



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



In the matter of:)	
)	
)	ISCR Case No. 07-09469
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert. E. Coacher, Esq., Department Counsel
For Applicant: *Pro Se*

March 26, 2008

Decision

LAZZARO, Henry, Administrative Judge

Applicant mitigated the security concerns caused by his financial problems.

On November 27, 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 security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). Applicant submitted a response to the SOR that was received by DOHA on December 17, 2007. He admitted all Guideline F allegations with some clarifications, denied all Guideline E allegations, and requested a hearing.

The case was assigned to me on January 9, 2008. A notice of hearing was issued on January 14, 2008, scheduling the hearing for February 5, 2008. The hearing was

¹ This action was taken under Executive Order 10865, 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.

conducted as scheduled. The government submitted four documentary exhibits that were marked as Government Exhibits (GE) 1-4. GE 1, 2, and 4 were admitted into the record without objection. Applicant's objection to the admission of GE 3 (a credit report) was sustained because one of the three pages of that document was missing. Department Counsel decided not to avail himself of the offer provided to him to obtain a complete copy of the document and instead indicated he was prepared to proceed without the exhibit.

Applicant testified and submitted five documentary exhibits that were marked as Applicant's Exhibits (AE) 1-5, and admitted into the record without objection. The record was held open to allow Applicant to submit additional documents in support of his case. Two additional documents were timely received, marked as AE 6 & 7, and admitted into the record without objection. Department Counsel's forwarding endorsement on AE 6 & 7, which contained arguments of Department Counsel on the significance of the additional documents, was marked as Appellate Exhibit (App. Ex.) I and included as part of the record. The transcript was received on February 27, 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 58 years old and has been employed by a defense contractor, currently as a network administrator, since May 2006. Applicant moved to his current state of residence in 2004 and was unemployed from in or about September 2004 until March 2005. He thereafter held a series of short-term jobs until obtaining his current employment. Prior to moving to his current state of residence he was the owner-operator of a trucking business that at one time had three trucks and employee drivers. The economic impact following the events of September 11, 2001, eventually made Applicant's trucking business unprofitable. Applicant held a security clearance while employed as a senior field engineer for a government contractor from August 1987 until November 1995. No adverse action was ever taken to revoke or downgrade that clearance.

Applicant was married in or about October 1992.² Applicant testified he and his wife lived together in a domestic-type relationship for some time prior to their marriage. They resided in a house he purchased in or about May 1985 before they began living together. Applicant has three children and two step-children from this relationship. Although he was uncertain of their exact ages, his children apparently range in age from about 18 to 37.

Sometime around the summer of 2004, Applicant's wife told him she wanted them to separate. Applicant's testimony indicates this was something he did not want to happen and it proved to be a very trying and emotional experience for him. He quit claimed his interest in the marital residence to her and abruptly moved to another state. He presumed his wife, who had been responsible for paying all household expenses during the course

² The security clearance application submitted in May 2006 (GE 1) lists the date of his marriage as October 8, 1992. However, Applicant consistently testified he had been married for over 20 years.

of their marriage, would make whatever arrangements were necessary to pay off their debts and they would eventually obtain a divorce. Instead, his wife neglected the bills and sold the house to a friend for about the amount that was owed on the mortgage. Applicant's wife traveled to the state where he had relocated at the end of 2004 and they reconciled. They did not discuss the sale of the house or what had happened to their finances because Applicant found it too emotionally distressful to talk about and wanted to just put that chapter of their life behind him.

A review of the credit reports in evidence, GE 4 and AE 2, unquestionably discloses that Applicant was financially solvent at all times prior to 2004. All debts alleged in the SOR became delinquent during about a nine-month period of time in 2004. No debts reflected in those credit reports have become delinquent since 2004.

Applicant submitted a security clearance application (e-QIP) in May 2006. He did not disclose any delinquent debts in the e-QIP in response to applicable questions. He credibly testified he was unaware he had any delinquent debts at the time he submitted the e-QIP.

Applicant and his wife purchased a house in 2006. In October 2006, during the course of closing on the purchase of that house, Applicant learned for the first time of the existence of the delinquent debts. He credibly testified he immediately notified the facility security officer (FSO) at his place of employment of the delinquent debts. He also took immediate steps to satisfy the delinquent creditors by signing a contract in November 2006 with a consumer credit counseling agency and entering into a repayment plan with that agency. The plan purportedly will have all debts fully satisfied within three years of entry into the plan.³

Applicant has consistently made payments to the credit counseling agency as required. As of the date of the hearing, all payments into the plan had been used to satisfy the plan's fees. According to the agreement Applicant entered into with the credit counseling agency, it is only beginning in March 2008 that payments he makes are to be applied to satisfy the delinquent debts

The contract Applicant has with the credit counseling agency also requires him to make payments into a personal savings accounts that will eventually be used to make payments to the creditors. Applicant has regularly made those required payments, although the account is somewhat underfunded due to a withdrawal for an unexpected medical

³ The debts listed in SOR subparagraphs 1.b- e are included in the plan. The debt listed in subparagraph 1.f has been paid in full (AE 5). Applicant testified the debt listed in subparagraph 1.a will be incorporated into the plan when one of the other debts listed in the plan is satisfied.

emergency.⁴ Applicant has also taken online consumer counseling courses through the consumer credit counseling service as part of the debt repayment plan.

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) and Guideline E (personal conduct), 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.⁵ The government has the burden of proving controverted facts.⁶ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁷ although the government is required to present substantial evidence to meet its burden of proof.⁸ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁹ 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.¹⁰ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹¹

⁴ Applicant testified \$1,100 was withdrawn from the account due to the medical emergency and stated he would submit verification of the medical necessity for that withdrawal after the hearing. Post-hearing, he submitted AE 7 which only discloses a medical payment of \$55. However, he explained in AE 6 that \$700 had been set aside for yet unperformed medical work and \$374 was used to pay the debt alleged in SOR subparagraph 1.f, and the \$700 has been redeposited in the savings accounts as reflected in the savings inquiry record included as part of AE 7.

⁵ ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

⁶ ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

⁷ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

⁸ ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

⁹ ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

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

¹¹ ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

No one has a right to a security clearance¹² and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹³ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹⁴

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. . . . (Adjudicative Guideline [AG]) 18

Applicant allowed a number of debts to become delinquent over the course of a few months in 2004. Disqualifying Condition DC 19(c): *a history of not meeting financial obligations* applies. The delinquencies were not the result of his inability or unwillingness to pay his debts, but rather due to a misplaced reliance on his wife doing so as both of them were apparently going through an emotionally upsetting and trying time in their marriage. Thus, DC 19(a): *inability or unwillingness to satisfy debts* does not apply to the facts of this case.

Applicant’s credit reports establish he led a financially responsible lifestyle at all times before and after the brief period of time when the debts alleged in the SOR became delinquent because of the turmoil that occurred in his marriage in 2004. He first learned of the delinquent debt when he purchased and was closing on a house in October 2006. The following month, a full year before he received the SOR, he entered into a debt repayment plan with a consumer credit counselling agency. Applicant has consistently made the required payments under the plan, made required payments into a personal savings accounts, and taken online consumer credit courses as recommended by the plan. Additionally, he immediately notified his employer’s FSO of the delinquent debts. Mitigating Conditions (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*; and 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* apply.

¹² *Egan*, 484 U.S. at 528, 531.

¹³ *Id* at 531.

¹⁴ *Egan*, Executive Order 10865, and the Directive.

Although all payments to the plan have thus far been solely applied to pay the credit counseling services fees, Applicant submitted verification he has been enrolled in a 36-month plan since November 2006 for the specific purpose of settling the debts included in the plan, and, correctly or incorrectly, has been operating under a sincere belief that the plan will satisfy all his delinquent creditors within the next two years. Thus, I find Applicant is entitled to application of 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*; and MC 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*.

Guideline E, Personal Conduct

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness 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 failure to cooperate with the security clearance process. AG 15

Applicant submitted an e-QIP in May 2006 in which he failed to disclose the existence of any delinquent debt. He credibly testified he was unaware he had any delinquent debts until he was closing on a house in October 2006, and he immediately notified his employer's FSO of them when he found about them. Accordingly, no disqualifying condition applies under guideline E.

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 mitigated the alleged financial considerations and personal conduct security concerns. He has overcome the case against him and satisfied his ultimate burden of persuasion. It is clearly consistent with the national interest to grant Applicant a security clearance. Guidelines F and E are decided for Applicant.

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: FOR APPLICANT

Subparagraphs 1.a-f: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraphs 1.a & b: For Applicant

Conclusion

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