



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



In the matter of:)	
)	
)	ISCR Case No. 07-06252
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Emilio Jaksetic, Esquire, Department Counsel
For Applicant: Pro Se

May 30, 2008

Decision

LAZZARO, Henry, Administrative Judge:

Applicant failed to mitigate the financial considerations security concern that arises from his numerous severely delinquent accounts.

On September 19, 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 alleges a security concern under Guideline F (financial considerations). Applicant submitted an answer to the SOR, dated September 30, 2007, in which he admitted the allegations contained in subparagraphs 1.a through 1.g, denied the allegations contained

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

in subparagraphs 1.h through 1.n, and requested a clearance decision based on the written record without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on November 19, 2007, that was mailed to Applicant on November 21, 2007. That copy of the FORM was apparently not received by Applicant. The FORM was resent to Applicant on February 20, 2008. Applicant was informed he had 30 days from receipt of the FORM to submit his objections to any information contained in the FORM or to submit any additional information he wished to be considered. Applicant acknowledged receipt of the FORM on February 27, 2008, but did not submit a response to the FORM or object to anything contained in the FORM within the time allowed him. The case was assigned to me on May 2, 2008.

Findings of Fact

After a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 48 years old. He was employed as a security officer by a defense contractor for several months in 2006 until he was laid off due to the loss of his interim security clearance. Applicant worked as a security officer outside the defense industry from August 2002 until September 2005, and as a cashier in a retail store beginning in June 2006 until an undisclosed date. He was unemployed from September 2000 until August 2002, as a result of being fired from a job as a legal clerk with the U.S. Army, and again from October 2005 until June 2006, for undisclosed reasons.

Applicant graduated from high school in May 1978, and obtained an associate of arts degree in May 1986. He served on active duty in the U.S. Navy from August 1978 until December 1979. Applicant was married in July 1982, and that marriage ended in divorce in March 1983. He did not report having any dependents in the security clearance application he submitted in 2006.

SOR subparagraph 1.a alleges a judgment that was entered against Applicant in or about 2001 in the amount of \$3,130. He admits this debt but claims it is the result of a dispute with a former landlord over water damage that was done to his apartment as a result of a fire in an upstairs apartment. It remains unsatisfied.

The SOR alleges two charged off accounts, subparagraphs 1.g and 1.k, that are owing in the total amount of \$2,126. Applicant admitted the debt alleged in subparagraph 1.g, although his credit report indicates he has filed a dispute over that debt. He denied the debt alleged in subparagraph 1.k, but in the explanation he provided in his SOR answer he acknowledged he had a credit card with that creditor but indicated he objected to the amount alleged because \$1,074 of that amount represents accrued interest. Neither debt has been satisfied.

The SOR alleges nine accounts, totalling \$6,726, that have been submitted for collection.² Applicant admits his responsibility for each of the debts listed in subparagraphs 1.b through 1.f. He denied the debt alleged in subparagraph 1.h, but admitted owing the creditor and indicated he objected to the debt because it involved rental of a storage unit and the creditor refusing to return his property although he was less than three months in arrears at the time of the company's refusal. He denied the allegations contained in subparagraphs 1.j and 1.n by asserting he did not recognize the listed creditors. Both allegations are supported by the contents of Applicant's credit reports included as part of the FORM. None of these creditors has been satisfied.

Applicant attributes his delinquent debts to being unjustly fired from his employment with the U.S. Army in September 2000, and the resulting unemployment. However, he provided no explanation why he did not make any payments or payment arrangements on any of the debts while he was employed from August 2002 until September 2005, and again for a period in 2006. He submitted a personal financial statement in June 2007 (FORM Item 7) in which he listed \$115 as his only monthly income and \$483 as his monthly living expenses.

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 (DC) and Mitigating Conditions (MC) 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 (financial considerations) with its respective DC and MC, is 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.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

² The SOR alleges two additional collection accounts in subparagraphs 1.l and 1.m that are not included in this total. The debt alleged in subparagraph 1.l is clearly the same debt that is alleged in subparagraph 1.a. The debt alleged in subparagraph 1.m appears very strongly to be the same debt alleged in subparagraph 1.i based upon the amount listed under the "credit limit" heading in Applicant's August 2006 credit report (SOR Item 6).

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).

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

Analysis

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.

Applicant has 12 severely delinquent debts, totalling almost \$12,000, that have been submitted for collection, charged off as bad debts, or that resulted in a judgment being entered against him. All of those debts have been delinquent for at least a couple of years. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19(c): *a history of not meeting financial obligations* apply.

Applicant attributes his severely delinquent debt to the nearly two years unemployment he experienced between 2000 and 2002. However, he was gainfully employed from August 2002 until September 2005, and again for a period of time in 2006, but failed to make any payment or payment arrangements on any of the debts during those periods of employment. He did not submit any evidence to indicate he has sought financial

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.

counselling. The financial statement he submitted in June 2007 strongly indicates he not only lacks the ability to make any payment on any of the debts but he is for all intents and purposes destitute. Finally, he provided no evidence to indicate he is or has been seeking employment or doing anything else to remedy his current financial situation. Accordingly, Applicant is not entitled to application of any Guideline F mitigating condition.

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 his acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all relevant and material facts and circumstances present in this case, including the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying conditions. I conclude Applicant has failed to mitigate the security concern caused by the financial considerations present in this case. He has failed to overcome the case against him or satisfy his ultimate burden of persuasion. Guideline F is decided against Applicant. It is not clearly consistent with the national interest to grant Applicant a security clearance.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a - k:	Against Applicant
Subparagraphs 1.l & m	For Applicant
Subparagraph 1.n	Against 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