



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



In the matter of:)	
)	
)	ISCR Case No. 07-11779
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro Se*

April 30, 2008

Decision

LAZZARO, Henry, Administrative Judge

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

On November 20, 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 security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). Applicant submitted a response to the SOR that was received by the DOHA on January 14, 2008. The DOHA notified him by letter, dated January 17, 2008, that his answer could not be considered complete because he did not properly answer the allegations. Applicant submitted a second response to the SOR that was received by the DOHA on February 4, 2008, in which he admitted the allegations contained in SOR subparagraphs 1.a and 1.y, denied the remaining allegations, and requested a hearing.

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.

The case was assigned to another administrative judge on February 8, 2008, and reassigned to me on February 11, 2008, to be heard in conjunction with other cases I had scheduled in the same region. A notice of hearing was issued on February 27, 2008, scheduling the hearing for March 20, 2008. The hearing was conducted as scheduled. The government submitted four documentary exhibits that were marked as Government Exhibits (GE) 1-4, and admitted into the record without objection. Applicant testified and submitted 1 documentary exhibit that was marked as Applicant's Exhibit (AE) 1, 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 2 & 3, and admitted into the record without objection. Department Counsel's forwarding endorsement on the additional submissions was marked as Appellate Exhibit (App. Ex.) I and included as part of the record. The transcript was received on April 9, 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 as a sheet metal mechanic by defense contractors since April 2005. He has proven himself to be highly reliable and a very willing team member/employee who is considered to be an asset to his company. Applicant was employed as a sheet metal mechanic by the U.S. Air Force from January 1992 until he was laid off in June 2004. He was unemployed from July 2004 to December 2004, and then worked as a machine operator until he was dismissed in April 2005 because he was unable to maintain production quotas.

Applicant graduated from high school in 1985. He served on active duty with the Air Force from March 1987 to March 1990, and attained the rank of airman first class (paygrade E-3). He served in the Air Force reserve from January 1991 to June 1994, and attained the rank of senior airman (paygrade E-4). Applicant has possessed a secret level security clearance for most of the time since he was in the Air Force. No prior adverse action has been taken to revoke or downgrade his clearance.

Applicant married the first time in February 1996. That marriage ended in divorce in February 2001. There were no children born of that marriage. He has been remarried since October 2002. He has two children, ages eight and six, from this relationship.

Applicant and his first wife filed for Chapter 13 bankruptcy protection in or about 1997. Although he listed continuous civilian employment with the Air Force between 1992 and 2004 in the security clearance applications he submitted, Applicant testified he was actually laid off for about eighteen months beginning in 1997. While he found other employment during the layoff, his salary dropped from somewhere between \$14 and \$15 an hour to whatever the minimum wage was at the time. Applicant successfully completed the Chapter 13 wage earner plan and obtained a discharge in or about 2002.

The SOR alleges 19 collection accounts, totaling \$2,877, resulting from delinquent medical bills. Applicant testified he experienced a number of medical conditions, including diabetes, heart stent emplacement, and ankle surgery over the past ten years or so, but that he always had medical insurance and paid the required co-pays before receiving treatment. He has sent a letter to the various credit reporting agencies challenging the legitimacy of most of these accounts, asserting they should have been paid by insurance companies.

The SOR alleges another 16 delinquent accounts, totaling \$5,884, that have been submitted for collection. Those accounts range from charges for telephone and television service to a returned check that appears to have been presented at a restaurant. The SOR also alleges two accounts, totaling \$1,531, that have been charged off as bad debts. Applicant sent a letter to the various credit reporting agencies challenging the legitimacy of most of these accounts, asserting they either do not belong to him or are duplicates of other accounts.

The SOR alleges one additional account charged off as a bad debt in the amount of \$11,295 that represents the deficiency owing after the sale of a repossessed automobile. Applicant admits he voluntarily allowed the vehicle to be repossessed and that he is responsible for this account. He claims he has contacted the creditor and has started to make payments on this account, but he did not provide any verification of a payment having actually been made.

Applicant contacted a representative of his employee assistance program upon receipt of the SOR and was advised to seek assistance from a consumer credit counseling service. He then contacted a credit counseling service and was further advised he should send a letter to the credit reporting services disputing all credit report entries that either were not his or that he did not recognize as being his accounts. The letters referred to above were recently sent based upon that advice. As advised, Applicant intends to contact the credit counseling service after he receives responses to the accounts he has disputed in an effort to establish a payment plan for whatever accounts remain on his credit reports.

Applicant submitted security clearance applications in May 2005 and May 2007 in which he failed to disclose, as required, that he had any accounts that had been over 180 days delinquent in the preceding seven years or were more than 90 days delinquent at the time those applications were submitted. In the 2005 application, Applicant did disclose a criminal charge related to a bounced check, a wage garnishment, and the repossession of an automobile. In the 2007 application, he disclosed the bounced check charge, the garnishment, and that he had been fired from a job.

Applicant testified he failed to list the numerous delinquent accounts in the security clearance applications he submitted because he was unaware some accounts were delinquent, he misunderstood some questions, and he was provided wrong information when he sought assistance in answering the questions. His demeanor, appearance, and manner of testifying make it abundantly clear he is very unworldly in such matters. His

explanations are credible. He did not deliberately provide false answers in the security clearance applications.²

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.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 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

² Department Counsel, on behalf of the Government, conceded in his closing argument that there was not a deliberate falsification by Applicant in this case. (Tr. p. 82)

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).

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.

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 filed for Chapter 13 bankruptcy protection in 1997 and, after successful completion of a wage earner plan, obtained a discharge in or about 2002. He now has accumulated numerous delinquent debts, totalling more than \$21,000, that have been either charged off as bad debts or submitted for collection. While many of the debts are for medical expenses, others are for items ranging from telephone and television service to bad checks presented at a restaurant. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19(c): *a history of not meeting financial obligations* apply.

Applicant admits he is personally responsible for the \$11,295 charged off account that resulted from his decision to allow the voluntary repossession of an automobile. While he claims he has contacted this creditor and has started to make payment on the debt, he did not provide any verification in support of that claim.

His testimony that he had health insurance when the various medical expenses alleged in the SOR became delinquent is credible. Notwithstanding, he did not provide any evidence to indicate the charges are not uncovered expenses that are his responsibility. Applicant sought the assistance of a consumer credit counseling service and, based on the advice he received, sent letters to the various credit reporting services challenging most of the delinquent accounts that appear in his credit reports. However, he has not accomplished anything to satisfy any of those accounts or provided any basis to conclude they will be resolved in any fashion in the foreseeable future.

Applicant’s failure to take any meaningful action to resolve the numerous debts that have been delinquent for years prohibits application of Mitigating Conditions (MC) 20(a): *the behavior . . . 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*; 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,*

¹¹ *Id.* at 531.

¹² *Egan*, Executive Order 10865, and the Directive.

or a death, divorce or separation) and the individual acted responsibly under the circumstances; 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.

Although Applicant claims he does not recognize a number of the creditors listed in the SOR and has submitted disputes to the credit reporting services to that effect, he presented no meaningful basis to conclude they are not his debts that have been sold to successor creditors. Accordingly, I conclude MC 20(e): *the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue* has no applicability to the facts of this case. The remaining mitigating condition, MC 20(f), is also inapplicable.

Guideline E, Personal Conduct

Personal conduct is always a concern because 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. (Adjudicative Guideline [AG] 15)

Applicant's explanations for his failure to disclose his many delinquent accounts in the security clearance applications he submitted in 2005 and 2007 are credible. Those explanations, combined with the abundant adverse information he did disclose in the applications, establish that he did not deliberately provide false answers in the security clearance applications. Accordingly, no disqualifying condition under Guideline E applies.

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.

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, I find Applicant has failed to mitigate the financial considerations security concern. He has neither 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

 Subparagraphs 1.a-mm: Against Applicant

Paragraph 2, Guideline E: FOR APPLICANT

 Subparagraphs 2.a-d: For 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