



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



In the matter of:)	
)	
)	ISCR Case No. 07-06524
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro Se*

January 28, 2008

Decision

LAZZARO, Henry, Administrative Judge

Applicant failed to mitigate the security concerns caused by her long-standing financial problems.

On September 18, 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 DOHA on October 22, 2007. She admitted all SOR allegations and requested a hearing.

The case was assigned to me on November 20, 2007. A notice of hearing was issued on November 29, 2007, scheduling the hearing for December 18, 2007. The hearing was conducted as scheduled. The government submitted six documentary exhibits

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

that were marked as Government Exhibits (GE) 1-6, and admitted into the record without objection. The Government also submitted a chart summarizing the contents of Applicant's credit reports that was marked as Appellate Exhibit (App Ex) I, and made part of the record. Applicant testified and submitted three documentary exhibits that were marked as Applicant's Exhibits (AE) 1-3, and admitted into the record without objection. The record was held open to allow Applicant to submit additional documents in support of her case. Following the hearing, I received a letter from Department Counsel detailing his efforts to obtain from Applicant any additional documentation she wanted to submit. That letter was marked as App Ex II, and is included in the record. The transcript was received on January 4, 2008.

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 woman who has been employed by a defense contractor since April 1985. Her current employment position is as a traffic coordinator. She submitted a letter from her supervisor that strongly indicates she is a trusted and valued employee. Applicant has held a secret level security clearance for approximately the past 15 years and no prior adverse action has been taken to revoke or downgrade that clearance.

Applicant graduated from high school in 1964. She reported in security clearance applications she submitted that she also attended college from January 1980 until July 1982. She has not earned a degree. Applicant was married in November 1980 and divorced in November 1985. She has two adult children.

Applicant has been living with a man in a domestic relationship for a number of years. They reside in a house she has owned and lived in since June 1983. Applicant values the house, on which there are no mortgages, at somewhat less than \$300,000. Applicant's gross salary, as of June 29, 2007, was \$1,058.48 per week. As of that date, she earned \$24,862.98 in 2007, although her net pay only amounted to \$8,454.47, largely due to deductions for loan repayments and garnishments. Applicant also contributes \$105.85 per week to a savings plan through a wage deduction. As of June 29, 2007, she contributed \$3,117.58 to that savings plan in 2007. She testified she has only a couple of dollars in bank accounts and an unknown amount in a retirement account.

Applicant's domestic partner contributed between \$1,800 and \$2,400 per month toward their joint living expenses until about three years ago when he was diagnosed with lung cancer and no longer able to work. Applicant's testimony indicated the amount he was able to contribute may have actually declined before that time because of his need to take time off from work because he was feeling ill even before he was diagnosed as suffering from cancer.

The Government concedes that the debts listed in SOR subparagraphs 1.a and 1.g are duplicate allegations of the same debt. The Government also concedes that the debts

listed in subparagraph 1.e and 1.j, which, as alleged, totaled approximately \$10,479, have been paid. Those debts were satisfied by means of Applicant's wages being garnished by the creditors. The debt alleged in subparagraph 1.i, in the amount of \$3,894, has also been satisfied by means of a wage garnishment.

The remaining debts alleged in the SOR represent accounts that are listed in Applicant's credit reports as delinquent or as having been charged off, submitted for collection, or on which a judgment has been obtained against Applicant. The total owing on those accounts as alleged in the SOR is approximately \$30,000. Applicant submitted a letter from a law firm (AE 3) which indicated a judgment was entered against her on November 12, 2007, on one of the alleged accounts in the amount of \$24,561.55, so it is clear her actual current delinquent indebtedness is much greater than what is alleged in the SOR. AE 3 also indicates the law firm placed a restraint on Applicant's bank accounts, after which she signed an agreement authorizing the bank to pay \$1,896.68 to the law firm to have the restraint removed. There is no record evidence that the money has actually been paid.

Applicant testified her financial problems are the result of the loss of income that was previously provided by her domestic partner. However, several of her accounts were delinquent for at least a couple of years before her partner was forced to completely stop working about three years ago. Based on Applicant's testimony, the record is unclear whether those earlier delinquencies are the result of a diminishment of the financial assistance he provided or due to overspending.

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 (financial considerations), with its disqualifying and mitigating conditions, 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.² The government has the burden of proving controverted facts.³ The burden of

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

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

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 him.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 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.

The SOR alleged approximately \$40,000 in debt that became delinquent or was charged off, submitted for collection or resulted in a judgment being entered against Applicant. Two of those debts have been satisfied, but only because the creditors were able to garnish Applicant’s wages. As alleged in the SOR, there is still almost \$30,000 in delinquent debt, although the recent judgment entered against Applicant indicates her outstanding delinquent debt is much greater. Her history of allowing accounts to become delinquent goes back at least five years. Disqualifying Conditions (DC) 19(a): *inability or*

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

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

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

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

⁸ ISCR Case No. 93-1390 (January 27, 1995) at pp. 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.

unwillingness to satisfy debts; and DC 19(c): a history of not meeting financial obligations apply.

Applicant has failed to take any affirmative action to resolve any of her delinquent debt. The accounts that have been satisfied are the result of aggressive collection action by the creditors. Applicant's testimony overwhelmingly establishes she has no plan to resolve the delinquent accounts or to find a way to assume a financially responsible lifestyle. Indeed, she testified she has not sought any type of assistance from any agency or individual who might be able to help her attain financial stability. Aggravating her lack of action to resolve her financial situation is the fact that she has approximately \$300,000 in equity in her home and money deducted from her salary for a savings plan that could be used to satisfy all her indebtedness and leave her with what should be a very manageable single mortgage payment. Rather than pursue this remedy or any other potential remedy, Applicant continues to allow judgments to be entered against her and her wages to be garnished. I have considered all mitigating conditions and conclude that none apply.

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

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶6.3.6 of the Directive, and the applicable disqualifying conditions, Applicant has failed to mitigate the security concern caused by the financial considerations present in this case. She has failed to overcome the case against her or satisfy her ultimate burden of persuasion. 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-j: **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