



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-12683
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

April 25, 2008

**Decision**

---

LAZZARO, Henry, Administrative Judge

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

On January 22, 2008, 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.<sup>1</sup> The SOR alleges security concerns under Guideline F (financial considerations). Applicant submitted a response to the SOR that was received by the DOHA on February 12, 2008, admitted the SOR allegations contained in subparagraphs 1.c, 1.e, 1.f, 1.i, 1.j, and 1k, denied the remaining allegations, and requested a hearing.<sup>2</sup>

---

<sup>1</sup> 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.

<sup>2</sup> Although Applicant admitted the allegations noted in his response, he at the same time indicated those debts were either paid or were the responsibility of a corporation he previously operated.

The case was assigned to me on February 21, 2008. 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 13 documentary exhibits that were marked as Applicant's Exhibits (AE) 1-13, and admitted into the record without objection. 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 62 years old and has been employed as an unexploded ordnance technician by defense contractors since January 2006. The certificates and letters of recommendation he submitted establish he has performed his duties in a commendable fashion.

Applicant listed employment outside the defense industry in the security clearance application he submitted in 2007 as the director of operations for an investment firm from April 1996 to February 1998, the vice president of operations for a corporation from February 1998 to March 1999, the customer service lead for an electronics warehouse from August 2003 to May 2004, security for a homeowners' association from April 2004 to August 2005, and the assistant director of security for a community association from September 2005 to January 2006. Applicant was also the president of his own business engaged peripherally in the motion picture business from March 1999 to August 2003.

Applicant served on active duty with the Air Force from June 1963 to May 1967. He attained the rank of Staff Sergeant (paygrade E-5) and his service was characterized as "Honorable." He served on active duty with the Army from February 1978 to April 1987. He attained the rank of Sergeant First Class (paygrade E-7). His military decorations include the Army Good Conduct Medal (3<sup>rd</sup> award), Army Achievement Medal, Army Commendation Medal, and the Air Force Good Conduct Medal. Applicant served as a Morse Intercept Operator in the Air Force. He served as an Explosive Ordnance Disposal Specialist in the Army. Applicant possessed a security clearance and was granted various high level security accesses while in the armed forces. No prior adverse action is reported to have been taken to revoke or downgrade his clearance or any granted access.

Applicant has been married since January 1978. In the 2007 security clearance application he submitted, Applicant reported two prior marriages that ended in divorce in or about 1969 and in or about 1972. He did not provide any other information about these marriages. He did not list any children from any of his marriages.

The SOR alleges seven delinquent accounts, totaling \$17,314, that have been submitted for collection, and four delinquent accounts, totaling \$29,472, that have been charged off as bad debts. In his response to the SOR, Applicant admitted he was personally responsible for two of the collection accounts, totaling \$299, although he also

alleged they had been paid without providing any proof of payment either with his response or at the hearing. He also admitted the business he operated from 1999 to 2003 was responsible for three of the charged off accounts and one of the collection accounts, totaling \$36,373. Finally, he indicated he was disputing the remaining accounts. His testimony and the information he provided in response to interrogatories propounded to him by the DOHA (GE 2), indicate the basis for his disputing those accounts is that he does not recognize the creditors.

The business related accounts consist of a delinquent credit card debt and deficiencies owing on two automobiles and a boat he allowed to be voluntarily repossessed when the business failed. While he asserts the business was incorporated and the debts were corporate liabilities that should have been solely the responsibility of the corporation, he did not submit any proof to substantiate those assertions. To the contrary, Applicant's credit reports (GE 2 & 3) list those debts as being either individual or joint debts with the sole exception of the entry of "Participant" in the credit report contained in GE 2 for the debt alleged in subparagraph 1.f.

Applicant also suggests his financial problems may be the result of possible identity theft as evidenced by a letter he received in August 2006 from the Department of Veterans Affairs (VA) indicating personal information of up to 26.5 million veterans may have been compromised by the theft of a computer. However, most if not all of the debts alleged in the SOR predate the letter by years and could not have resulted from the theft of his identity as a result of that theft. Further, Applicant admits all but five of the debts are either his personal responsibility or the responsibility of his former business.

Applicant also suggests that entries in the credit report contained in GE 2 that indicate he is deceased somehow contribute to his financial problems.<sup>3</sup> Other than his testimony that he has had difficulty contesting those entries he disputes in his credit reports, it is unclear how the obviously inaccurate entries about his death could have contributed to his financial problems. Most significantly, they could not have contributed in any way to the debts he admits he and/or his former business are responsible for and his unwillingness or inability to resolve those debts.

Applicant testified he contacted the creditors of his former business in an effort to resolve those debts but was unable to make the payments they insisted on. He also testified his bank refused to give him a loan to pay off those debts because he reportedly was deceased. However, he was able to clear up the reports of his death sufficiently to obtain a mortgage loan to purchase a house. Finally, he submitted a letter from an attorney, dated March 17, 2008, who reported he is working to clear up the issue of Applicant being listed as deceased by the various credit reporting agencies. (AE 12)

---

<sup>3</sup> The record does not contain any evidence to explain how or from whom the credit reporting agencies obtained assertions that Applicant had died.

## 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.<sup>4</sup> The government has the burden of proving controverted facts.<sup>5</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence,<sup>6</sup> although the government is required to present substantial evidence to meet its burden of proof.<sup>7</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>8</sup> 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.<sup>9</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>10</sup>

No one has a right to a security clearance<sup>11</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of

---

<sup>4</sup> ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

<sup>5</sup> ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

<sup>6</sup> *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

<sup>7</sup> ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

<sup>8</sup> ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

<sup>9</sup> ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

<sup>10</sup> ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

<sup>11</sup> *Egan*, 484 U.S. at 528, 531.

denials.”<sup>12</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>13</sup>

---

## 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 has numerous debts, totalling more than \$46,000, that have been delinquent for many years and either charged off as bad debts or submitted for collection. 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 two small debts which he claims to have paid. However, he did not provide any verification of the alleged payments. He admits over \$36,000 of the delinquent debt arose from his former business endeavor. While he asserts that debt should have been corporate debt for which he should not be held personally liable, he failed to provide any evidence in support of that assertion. Applicant sought the assistance of an attorney to clear up the issue of his reported death in the credit reports as evidenced by a letter dated March 17, 2008, but has not actually accomplished anything to resolve the issue. He also claims to have contacted the creditors on the business debt and sought a bank loan in unsuccessful efforts to resolve that debt.

Applicant’s failure to take any meaningful action to resolve the numerous debts that have been delinquent for years prohibits application of Mitigating Condition (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, 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 to not recognize several of the creditors listed in the SOR, he presented no meaningful basis to conclude they are not his debts that have been sold

---

<sup>12</sup> *Id.* at 531.

<sup>13</sup> *Egan*, Executive Order 10865, and the Directive.

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 is also inapplicable.

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, I find 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

Subparagraphs 1.a-k:           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