



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



In the matter of:)	
)	
)	ISCR Case No. 07-12705
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

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

April 22, 2008

Decision

LAZZARO, Henry, Administrative Judge

Applicant mitigated the security concerns caused by his financial problems.

On January 15, 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.¹ 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 4, 2008, admitted all SOR allegations, and requested a hearing.

The case was assigned to me on February 14, 2008. A notice of hearing was issued on February 27, 2008, scheduling the hearing for March 19, 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.

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.

Applicant testified and submitted six documentary exhibits that were marked as Applicant's Exhibits (AE) 1-6, and admitted into the record without objection. The transcript was received on March 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 a 44-year-old high school graduate who has been employed as a warehouse worker by a defense contractor since October 2004. He was employed outside the defense industry, by a variety of employers, as a forklift driver from August 1992 to May 2002, as a truck driver from August 2002 to January 2003, as some type of equipment operator from January 2003 to October 2003, and as a machine operator from April 2003 to April 2004. He was unemployed from May 2002 to August 2002, after his long-term employer closed the business where he worked. He also was briefly self-employed repairing automobiles from March 2004 to October 2004. He has never held a security clearance.

Applicant was married in April 1996. His wife left him to take up residence with someone else in February 2006, and he filed for a divorce in January 2008. Applicant has three children, ages 7, 20 and 21. None of his children reside with him, and he pays \$465 per month as support for the youngest child.

Applicant's wife experienced health problems between 2002 and 2005, including surgery to remove cancerous tumors. As a result of her health problems, she was unemployed for varying periods of time, including one period of approximately six months. They were forced to attempt to support themselves solely on his income during her unemployment.

Applicant presented himself as a very financially unsophisticated individual. He credibly testified his wife was responsible for their finances as follows:

Well, my wife was -- she was -- she's smart, sir, so I -- I had -- I trusted her. Because she know things I don't know. She reads better than me, she's a stronger reader so I -- I had to trust her. So, when she -- when she asked me to do something -- (Tr. p. 56)

Applicant and his wife filed for Chapter 7 bankruptcy protection in 2003 due to her hospital bills and delinquent federal income taxes. (Tr. p. 34) They were awarded a discharge in May 2003.² Applicant and his wife filed for Chapter 13 bankruptcy protection sometime in 2004, in an effort to protect their residence from foreclosure. Applicant decided at the last moment that he did not want to pursue the bankruptcy but instead

² SOR subparagraph 1.a incorrectly lists the date of discharge as May 16, 2005. A copy of the discharge order, dated May 16, 2003, is included in GE 2.

wanted to attempt to enter into a repayment agreement with the mortgage holder himself. As a result, the Chapter 13 petition was dismissed in February 2005.

Applicant decided to allow the family vehicle to be voluntarily repossessed and the house to be foreclosed on after his wife deserted him. His explanation for so doing is:

. . . I love my family, I love my wife, but I couldn't hold on to her so I had to give it up. And the best way to kind of like get rid of the memories was just let go of everything we had.

As far as the car, it was a van for her and my sons. My sons are grown except for one. When she left, she left the vehicle, I had no need for it. I couldn't hold on to it so I let it go back.

. . . I put the house on the market to sell. By it being a older home, at the time the market was bad, nobody would buy the home, so I just let it go. Maybe I should have kept it but it was probably the best thing for me to do was to let it go. (Tr. pp. 34-35)

The delinquent debt alleged in the SOR, excluding the repossessed auto and the house foreclosure, consists of three accounts, totaling \$1,861, that have either been charged off as a bad debt or submitted for collection. The house was sold at a foreclosure sale in or about August 2007 (GE 2), and the creditor has not notified Applicant of any deficit that remains owing. Applicant is repaying the delinquent creditors alleged in the SOR, and a couple of creditors who are not alleged, under a plan he entered into with a consumer credit counseling service in October 2007. He has been making the agreed upon payments of \$123 per month under the plan since November 2007. Those payments are automatically debited from his bank account. He contacted the creditor on the repossessed automobile, but was unsuccessful in working out a repayment plan because that creditor wanted him to pay the full purchase price for the car.

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 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 obtained a discharge under Chapter 7 of the bankruptcy code in 2003. He subsequently allowed his house to be foreclosed upon, voluntarily allowed an automobile to be repossessed, and allowed several other debts, totalling \$1,861, to become delinquent

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.

¹¹ *Id.* at 531.

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

and either charged off as a bad debt 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's wife's several periods of unemployment between 2002 and 2005, that were necessitated by her health problems, contributed significantly to their financial problems. He decided to allow the family vehicle to be repossessed and the marital residence to be foreclosed on only after his wife decided to desert him, take his son, and begin residing with another person. 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* applies. Additionally, these circumstances allow for at least partial 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*.

The foreclosure and sale of the marital residence has apparently extinguished the liability Applicant had under the mortgage on that house. Except for the creditor owing for the repossessed auto, he has entered into a repayment plan through a debt counselling service to repay the delinquent creditors alleged in the SOR. He attempted to negotiate a settlement of the debt owed on the repossessed auto but was unsuccessful due to the unreasonable amount demanded by that creditor. 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* 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.

Applicant is a financially unsophisticated individual. He entrusted most, if not all, financial decisions to his wife during their marriage. He responded emotionally and made some very unwise financial decisions after she deserted him. However, he has now taken appropriate steps to resolve his financial problems, appears to have regained control of his emotions, and he has put himself on a financially stable course.

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 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-f: 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