



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



In the matter of:)	
)	
)	ISCR Case No. 07-11114
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

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

March 24, 2008

Decision

LAZZARO, Henry, Administrative Judge

Applicant mitigated the security concerns caused by his financial problems.

On November 26, 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 December 26, 2007. He admitted all allegations except those contained in subparagraphs 1.d, 1.f, and 1.i, and requested a hearing.

The case was assigned to me on January 18, 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 four 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) 1-4, and admitted into the record without objection. Applicant testified, called one witness to testify on his behalf, and submitted eight documentary exhibits that were marked as Applicant's Exhibits (AE) 1-8, and admitted into the record without objection. The record was held open to allow Applicant to submit additional documents in support of his case. One additional document was timely received, marked as AE 9, and admitted into the record without objection. Department Counsel's forwarding endorsement on AE 9 was marked as Appellate Exhibit (App. Ex.) I and included as part of the record. 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 41 years old and has been employed by a defense contractor as a senior programmer analyst since July 2004. He was previously employed by another company, but working with his present employer under contract, from November 2000 to June 2004. Applicant has been married since March 1996. He does not have any children.

Applicant's and his wife's joint family income was between \$225,000 and \$250,000 annually before she lost her job in August 2001. Her portion of that income was about \$150,000. She remained unemployed until August 2002, when she was hired at a salary of \$60,000 annually. Having established a lifestyle based upon their greatly increased family income, Applicant and his wife depleted their savings and retirement accounts during her period of unemployment in an effort to maintain that lifestyle.

Applicant's wife again became unemployed in 2004, at which time they began to fall behind in payments on their various debts. She has since then been working on establishing a cosmetic business and selling items at flea markets which are only generating a net monthly income of about \$500. Further complicating their financial situation was the need to let a young teenage nephew come and live with them from 2006 to 2007 in accord with a court order to keep him from being sentenced to a term in jail. His presence in the home prevented Applicant's wife from seeking full-time employment and also prevented them from moving into a smaller and less expensive apartment as they had previously planned on doing.

Applicant's wife's unemployment and the resulting severe decrease in family income resulted in numerous debts, primarily consisting of revolving credit, becoming delinquent. He contacted a credit consumer counseling service in an attempt to resolve his delinquent debts, but was unable to make the \$1,900 monthly payments they were going to require from him.

Before the SOR was filed, DOHA sent Applicant interrogatories inquiring about the debts that were subsequently listed in the SOR and others. Applicant responded to the interrogatories on October 4, 2007, and provided proof that three debts, totaling \$1,090, had been paid. He submitted proof with his answer to the SOR that two additional debts, totaling \$5,570, had been satisfied.

The Vice President and Chief Financial Officer for Applicant's employer testified on his behalf. He described Applicant as a meticulous individual, an outstanding employee, and a "stand-up" guy. Applicant informed his employer of the pending hearing on the SOR and the basis for the denial of his security clearance about two weeks before the hearing. At the employers suggestion, a \$30,000 loan was made to Applicant by the employer at 5% annual interest to be repaid in 98 bi-monthly installments of \$345.10 to be withheld directly from his salary. The employer made the loan because it's officers believe Applicant is a valued employee who they trust to repay the loan in accordance with the agreed contractual terms or sooner.

Applicant applied the proceeds of the loan to satisfy all delinquent debt alleged in the SOR with the exception of a debt owing in the amount of \$12,154 to a collection agency. Applicant testified he was reluctant to contact this creditor directly, as he had the creditors who he has satisfied, because of the abundance of negative information he learned about this creditor through an internet search. He testified he instead opted to act through an attorney with this creditor. In his post-hearing submission (AE 9), Applicant stated the attorney told him to try and negotiate with that creditor directly, that he did so but was unsuccessful in arranging an agreed settlement with that creditor, and he intends to resolve the account in the upcoming months with the assistance of the attorney.

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 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

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.

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).

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

Applicant’s severe and unexpected decrease in family income from August 2001 to August 2002, and again since 2004 caused a number of his debts to become delinquent. Disqualifying Conditions DC 19(c): *a history of not meeting financial obligations*; and 19(a): *inability or unwillingness to satisfy debts* apply.

Applicant and his wife lived within their financial means before she lost her job in August 2001. They acted responsibly by applying their savings to maintain their lifestyle while she searched for new employment. Having expended all their savings, they found themselves in a position where they could not service all their credit card debt when she again became unemployed in 2004. The need to take their nephew into their home further aggravated their financial position and prohibited them from taking more immediate steps to begin to resolve their financial distress.

Applicant satisfied several delinquent accounts even before the SOR was issued. At his employer’s suggestion, he has obtained a loan that has allowed him to satisfy all

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.

remaining delinquent creditors with the exception of one. He has consulted with an attorney about that debt and credibly asserted that with the attorney's assistance the debt will be satisfied in the not too distant future. The loan he obtained from his employer is being repaid over the course of the next four years at a modest interest rate by withholding a relatively small sum from Applicant's salary.

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*; 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*; 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 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* all 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, specifically to include the trust and confidence his employer demonstrated in Applicant by making a loan to him at its suggestion and with full knowledge of the reason and need for the loan, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, Applicant has mitigated the financial considerations security concern. 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. Guideline F is 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-i: 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