exhibit 1). In doing so, he was required to answer questions about many aspects of his background, to include his financial record. In response to four questions about his financial record, Applicant disclosed unfavorable financial information.

4. As part of the background investigation, a credit report was obtained in March 2005 (Exhibit 2). It revealed one unpaid judgment, five accounts described as bad debts placed for collection, two accounts 120-days or more past due, and six collection accounts. Two additional credit reports were obtained in 2006 (Exhibits 3 and 4), and these reports further reveal or confirm Applicant's unfavorable financial history.

5. The SOR alleges--and Applicant does not dispute--that he is indebted to creditors for 15 delinquent or unpaid debts for about \$23,000 in total. To date, all the debts in the SOR are unpaid or otherwise unresolved. He did pay one debt, not in the SOR, for \$516 in March 2006 (Exhibit A at 13). A couple of the debts from the SOR are discussed separately below.

6. By far the largest debt is \$12,731 for a delinquent car loan referred for collection, which is SOR subparagraph 1.l. This debt is the remainder or deficiency balance after Applicant's car was repossessed.

7. The debts in subparagraphs 1.g, 1.k, and 1.m are judgments taken against Applicant, and those judgments remain unpaid. The unpaid judgment in subparagraph 1.g is for \$1,379. The unpaid judgments in subparagraphs 1.k and 1.m are for \$884 and \$922. Both judgments were taken by the same creditor and are based on rent owed on an apartment lease.

8. Applicant describes his current financial situation as living paycheck-to-paycheck (R. 21). He estimates having about \$50 in a savings account, and he had \$765 in a checking account as of November 27, 2006 (Exhibit A). He participates in his employer's 401(k) retirement savings plan, and his account balance is about \$1,300. He took a \$1,200 loan against his 401(k) account in August 2006 to cover moving expenses. He has a car loan with monthly payments, and he was one month late on the car loan (R. 69). He does not have credit cards. He is current with his rent for the house he and his wife now occupy, and they have a favorable rental record, with timely payments, from an apartment they lived in from November 2005 to September 2006 (Exhibit B). Applicant has not received financial counseling, credit counseling, or debt management services within the last ten years.

9. Applicant estimates that his gross salary for 2005 was about \$31,000. For 2006, he estimates his gross salary at \$33,000 to \$35,000. Also, he estimates his family's total gross income for 2006 at less than \$40,000. Applicant has been continuously employed, in various jobs, since about 1996. His wife was underemployed after the couple relocated to their present location in 2001. His wife was unemployed for majority of 2004, the year when their daughter was born.

10. Applicant has not been convicted of a crime. He denies that his financial problems are linked to gambling, drug abuse, or alcoholism. He traces his financial problems to his relocation in 2001, which resulted in some underemployment for his wife and an increase in living expenses (R. 18-21).

## 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

(3)

deny a person a security clearance is not a determination of an applicant's loyalty. 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.<sup>(4)</sup> There is no presumption in favor of granting or continuing access to classified information.<sup>(5)</sup> The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>(6)</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>(7)</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(8)</sup>

No one has a right to a security clearance.<sup>(9)</sup> 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."<sup>(10)</sup> 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,<sup>(11)</sup> 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.<sup>(12)</sup> The record evidence shows a pattern of Applicant not fulfilling his financial obligations. He owes about \$23,000 to multiple creditors for multiple debts, and he does not have a plan in place to address his delinquent or unpaid indebtedness.

I reviewed the MCs under the guideline and conclude none apply in his favor. Applicant has not presented sufficient evidence to support application of any MC under the guideline. While I accept his statement that his 2001 relocation had an adverse financial effect, his move was not a condition largely beyond his control. In addition, any financial problems related to the move occurred about five years ago and can no longer serve as a chief reason for his current financial problems. Likewise, his wife's unemployment during 2004 due to the birth of their child is not an unexpected medical emergency. Many people who move or have children or both still manage to live within their means, pay on their debts, and otherwise live a financially-responsible lifestyle. Most telling here is what's absent: (1) a comprehensive, realistic approach for paying off, settling, or otherwise resolving his indebtedness; (2) documented actions taken in furtherance of that approach; and (3) a substantial improvement to his financial situation. Indeed, his overall financial situation is still uncertain and it appears his financial problems will continue as evidenced by, among other things, being one month behind on his current car loan. Time will tell if Applicant is willing and able to put his financial house in order.

Given these circumstances, I conclude Applicant failed to present sufficient evidence to rebut, explain, extenuate, or mitigate the financial considerations security concern. 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**

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

SOR ¶ 1-Guideline F: Against Applicant

Subparagraphs a-o: 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. 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 (10<sup>th</sup> 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.