



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 12-09324
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: Eric Roper, Esq.

01/31/2013

Decision

LAZZARO, Henry, Administrative Judge

Applicant owes over \$488,000 on delinquent student loans. He made a few relatively small payments on one of the loans in 2010; and he recently began making very small payments on another of the loans. No payments have been made on the remaining delinquent accounts, most of which have been delinquent for years. Clearance is denied.

On November 2, 2012, the Department of Defense (DOD) 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 alleges security concerns under Guideline E (personal conduct) and Guideline F (financial considerations). Applicant submitted an undated response in which he requested a hearing and admitted SOR allegations 1.a and 1.b, denied allegations 1.c and 1.d, and stated he

¹ This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended (Directive), and the adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

neither admitted or denied the Guideline F allegations alleged in SOR subparagraph 2. At the hearing, Applicant admitted all Guideline F allegations.

The case was assigned to me on December 20, 2012. A notice of hearing was issued on December 20, 2012, scheduling the hearing for January 7, 2013. The hearing was conducted as scheduled. The Government submitted ten documentary exhibits that were marked as Government Exhibits (GE) 1-10. GE 1-4 and GE 6-10 were admitted into the record without objection. Applicant's objection to GE 5 was overruled and it was admitted into the record. Applicant testified, called one witness to testify on his behalf, and submitted 11 documentary exhibits that were marked as Applicant Exhibits (AE) 1-11. AE 1-8 were admitted into the record without objection. Department Counsel's objections to AE 9-11 were overruled and they were admitted into the record. The transcript was received on January 22, 2013.

Findings of Fact

Applicant's admissions to the SOR allegations 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 37-year-old man who has been employed as a linguist by a defense contractor since April 2012. He was unemployed from September 2011 until April 2012. He worked in a retail store from August 2010 until August 2011.

Applicant obtained a bachelor's degree in December 1999. He attended medical school outside the United States and obtained a degree in medicine in May 2007. He has taken and failed the examinations required before he could apply to begin a residency in 2007 and 2009. Considering how much time has passed since he completed his medical training and last failed the examination, it is unlikely he will ever be able to practice medicine. Applicant did not work while studying to become a doctor, and, instead, supported himself and his family with student loans.

Applicant was married in January 2001. That marriage ended by divorce in February 2012. Applicant has two children from that marriage, ages 10 and 7, who reside with his ex-wife. Applicant is not required to pay child support, but he testified he does provide his ex-wife with \$400 per month.

On May 9, 2010, Applicant was charged with Battery, Terroristic Threats, and Obstruction of a 911 call based on allegations made by his wife. The Terroristic Threat charge, a felony, was based on his wife's claim that he would kill her by cutting her throat. Applicant claims his wife filed the charges because she is a devout Muslim who is against United States military forces being in any Muslim country, and she did not want him to work with the United States military. The Court entered a protective order and required Applicant to attend a domestic violence pretrial diversion program. Applicant successfully completed

the domestic violence pretrial diversion program and a nolle prosequi was issued as to all charges on August 8, 2011.

Applicant submitted a security clearance application on April 10, 2012, in which he reported that he had been charged with a misdemeanor simple battery and that the case was dismissed. The security clearance application does not indicate that Applicant disclosed the other two charges that had been filed against him or that one of those charges was a felony. Applicant testified he did disclose the charges and he submitted photographs of what he claims are the saved copy of his submission on his computer that contains drop-down boxes that disclose additional information indicating he had been charged with three charges, one of which included the word terroristic. (AE 9 & 10)

On April 9, 2012, Applicant signed and submitted a document entitled *Prenomination Personal Interview Form* in which, in response to a question asking if he had ever been arrested or convicted of a felony, he answered: "Yes - argument with my ex-wife." On April 23, 2012, during a three and one-half hour interview in which a counterintelligence-focused security screening questionnaire was prepared, Applicant fully discussed his arrest and the three charges that had been placed against him.

The woman who interviewed Applicant for his employment with the defense contractor testified Applicant disclosed to her that three charges had been filed against him for the May 2010 incident with his ex-wife. She stated that the hand-written notation of page 41 of the Questionnaire for National Security Positions (AE 1) under the phrase "All three charges" was put there by her. She also testified that Applicant sent her the two documents immediately following that page, which are the nolle prosequi and a personal statement prepared by Applicant concerning his version of the events preceding his arrest.

Applicant accumulated over \$488,000 in student loans while attending medical school. Those loans have now been submitted for collection, charged off as bad debts, or listed as past-due. Applicant made two payments, totaling \$500, toward the debt listed in SOR subparagraph 2.p in March and April 2010. (AE 2) He has not made any payment toward that account since April 2010. He made one payment of approximately \$60 toward the account listed in subparagraph 2.c in April 2004. (AE 2) He has made three additional payments of approximately \$60 each toward that account beginning in November 2012.

The account listed in SOR subparagraph 1.a is an ambulance charge that is the responsibility of the insurer of the person who was involved in an automobile accident with Applicant. The accounts listed in SOR subparagraphs 1.o through 1.s have been consolidated into the debt listed in subparagraph 1.d, owed in the amount of \$112,597. Applicant testified he has contacted the creditor holding those consolidated debts and he has agreed to begin making \$875 monthly payments toward those accounts in February 2013. As of the date of the hearing, no payment, other than the payments discussed above in regard to subparagraph 2.p, has been made toward those accounts. No payment or payment arrangements have been made in regard to any of the other delinquent accounts.

Applicant's net pay monthly is about \$6,500. He testified he owed his mother between \$15,000 and \$20,000, and he has paid her between \$20,000 and \$30,000. He also testified he has between \$20,000 and \$30,000 in savings.

Applicant submitted a letter of recommendation from an Army sergeant first class with whom he has worked as a linguist. The sergeant first class highly recommends that Applicant be granted a security clearance based upon his proven performance during the two months they worked together. Applicant's personal references attest to him being a responsible, honest, and compassionate individual who possesses integrity and dedication to duty.

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 and mitigating conditions for each applicable guideline. Each clearance decision must be a fair and impartial decision based upon 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. Guideline E (personal conduct) and Guideline F (financial considerations) with their disqualifying and mitigating conditions, are most relevant in this case.

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.² The Government has the burden of proving controverted facts.³ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁴ although the Government is required to present substantial evidence to meet its burden of proof.⁵ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁶ 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

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

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

⁴ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 01-20700 (December 19, 2002) at 3 (citations omitted).

⁶ ISCR Case No. 98-0761 (December 27, 1999) at 2.

her.⁷ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁸

No one has a right to a security clearance⁹ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁰ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹¹

Analysis

Guideline E, Personal Conduct

Conduct involving questionable judgment, lack of candor, dishonesty, or willingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. (Adjudicative Guideline [AG] 15)

Applicant was involved in a domestic altercation with his ex-wife in May 2010. He was charged with three offenses, including a felony offense. Although Applicant denies most of the allegations and attributes the charges to his wife’s efforts to prevent him from accepting employment assisting United States military forces, the Court entered a protective order and required Applicant to attend a domestic violence pretrial diversion program. Applicant successfully completed the domestic violence pretrial diversion program and a nolle prosequi was issued as to all charges on August 8, 2011.

The security clearance application Applicant submitted indicates Applicant was charged with a misdemeanor battery that was dismissed. Applicant testified that he disclosed all the charges in the electronic copy that he submitted, and he offered some evidence in support of that assertion. Further, it is clear from the record, that Applicant disclosed that three charges had been filed against him when he was interviewed for his prospective employment with a defense contractor. He disclosed that he had been arrested or charged with a felony in a form he submitted on April 9, 2010, the day before he submitted the security clearance application. Applicant fully disclosed the charges that had been placed against him during a lengthy interview conducted on April 23, 2012.

⁷ ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, Item E3.1.15.

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

⁹ *Egan*, 484 U.S. at 528, 531.

¹⁰ *Id.* at 531.

¹¹ *Egan*, Executive Order 10865, and the Directive.

It is clear that Applicant did not deliberately provide false information in the security clearance application he submitted on April 10, 2010. The woman who interviewed him for his employment specifically noted that the form she received contained information that three charges had been filed against Applicant. On at least two other occasions, both before and after Applicant submitted the security clearance application, he provided information disclosing the exact charges that had been filed against him and that one of those charges may have been a felony.

The SOR does not allege the underlying offense as a criminal offense security concern, undoubtedly because there is no evidence of any other criminal conduct in Applicant's history. However, when combined with Applicant's financial history, as discussed below, his conduct and the Court's response to that conduct is sufficient to allow for application of Disqualifying Condition (DC) 16(d): *credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgement, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.*

While the Court imposed an order of protection and required Applicant to attend a domestic violence diversion program, it eventually entered a nolle prosequi upon his successful completion of the program. Applicant has not been involved in any other criminal activity, either before or after the events of May 9, 2010. Further, Applicant's references indicate he has demonstrated that he is an honest and responsible individual who has demonstrated trustworthy characteristics during at least part of the time he has been working with the Army.

Considering the nature of Applicant's conduct and that he is now divorced from his ex-wife, Applicant's conduct is unlikely to recur. Mitigating Condition (MC) 17(c): *the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment applies.*

Guideline F, Financial Considerations

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 acts to generate funds. AG 18

Applicant has over \$488,000 in delinquent student loans that have been submitted for collection, charged off as bad debts, or listed as past due. Those debts have been delinquent for years. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and 19(c): *a history of not meeting financial obligations* apply.

Applicant chose to support himself and his family on student loans while he attended medical school. In so doing, he voluntarily acquired the enormous debt that has now become severely delinquent. His failure to pass the examinations required before he could pursue a career as a physician makes it highly unlikely he will ever be able to satisfy his delinquent debt. Until he was hired by his current employer, Applicant had only worked one year, at a low paying and unskilled job, in the past ten years. In addition to student loans, he primarily survived by borrowing money from his mother. As a result, he not only acquired enormous debt, he also maintained the inability to satisfy that debt.

Applicant made a few relatively small payments on two of his debts before the SOR was issued. He began making regular very small payments on one of those debts after the SOR was issued. He testified he has made arrangements to make \$875 monthly payments toward a very large debt that is the result of the consolidation of a number of debts owed to the same creditor, but those payments were not to begin until after the hearing of this case. Assuming Applicant actually makes the payments he has agreed to on that debt, it will take over ten years, not counting accumulating interest on the debt, before it is satisfied.

Applicant knowingly placed himself in a precarious financial position by choosing to support himself and his family solely on student loans. He did not act responsibly in acquiring such enormous debt solely in the hope that he would someday become a doctor and, hopefully, have sufficient income to begin to satisfy that debt. He has not acted responsibly in simply ignoring the debt since he acquired it. Mitigating Condition MC 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 death, divorce or separation), and the individual acted responsibly under the circumstances* does not apply.

Applicant's financial problems are ongoing and unlikely to be resolved in the foreseeable future. The few and nominal payments he has made on a couple of his accounts cannot be considered a good faith effort to resolve those debts. While he has negotiated a repayment plan on one large consolidated debt, it will take many years for that plan to actually resolve that debt even if he makes the required payments. Further, there are many other delinquent accounts on which no effort has been made to set up repayment plans.

I have considered the following mitigating conditions and concluded they do not apply: MC 20(a): *the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*; MC 20(c): *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*; MC 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*; and MC 20(e): *the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause*

of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Considering all relevant and material facts and circumstances present in this case, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, the whole-person concept, and the applicable disqualifying and mitigating conditions, I find Applicant mitigated the personal conduct security concern but failed to mitigate the financial considerations security concern. Applicant has not overcome the case against him nor satisfied his ultimate burden of persuasion. It is not clearly consistent with the national interest to grant Applicant a security clearance. Guideline F is decided against Applicant.

Formal Findings

Formal findings for or against Applicant on the allegation set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline E:	FOR APPLICANT
Subparagraphs 1.a-d:	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraphs 2.b-n:	Against Applicant
Subparagraphs 2.o-s:	For Applicant

Conclusion

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.

Henry Lazzaro
Administrative Judge