



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



In the matter of:)	
)	
)	ISCR Case No. 07-14012
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 December 18, 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). Applicant submitted a response to the SOR that was received by the DOHA on January 2, 2008. He admitted all SOR allegations except the allegation contained in subparagraph 1.e, and requested a hearing.

The case was assigned to another administrative judge on January 25, 2008, and was reassigned to me on February 8, 2008, to be heard in conjunction with other hearings I had scheduled in the same city. A notice of hearing was issued on February 27, 2008,

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.

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. Applicant testified and submitted 14 documentary exhibits that were marked as Applicant's Exhibits (AE) 1-14, 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 36 years old and has been employed as an engineer by defense contractors since August 2005. He was awarded a bachelor of science degree in electrical engineering in December 1994. He was employed as a team leader by a tobacco company from March 1996 to July 2002, when he quit to start a telecommunications business with his brother. That endeavor failed and Applicant closed the business in February 2005. He was unemployed until April 2005, when he obtained employment as a car salesman, which employment he maintained until being hired into his present position. He was granted an interim security clearance in December 2005.

Applicant has been married since August 1995. He has one 16-year-old child, and twins who are 12 years old. Applicant and his wife separated in either January or February 2002, and reunited in August 2004. They shared custody of their children during the separation and Applicant also provided his wife and children with financial support. Applicant and his family resided in a mobile home he is purchasing until they bought their current house in 2006. Applicant's mother now resides in the mobile home. He pays the mortgage payment on that residence, and she pays the other expenses and assists with the care of his children in return therefore.

Applicant's financial problems began when he attempted to start the telecommunications business. A large part of that business was intended to furnish services in countries located in the Middle East which proved unsuccessful following the start of the coalition war in Iraq. Applicant's annual income fell from approximately \$70,000 in 2001 to about \$25-30,000 in the years after he resigned from the tobacco company. Although he had accumulated about \$40,000 in savings before launching this business enterprise and his wife was earning approximately \$20,000 per year, he soon found it necessary to pay a large portion of their living expenses by using credit cards in an effort to make the business a success while maintaining the lifestyle they had established.

The SOR alleges five collection accounts, totaling \$23,436, one account that was charged off as a bad debt, in the amount of \$6,701, and delinquent federal taxes, in the amount of \$2,406.46. Applicant satisfied the charged off account, SOR subparagraph 1.b, by paying an agreed upon settlement of \$4,747.43, which represented 50% of the total owed, including interest, attorney's fees, and court costs. (AE 8 & 11). He entered into a repayment agreement on the delinquent taxes, SOR subparagraph 1.g, and that debt is now fully satisfied. (GE 2 & AE 9)

Applicant has satisfied the collection accounts alleged in SOR subparagraph 1.d (owed in the amount of \$1,757) (AE 7), and SOR subparagraph 1.e (owed in the amount of \$4,517) (AE 6 & 10).² Applicant obtained the funds to satisfy these collection accounts and the charged off account by borrowing funds from his 401k retirement plan. He is repaying the loan from the 401k plan by having \$79.76 automatically deducted from his wages each payday. (AE 14)

Applicant has approximately \$25,000 equity in his home. He attempted to obtain a home equity loan to obtain the needed funds to satisfy his remaining delinquent creditors. However, his loan application was denied because of the existence of those creditors. (AE 4 & 5) Shortly before the hearing, Applicant obtained counseling from a consumer credit counseling service in an effort to obtain assistance from that company to satisfy his remaining creditors. Because he did not include his wife's income in the application, he was about \$350 per month short of the amount they required for him to obtain the company's assistance. He credibly testified he is going to reapply and include his wife's income which will make him eligible for the program.

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

² Although the court file numbers listed in AE 6 and AE 10 are different, the creditor account number contained in AE 10 (9943242), reflecting an overpayment on the account and a refund to the debtor, is identical to the creditor account number contained in the credit report included as part of GE 2. Thus, whether AE 6 is a receipt showing payment of the amount due on the account in accord with Applicant's testimony or not, AE 10 independently establishes the debt has been fully satisfied.

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).

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 incurred a number of delinquent debts when his attempt to start a business with his brother failed. Those debts included delinquent taxes and accounts that were either submitted for collection or charged off as bad debts. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19(c): *a history of not meeting financial obligations* apply.

Applicant accumulated reasonable savings and had his wife’s income to rely upon when he decided to launch his business enterprise. Unfortunately for him, world events conspired to make his entrepreneurial undertaking a failure. 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*; and MC 20(b): *the conditions that resulted in the financial problem were largely*

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.

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 apply.

Applicant has now once again obtained secure employment and has taken meaningful steps to satisfy his delinquent creditors. He has paid off four of the debts alleged in the SOR, including the federal tax debt, and has applied for assistance through a consumer credit counseling service to resolve the remaining debts. Although three delinquent debts remain outstanding, Applicant's actions in resolving the other debts and his credible testimony as to what he will do to resolve those that remain permit application of 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.*

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 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-g: 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