



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



In the matter of:)	
)	
)	ISCR Case No. 07-10340
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

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

March 27, 2008

Decision

LAZZARO, Henry, Administrative Judge

Applicant failed to mitigate the security concerns caused by his financial problems.

On November 16, 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). Applicant submitted a response to the SOR, dated January 10, 2008, admitted the SOR allegations contained in subparagraphs 1.c, 1.e, and 1.i, denied all other allegations, and requested a hearing.

The case was assigned to me on January 25, 2008. A notice of hearing was issued on January 29, 2008, scheduling the hearing for February 20, 2008. The hearing was conducted as scheduled. The government submitted five documentary exhibits that were

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.

marked as Government Exhibits (GE) 1-5, and admitted into the record without objection. 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 transcript was received on February 28, 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 38 years old and has been employed by a defense contractor, currently as a security specialist, since November 2005. He was employed by a private company as a security officer assigned to his current employer from May 2005 to November 2005. Applicant's immediate supervisor considers him to be a valued employee who has "consistently demonstrated strength of character, trustworthiness, honesty and reliability of the highest level." (AE 3)

In his May 2006 security clearance application, Applicant listed high school attendance from September 1985 to June 1988, and receipt of a general educational development (GED) certificate in December 1999. However, he testified he graduated from high school in or about 1988. (Tr. p. 7) He also listed enlisted service in the U.S. Army from February 1989 to January 1997, without specifying whether it was active, active reserve, or inactive reserve. In response to an interrogatory requesting production of a DD 214, Applicant submitted a letter from the National Personnel Records Center that verified his reserve service but which also stated no DD 214 was ever issued because he either had no active service or less than 90 consecutive days of active duty for training. (GE 2) He submitted a security clearance application in May 2006 (GE 1), in which he reported a series of jobs, and periods of unemployment from November 2003 to May 2005, August 2001 to February 2002, and February 1999 to September 2000.

Applicant was married in April 1988, and has been separated from his wife since September 1997. He has three children from that marriage who were born in May 1988, March 1989, and July 1999. Applicant does not pay child support or alimony to his wife, but testified he has an arrangement with his wife whereby he provides for the children on a random basis. (Tr. pp. 44-45)

In his SOR response, Applicant claimed the delinquent debts alleged in SOR subparagraphs 1.a, 1.b, 1.d, 1.f, and 1.g had been resolved. In the response to interrogatories he executed on September 20, 2007 (GE 2), he stated he either had previously successfully disputed or was currently disputing the debts alleged in subparagraphs 1.a, 1.b, 1.f, 1.g, 1.h,² and 1.i. As to the debt alleged in subparagraph 1.d, Applicant stated in the response to interrogatories that he would contact that creditor and

² Applicant also stated in his response to the interrogatories that he would follow up with other credit reporting agencies and "make payment arrangements as necessary" on this debt.

make arrangements to resolve the debt. In the two documents, he consistently admitted owing the debts alleged in subparagraphs 1.c and 1.e, totaling \$38,140.

Applicant testified the debts listed in subparagraphs 1.a, 1.b, and 1.f have been paid and that he does not recognize the creditor listed in subparagraph 1.g. (Tr. pp. 34-39) He failed to present any receipts proving payment and testified none were available. He also testified he still owes the debts alleged in subparagraphs 1.c, 1.d, 1.e, and 1.i, totaling \$39,860. (Tr. pp. 35-41) Further, he testified he had made arrangements with the creditor to make two payments of \$800 to satisfy the debt alleged in subparagraph 1.i with the first payment due in January 2008, but that he had been financially unable to make the payment as agreed. (Tr. pp. 41-42) Finally, he admits he has not paid the creditor listed in subparagraph 1.h and does not know why that debt is no longer listed in his credit reports. (Tr. pp. 40-41)

The debts alleged in the SOR became delinquent and/or were charged off or submitted for collection as far back as December 2000 and as recently as October 2006. In addition to the periods of unemployment noted earlier, Applicant attributes his financial problems to the more recent need to support his live-in girlfriend who was unemployed for almost two years. Additionally, Applicant's wages are being garnished for 10% of his income to satisfy a judgment for unpaid rent that arose about the time he separated from his wife. There is a balance of almost \$30,000 remaining to be paid through the garnishment. Applicant's girlfriend once again became employed several months ago and he believes her financial contributions to their household expenses will assist him in satisfying his remaining delinquent creditors.

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.³ The government has the burden of proving controverted facts.⁴ The burden of

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.

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

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 numerous debts to become delinquent which were then either charged off or submitted for collection. His admitted outstanding delinquencies that are alleged in the SOR total almost \$40,000. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19(c): *a history of not meeting financial obligations* applies.

Applicant’s several periods of unemployment contributed significantly to his financial problems. However, until relatively recently he took minimal to no action to pay his

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.

delinquent debts when he was employed and instead aggravated his financial problems by opting to support an unemployed girlfriend instead of applying funds he would have otherwise had available to creditors. Accordingly, he is entitled to only minimal application of 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*; and MC 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*.

Applicant has not received financial counselling and his financial problems are ongoing and unlikely to be resolved in the near future. Thus, 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(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* do not 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 and mitigating conditions, Applicant has failed to mitigate the financial considerations security concern. He 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 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	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