



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-13770
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jennifer I. Goldstein, Esquire, Department Counsel  
For Applicant: *Pro Se*

September 19, 2008

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**Decision**

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LAZZARO, Henry, Administrative Judge:

Applicant has failed to mitigate the security concerns that arise from his delinquent federal income taxes and other debts that remain owing.

On April 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.<sup>1</sup> The SOR alleges security concerns under Guideline F (financial considerations). Applicant submitted an answer to the SOR, dated May 7, 2008, in which he admitted all SOR allegations and requested a clearance decision based on the written record.

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<sup>1</sup>This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive), DoD Regulation 5200.2-R, dated January 1987, as amended (Regulation), and the revised adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

Department Counsel prepared a File of Relevant Material (FORM) on May 20, 2008. Applicant was informed he had 30 days from receipt of the FORM to submit his objections thereto or any additional information he wanted considered. Applicant acknowledged receipt of the FORM on June 9, 2008. He did not submit a response to the FORM or object to anything contained in the FORM within the time allowed him. The case was assigned to me on August 19, 2008.

### **Findings of Fact**

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is a 45-year-old single man who has been employed as a senior technical support engineer by a defense contractor since April 2005. He worked for several employers outside the defense industry as either a CAD support engineer or designer from April 1992 to August 1999, December 2003 to April 2004, and April 2004 to April 2005. He was self-employed as a CAD designer from August 1999 to November 2003.

Federal tax liens were filed against Applicant by the IRS in April 2004, and September 2005, totalling \$31,735. No payment is reported to have been made toward either of these liens. Applicant submitted a letter from an attorney, dated December 26, 2007, who claimed he was working on setting up a repayment plan with the IRS that "should be approved and in place within approximately three to four weeks." (GE 6). The attorney also stated in that letter "I will provide you with confirmation of the payment plan once I receive same from the IRS." (GE 6) The FORM does not contain any information to indicate Applicant has been successful in negotiating a repayment plan with the IRS.

The SOR alleges three accounts, totalling \$76,412, that are listed as past due in Applicant's credit reports. In his response to financial interrogatories sent to him by DOHA in December 2007, Applicant stated these accounts were "Pending." (GE 6) The FORM does not contain any information to indicate any payment has been made on any of these debts.

The SOR alleges four accounts, totalling \$43,800, that have been submitted for collection. In his response to the December 2007 DOHA interrogatories, Applicant claimed one account he owed in the amount of \$8,444 had been "Settled in full" and the other three accounts were "Pending." (GE 6) The account Applicant claimed to have satisfied was still listed in his credit report, dated May 19, 2008, as a collection account with a past due amount of \$8,440. The FORM does not contain any other information to indicate any payment has been made on any of these debts.

Applicant retained an attorney sometime in or about mid-2005 to assist him in resolving his financial problems. According to the correspondence contained in the FORM from the attorney, Applicant's financial problems arose as a result of his self-employment and failure to have taxes withheld from the monies that were paid to him. Additionally, the attorney indicates Applicant was unable to make ends meet on the income he was generating and found it necessary to use credit cards to pay his living expenses.

Applicant's attorney wrote that Applicant chose to not seek bankruptcy protection but instead intends to satisfy all his delinquent creditors by prioritizing the claims and making what payments he can afford. Applicant satisfied a state tax lien in the amount of \$8,118 that was filed in March 2004 and released in August 2006. Additionally, an account Applicant owed in the amount of \$6,840 that was listed in the December 2007 DOHA interrogatories was satisfied sometime before May 2007.

## 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 (DC) and Mitigating Conditions (MC) 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 respective DC and MC, 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>2</sup> The government has the burden of proving controverted facts.<sup>3</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence<sup>4</sup>, although the government is required to present substantial evidence to meet its burden of proof.<sup>5</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>6</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>7</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>8</sup>

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

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

<sup>4</sup> *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

<sup>5</sup> ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

<sup>6</sup> ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

<sup>7</sup> ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

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

No one has a right to a security clearance<sup>9</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>10</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>11</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.

Applicant failed to pay federal income taxes and tax liens, totalling \$31,735, were filed against him in 2004 and 2005. No payment has been made to satisfy those liens and they remain of record. Additionally, Applicant has seven delinquent accounts, totalling \$120,212, that have either been submitted for collection or are listed as past due in his credit reports. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19(c): *a history of not meeting financial obligations* apply.

Applicant attributes his financial problems to his attempt at self-employment, his lacking the funds to pay taxes as they came due, and his need to use credit cards to pay his living expenses. Applicant has now consulted with an attorney in an effort to resolve his financial problems, and, with the assistance of the attorney, he has satisfied a state tax lien and at least one other creditor. However, the vast majority of his delinquent debt remains outstanding and there is nothing of record that would indicate it will be resolved in the near future.

Having made the decision to work for himself without first providing for the financial resources to support himself and pay taxes as they came due, Applicant is not entitled to application of Mitigating Condition (MC) 20(b): *the conditions that resulted in the financial problem were largely beyond the person’s control . . . and the individual acted responsibly under the circumstances.*

While Applicant has sought the assistance of an attorney, there is nothing in the record that indicates his financial problems are under control. To the contrary, although the attorney’s letter indicated Applicant should have had a repayment plan in place with the IRS at least six months ago, there is nothing in the record to suggest that Applicant has

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<sup>9</sup> *Egan*, 484 U.S. at 528, 531.

<sup>10</sup> *Id* at 531.

<sup>11</sup> *Egan*, Executive Order 10865, and the Directive.

been successful in negotiating such a plan. Accordingly, MC 20(c): *the person has received or is receiving counseling for the problem and/or there are clear indications that the problem in being resolved or is under control* does not apply.

Applicant's attorney wrote that Applicant decided against seeking bankruptcy protection and instead has chosen to prioritize his creditors and repay them when and as he is able. To that end, he has satisfied a state tax lien and another delinquent creditor. Thus, Applicant is entitled to application of MC 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*. However, considering the huge amount of delinquent debt that remains outstanding and the lack of any information in the record to indicate Applicant has made any payment toward his delinquent debt in at least the past year, application of this mitigating condition is limited and insufficient to overcome the overwhelming negative financial concerns that remain.

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 security concerns caused by the financial considerations that are present in this case. 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.

### **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-i:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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HENRY LAZZARO  
Administrative Judge

