



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



In the matter of:)	
)	
)	ISCR Case No. 07-15106
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert E. Coacher, Esq., Department Counsel
For Applicant: *Pro Se*

June 24, 2008

Decision

LAZZARO, Henry, Administrative Judge

On March 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). Applicant submitted a response to the SOR that was received by DOHA on April 17, 2008. He admitted the allegations contained in SOR subparagraphs 1.a through 1.e, denied the remaining allegations, and requested a hearing.

The case was assigned to me on May 2, 2008. A notice of hearing was issued on May 6, 2008, scheduling the hearing for May 21, 2008.² The hearing was conducted as scheduled. The government submitted seven documentary exhibits that were marked as

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.

² Applicant acknowledged he received oral notification of the hearing date and location from Department Counsel more than 15 days before the date of the hearing. (Tr. 16-17)

Government Exhibits (GE) 1-7, and admitted into the record without objection. Applicant testified, called one witness to testify on his behalf, and submitted 1 documentary exhibit that was marked as Applicant's Exhibit (AE) 1, and admitted into the record without objection. The transcript was received on June 2, 2008.

Findings of Fact

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

Applicant is 57 years old and has been employed as a mechanical engineer by a defense contractor since February 2007. He retired from employment with a different defense contractor in February 2007. Applicant has possessed a secret level security clearance at various times for the past 28 years. No prior adverse action has been taken to revoke or downgrade his clearance.

Applicant married the first time in December 1992. That marriage ended in divorce in March 2003. He has two children from that marriage, ages 13 and 14, and pays \$1,408 per month as child support. He has been remarried since March 2003, and has an 11-year-old stepchild from this marriage. His wife does not work outside the house.

SOR subparagraphs 1.a through 1.c allege three judgments entered against Applicant, totaling over \$12,000.³ Each judgment arose from delinquent credit card debt, and each judgment was entered in 2005. Applicant has done nothing to satisfy any of the judgments.

Subparagraph 1.d alleges a collection account owing in the amount of \$157. This account arose from a cell phone bill and has been delinquent since at least 2005. Applicant has done nothing to resolve this account.

Subparagraph 1.e alleges a medical bill that was submitted for collection in or about December 2007. Applicant credibly testified this bill should have been covered by medical insurance and that it is now in the process of being paid by the insurance company.

Subparagraphs 1.f through 1.h allege three charged off credit card debts, totaling over \$14,600. Applicant testified he did not recognize the creditors listed on those accounts and, based on similarities in the amounts owing, assumes they are duplicates of the debts alleged in subparagraphs 1.a through 1.c. (Tr. 35-38) He did not submit any evidence in support of those assumptions and admitted he has not even bothered to dispute the accounts with the various credit reporting agencies. (Tr. 38)

³ Applicant's credit reports, GE 4 and GE 5, disclose the dates alleged in subparagraphs 1.a and 1.b are reversed. Additionally, while the amount alleged in subparagraph 1.a is \$1,873, the credit reports indicate the actual amount owing on the February 2005 judgment is in excess of \$4,000. The amount alleged in the SOR rather than the amount listed in the credit reports is used herein in computing the total amount owed on the judgments.

Applicant attributes his financial problems to his divorce, the resulting child support, and a three-month layoff he experienced in 2002. He submitted a personal financial statement (AE 1) in which he listed his March 2003 net monthly income as \$4,553, net monthly expenses as \$6,364, and his net monthly deficit as \$1,811. In the same document, he listed his January 2008 net monthly income as \$6,178.33, his net monthly expenses as \$6,433.21, and his net monthly deficit as \$254. He does not have a plan to resolve his delinquent debt nor to get his monthly income and expenses in order.

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

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

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

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

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

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

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

¹⁰ 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 clearance¹¹ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹² Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹³

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 admits he has three outstanding judgments and one outstanding collection account totalling over \$12,000. He denies liability for the three charged off credit card accounts, totalling over \$14,000, based on his assumption that they are duplicates of the judgments. He did not offer any evidence in support of those assumptions and has not done anything to dispute the validity of those 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 credibly testified the debt alleged in subparagraph 1.e is being resolved by his medical insurance company. However, he has done nothing to resolve any of the other alleged debts and has no plan to do so in the future. He has allowed each of the accounts to remain delinquent for years without taking any action to satisfy any of them. He continues to spend more each month than he earns and hasn’t figured out a way to resolve that continuing financial dilemma. I have considered all mitigating conditions and find that none 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 his 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

¹¹ *Egan*, 484 U.S. at 528, 531.

¹² *Id.* at 531.

¹³ *Egan*, Executive Order 10865, and the Directive.

the applicable disqualifying and mitigating conditions, I find Applicant has failed to mitigate the financial considerations security concern. He has neither 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-d	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-h:	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