



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



In the matter of:)	
)	
)	ISCR Case No. 07-15051
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro Se*

June 17, 2009

Decision

LAZZARO, Henry, Administrative Judge

Applicant mitigated the security concern that was created by the delinquent debts he accumulated following his wife’s loss of employment. He has resolved most of those debts and has taken meaningful steps to resolve others. He is well on his way to resuming a financially stable lifestyle.

On November 24, 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 a security concern under Guideline F (financial considerations). On December 23, 2008, Applicant submitted a response to the SOR in which he admitted the allegations contained in subparagraphs 1.a-c, 1.e, 1.h-j, and 1.n, denied the allegations contained in subparagraphs 1.d, 1.f, 1.g, and 1.k-m, 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 me on February 25, 2009. A notice of hearing was issued on April 2, 2009, scheduling the hearing for April 28, 2009. The hearing was conducted as scheduled. The government submitted six documentary exhibits that were marked as Government Exhibits (GE) 1-6 and admitted into the record without objection. Applicant testified and submitted 12 documentary exhibits that were marked as Applicant's Exhibits (AE) 1-12 and admitted into the record without objection.

The record was held open to provide Applicant the opportunity to submit additional documentation in support of his case. Four documents or groups of documents were timely received, marked as AE 13-16 and admitted into the record without objection. Department Counsel's forwarding memorandum was marked as Appellate Exhibit (App. Ex.) I and is included in the record. On June 10, 2009, I initiated a series of e-mail exchanges with Department Counsel in which she agreed to contact Applicant and provide him additional time to submit post-hearing documentation if he wanted. Those e-mails have collectively been marked as App. Ex. II and are included in the record. No additional documentation was received by June 15, 2009, and the record was again closed. The transcript was received on May 7, 2009.

Procedural Matters

During the hearing, the evidence established that the allegation contained in SOR subparagraph 1.j was a duplicate of the allegation contained in SOR subparagraph 1.f. Department Counsel moved to withdraw the allegation in subparagraph 1.j, and that motion was granted without objection.

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 28-year-old man who has been employed as a security officer by a defense contractor since June 2006. He graduated from high school in 1999. He attended a professional school from September 2001 to February 2002, to obtain the required state certification to perform official police duties. As part of his employment with the defense contractor, he is also required to be a sworn special deputy with the local sheriff's department, which he has been since June 2006. Before obtaining his current employment, Applicant worked as a police officer or security officer for several different employers. He has also worked as a part-time security officer for a hospital since December 2001, on a very limited basis when he is needed to fill in for someone else.

Applicant submitted four letters of recommendation from his supervisors and a co-worker. Those persons attest to Applicant being a hard-working, organized, efficient, competent and trustworthy employee. They each recommend that he be granted a security clearance.

Applicant has been married since November 2002. He and his wife have an eight-year-old daughter. Applicant's wife is employed and her net pay is approximately \$1,700

per month. She had been working as a manager of a retail store when their daughter was born, earning about \$18 per hour. She relinquished her management position due to the birth of the child but was retained in a lesser position but at the same hourly rate. Eventually, the employer found a reason to terminate her employment. She was then unemployed for about six months until she found a job that paid her \$13-14 per hour. Applicant attributes the financial problems he has experienced for the past several years to his wife's unemployment and re-employment at a significantly reduced wage.

Applicant obtained a promotion and salary increase in January 2009. His current net monthly pay is about \$2,800. He estimates his recurring monthly expenses for food, clothing, utilities, car expenses, medical expenses, tuition for his daughter at a private school, and entertainment to be approximately \$2,150. The mortgage payment on his house is \$878, but because of ongoing negotiations with the mortgage company he has been instructed to not make the payment for the last few months. Applicant had about \$3,000 in his checking account as of the date of the hearing. He does not have any open credit cards. He has applied a substantial portion of the discretionary income he currently has available to satisfy his delinquent creditors.

The debts listed in SOR subparagraphs 1.a-1.c, owing in the total amount of \$242, arose from medical expenses. Applicant paid those debts, and apparently three others that were not listed in the SOR, in full on May 15, 2009. (AE 15) The collection debt listed in subparagraph 1.d, owing in the amount of \$295, was originally owed to a telephone company. This account was settled-in-full as of April 27, 2009. (AE 5 & AE 12) The collection debt listed in subparagraph 1.h, owing in the amount of \$207, was originally a utility bill. This account was paid-in-full on April 27, 2009.²

The debt listed in subparagraph 1.i, owing in the amount of \$766, arose from a credit card account. This account was settled-in-full for less than the full amount owing on May 13, 2009. (AE 11 & AE 14) The charged off account listed in subparagraph 1.k, owing in the amount of \$90, was actually paid-in-full as February 2004. (AE 8) The charged off credit card account listed in subparagraph 1.m, owing in the amount of \$1,038, was satisfied and closed as of April 2008.

Applicant testified he had made arrangements to pay the charged off department store credit card account listed in subparagraph 1.d, owing in the amount of \$295, on April 30, 2009. He did not submit proof that he actually paid this account.

Applicant testified he thought the account listed in subparagraph 1.f, owing in the amount of \$882, was a duplicate of the account listed in subparagraph 1.i. He based this assumption on the letters from the collection agency that are included as part of GE 4 because he testified he only had one credit card with the bank listed in the letters that make up GE 4. At the hearing, Department Counsel provided a detailed explanation and comparison of the information contained in Applicant's Credit Bureau Reports (CBR) and other documents in the record that indicate the accounts are not duplicates. (Tr. 41-53)

² Although the receipt marked as AE 7 indicates this debt was paid by credit card, Applicant credibly testified the card used was actually a checking account debit card (Tr. 82)

Applicant also testified he thought the account listed in subparagraph 1.n, owing in the amount of \$212, was a duplicate of the account listed in 1.e., and that it had been paid off. Once again, Department Counsel provided a detailed explanation and comparison of the information contained in Applicant's CBRs and other documents in the record that probably indicates the accounts are not duplicates. (Tr. 64-72) However, it cannot be concluded with certainty from the record evidence that they are not duplicates. Still, Department Counsel's interpretation of the information contained in the CBRs provides sufficient corroboration of Applicant's testimony that he paid the debt listed in subparagraph 1.n to find that account has been satisfied.

The debt alleged in subparagraph 1.l, owing in the amount of \$2,433, is from a jewelry store. The entries in Applicant's CBRs indicate the account was opened in either October 1999 or October 2000. Applicant testified he thought the debt had been discharged in a bankruptcy action his wife had filed some years ago but he would satisfy the debt if it is still valid. (Tr. 62-63) On May 15, 2009, the creditor presented Applicant with an offer to settle the account for \$1,416, provided payment is made in full by July 30, 2009. (AE 16)

The final account alleged in the SOR is subparagraph 1.g and pertains to the mortgage on Applicant's residence. Applicant testified the lender talked him into acquiring an adjustable rate mortgage in October 2003. His monthly payment originally was \$654. Since then the payment has at times increased to over \$1,000 per month and appears from the entries in Applicant's CBRs to currently be set at \$978 per month. Applicant's October 2008 CBR disclosed the account was past due in the amount of \$9,778. His April 2009 CBR disclosed the past due amount had increased to \$16,623.

Applicant testified he has been negotiating with the mortgage company seeking a loan modification that apparently is intended to convert the mortgage into a fixed rate mortgage. As part of the process, he was instructed by the company to not make any additional payments on the loan. (Tr. 53-57) As of May 15, 2009, Applicant's request for assistance with his mortgage was pending review and the letter from the company indicated Applicant would be notified of the status of the review by June 14, 2009. (AE 13) The record was reopened to provide Applicant the opportunity to submit additional information about the mortgage if it became available. No additional documentation was received by June 15, 2009, and the record was once again closed.

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. 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)

The SOR alleges 13 accounts that were either charged off, submitted for collection, or listed as seriously past due. Applicant admitted his liability for eight of the alleged accounts. The evidence establishes that all of the alleged delinquent accounts either are

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.

or were at one time seriously delinquent. 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 financial problems arose from his wife's loss of employment and her subsequent substantial reduction in pay. He submitted proof at the hearing and afterward that he has satisfied nine of the alleged delinquent accounts that had been owing in the combined amount of \$2,792. He credibly testified he had made arrangements to pay another account owing in the amount of \$295 a few days after the hearing.

Applicant was clearly and understandably confused about the collection account owing in the amount of \$822 that remains unpaid. Likewise, he apparently was incorrect in his assumption that the charged off debt owing in the amount of \$2,433 had been discharged in a bankruptcy his wife filed some years ago. However, to his credit, AE 16 indicates he contacted the creditor who had charged off the account and initiated negotiations to settle the account in accordance with his testimony at the hearing.

The remaining delinquent account concerns Applicant's home mortgage. Like countless thousands of his fellow citizens, Applicant got caught up in what can properly be described as a banking fiasco. His CBRs disclose that the past due amount owing on his mortgage has increased tremendously in just the past six months. He testified he is doing whatever he can to negotiate with the mortgage company to resolve the situation and has been instructed to not make any payments until some resolution is reached. He submitted a letter that indicates the matter was under consideration. In a post-hearing conversation with Department Counsel, Applicant indicated that as of June 15, 2009, some loan modification was imminent. (App. Ex. II) Whether he will be successful in renegotiating his mortgage and saving his home cannot be known. However, the record does make clear he is acting responsibly in attempting to resolve his personal mortgage crisis.

Applicant has not yet satisfied all his delinquent debts and his continuing mortgage issues may cause him to suffer a foreclosure in the not too distant future. Still, the efforts he has made thus far to satisfy delinquent creditors, the proof he submitted of his continuing efforts to resolve others, his recent promotion and pay raise, the trust and confidence he has earned from his supervisors and co-workers, and the total financial posture he is in as indicated by a comparison of his family income to family expenses strongly indicate he will, in the very near future, be completely financially secure.

As a result of the above, I conclude 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): *. . . 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.

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 has 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-l:	For Applicant
Subparagraph 1.j:	Withdrawn
Subparagraphs 1.k-n:	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

