

DATE: November 29, 2007

In re:

SSN: -----

Applicant for Security Clearance

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) ISCR Case No. 07-04943
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**DECISION OF ADMINISTRATIVE JUDGE
HENRY LAZZARO**

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

John Daly, Esq.

SYNOPSIS

Applicant has taken meaningful action to resolve the delinquent debt he accumulated as a result of his wife's irresponsible financial practices and the breakup of their marriage. Clearance is granted.

STATEMENT OF THE CASE

On July 26, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national

interest to grant or continue a security clearance for Applicant.¹ The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline F (financial considerations). Applicant submitted a response to the SOR that was received by the DOHA on August 23, 2007. He admitted all SOR allegations, except those listed in subparagraphs 1.t, 1.v and 1.w, and requested a hearing.

The case was assigned to another administrative judge on September 28, 2007, and reassigned to me on October 2, 2007, due to caseload considerations. A notice of hearing was issued on October 11, 2007, scheduling the hearing for October 29, 2007. The hearing was rescheduled to October 30, 2007, at Applicant's request, following a conference call held with Applicant's attorney and Department Counsel (see: Appellate Exhibit I). The hearing was conducted as rescheduled. The government submitted eight documentary exhibits that were marked as Government Exhibits (GE) 1-8, and admitted into the record without objection. Applicant testified and submitted one documentary exhibit that was marked as Applicant's Exhibits (AE) 1, and admitted into the record without objection. The record was held open to allow Applicant to submit additional documents in support of his case. One additional document was timely received, marked as AE 2, and admitted into the record without objection. The transcript was received on November 14, 2007.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, testimony and exhibits, I make the following findings of fact:

Applicant is a 61-year-old man who has been employed as storekeeper/material receiver at an air reserve base by a defense contractor since May 1990. He has compiled an exemplary work record and displayed a high degree of integrity, responsibility and ambition. His supervisor attests to Applicant's loyalty and requests a favorable clearance decision be made on his behalf. Applicant served on active duty in the Army from 1964-67 and again from 1973-90. He retired as a Staff Sergeant, paygrade E-6. Between 1967 and 1973 Applicant worked in a factory and as a cab driver.

Applicant was married in April 1983. He has four step-children from that marriage. He physically separated from his wife sometime in 2002, and they obtained a legal separation in March 2004. Applicant is required to pay his wife \$1,050.00 per month as maintenance. He plans on obtaining a divorce in the near future.

The SOR lists 17 debts, totaling \$34,066.00, that were all included in a Chapter 13 Bankruptcy Petition Applicant filed in September 2006.² Also alleged are three debts, totaling \$198.00, that were not listed in the bankruptcy which, according to the credit bureau reports received

¹ This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

² The SOR lists the debt alleged in subparagraph 1.k as owing in the amount of \$726.00. Schedule F of the bankruptcy filing lists this debt owing in the amount of \$2,128.00. The amount alleged in the SOR is the amount included in the calculation of the total debt owing herein.

in evidence, were not listed in those reports until after the bankruptcy petition was filed. A Chapter 13 plan was confirmed on November 16, 2006, that requires Applicant to make monthly payments of \$111.00. Applicant has remitted payments on the plan on a regular basis, missing only one payment since the plan was confirmed, and will complete the plan in approximately 40 months. He attributes the missed payment to the need to repair his automobile that month. Applicant's financial statement and testimony indicate he is presently living well within his means and will have the resources to continue making the required plan payments.

Applicant's financial problems are due to him entrusting all bill payment to his wife and her failing to live up to that trust. Specifically, Applicant asserted his wife assumed responsibility for paying all household bills, wrote all household checks, and was solely responsible for the household finances. He had no reason to question her handling of those matters until approximately 2001 when he first discovered notices for delinquent debts when he picked up mail from a post office box they rented. He confronted her about their debt situation and when it wasn't resolved he moved out of the family home sometime in 2002.

Applicant attempted to make what payments he could on the delinquent debt until his wife obtained an individual discharge in bankruptcy and a court order requiring him to pay her maintenance in the amount of \$1,050.00 per month. His wife's creditors thereafter started contacting him in an effort to collect on debts he previously considered to be her sole responsibility. Unable to make the payments demanded of him by his and her creditors and the court-ordered maintenance payments, Applicant filed for the bankruptcy protection described above.

Applicant previously sought bankruptcy protection in 1993 and 1994. The only record evidence about these filings are that Applicant and his wife filed a Chapter 7 filing in July 1993 that was reportedly discharged in November 1993, and filed a Chapter 13 filing in March 1994 that was discharged in February 1997. Applicant testified his recollection is they filed both bankruptcies at about the same time after his wife lost her job in an effort to retain a house they had purchased but were unsuccessful in that effort.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying conditions and mitigating conditions for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon 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. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline F, pertaining to financial considerations is most relevant in this case.

BURDEN OF PROOF

The sole 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 The government has the burden of proving controverted facts.⁴ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁵ although the government is required to present substantial evidence to meet its burden of proof.⁶ “Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.”⁷ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁸ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁹

No one has a right to a security clearance¹⁰ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹¹ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹²

CONCLUSIONS

Under Guideline F, a security concern exists when a person has significant unpaid debts. Failure 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 acts to generate funds.

As alleged in the SOR, and evidenced by Applicant’s admissions, bankruptcy filing and credit reports, Applicant had numerous accounts, totaling approximately \$35,000.00, that became delinquent. Most of those accounts remained delinquent until Applicant obtained Chapter 13

³ ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

⁴ ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

⁵ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

⁶ ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

⁷ ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

⁸ ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

⁹ ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

¹⁰ *Egan*, 484 U.S. at 528, 531.

¹¹ *Id* at 531.

¹² *Egan*, Executive Order 10865, and the Directive.

bankruptcy protection in November 2006. Three small accounts that were not listed in his credit reports at the time he filed for bankruptcy protection remain delinquent. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and 19(b) *a history of not meeting financial obligations* apply.

Applicant credibly testified his recent financial distress originated due to his wife mismanaging the family finances. After he moved out of the marital residence and attempted to satisfy creditors to the best of his ability, his wife obtained an individual discharge in bankruptcy and a court order requiring him to pay a substantial portion of his pay to her as maintenance. Mitigating Condition 20(b): *the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a divorce, death, or separation), and the individual acted responsibly under the circumstances* applies.

Applicant filed for Chapter 13 bankruptcy protection before he submitted a security clearance application and obviously before the SOR was issued and he was formally notified his financial problems might cause a security concern. He has made regular payments on the approved plan and appears to be living well within his financial means. He has the means to continue making the required payments, and based upon his appearance, demeanor and manner of testifying, I am satisfied he will continue to make those payments and also resolve the three small debts that are still outstanding. Mitigating condition 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* applies.

The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Applicant served honorably in the Army for 20 years and retired therefrom. He has held steady employment at the same location with defense contractors for the 17 years following his Army retirement. His supervisor vouches for his loyalty, integrity, responsibility and ambition and recommends he be granted a security clearance. Other than his current financial problems, the only negative record information about Applicant is the 1993 and 1994 bankruptcy filing(s) which Applicant credibly testified were caused by his wife's unexpected unemployment. While the record is unclear, Applicant's testimony and the timing of the filings strongly indicates there was an attempt to save Applicant's house from foreclosure by converting the Chapter 7 bankruptcy into a Chapter 13 bankruptcy and this is effectively a single financial occurrence.

Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Having done so, and having observed Applicant's appearance and demeanor while testifying, I conclude Applicant has presented sufficient evidence of refutation, extenuation, and mitigation to overcome the case against him. Accordingly, Guideline F is decided for Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline F: For Applicant

Subparagraphs a-w: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Henry Lazzaro
Administrative Judge

