



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



In the matter of:)	
)	
)	ISCR Case No. 07-15572
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: Pro Se

June 24, 2008

Decision

LAZZARO, Henry, Administrative Judge:

Applicant failed to mitigate the security concern that arises from his financial irresponsibility.

On February 8, 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 an answer to the SOR, executed by him on March 6, 2008, in which he admitted the allegations contained in SOR subparagraphs 1.a, b, e, h, j and k, denied the remaining

¹ This action was taken under Executive Order 10865 and 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.

allegations and requested a clearance decision based on the written record without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on March 19, 2008, that was received by Applicant on April 2, 2008. Applicant submitted a response to the FORM that contained a cover letter and three additional documents. Those documents were marked as Applicant Exhibits (AE) 1-4, and made part of the record without objection. The case was assigned to me on May 27, 2008.

Findings of Fact

After a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is a 35-year-old man who has been employed as a network engineer by a defense contractor since August 2005. He was employed as a contract specialist by the government from September 1997 to January 1999 when he decided to change careers, quit work and become a full-time student. He possessed a secret level security clearance while working for the government and there is no indication he ever mishandled or compromised classified information or that any previous adverse action was ever taken to revoke or downgrade his clearance.

Applicant's plan to finance his education was to rely on student loans, friends, family, and credit cards. In January 2001, he was hired as an intern, but that job ended in May 2001 due to a workforce reduction. Discovering that he was unable to support himself on student loans and unemployment compensation, Applicant decided to gamble in the stock market. He obtained cash loans from credit cards, invested it all in the stock market, and within a few months managed to lose everything he had invested. He then continued to rely on credit cards to support himself, to pay other credit card debt, and to repay a loan he had obtained from a friend to purchase a car.

Unable to keep up with the credit card debt he had accumulated, Applicant filed for Chapter 7 bankruptcy protection in December 2004. His bankruptcy petition was dismissed in July 2005. Applicant explained the petition was dismissed "partly due to being indifferent in spending the money and not providing sufficient documentation." (GE 4)

The SOR alleges nine credit card accounts, totalling over \$82,000, that have been charged off. Applicant submitted proof with his answer to the SOR that he satisfied the debts alleged in SOR subparagraphs 1.d, f, g, h, and i.² He satisfied the accounts by negotiating settlements for substantially less than the amount owing with the various

² The same creditor is alleged in SOR subparagraphs 1.c and 1. h. The balance owing listed in the January 9, 2008 letter from the debt collection agency handling the satisfied account matches the balance listed in subparagraph 1.c. However, the account number listed in that letter matches the account number for the creditor listed in subparagraph 1.h as recorded in Applicant's October 15, 2005 credit report (GE 6). Accordingly, it is most likely the account that has been satisfied is that which is alleged in subparagraph 1.h. Further, the information listed in GE 6 for the accounts alleged in subparagraphs 1.c and 1.h establishes they are separate accounts and not duplicate entries for a single account.

creditors and obtaining a \$16,000 loan from his employer on December 4, 2007 (GE 5), to make the required payments. Specifically, he paid: \$750 to satisfy the \$1,068 debt owing under subparagraph 1.f; \$625 to satisfy the \$942 debt owing under subparagraph 1.g; \$3,200 to satisfy the \$13,793 debt owing under subparagraph 1.h; and \$2,882 to satisfy the \$10,625 debt owing under subparagraph 1.i. The information contained in the FORM does not establish how much Applicant paid to satisfy the \$440 debt alleged in subparagraph 1.d. Finally, Applicant also submitted proof he satisfied an account not alleged in the SOR that had been charged off in the amount of \$21,014 (GE 6) by making a payment in the amount of \$13,500 in August 2006 (AE 3).

Still outstanding, are the delinquent accounts alleged in subparagraphs 1.a-c, and 1.e, totalling over \$55,000. Applicant also owes more than \$70,000 to repay student loans. He is making payments in the amount of \$325.40 on the student loans and is current on those payments (AE 2)

Applicant submitted a personal financial statement and a wage statement in response to interrogatories sent to him (GE 5). Those documents disclose his gross weekly pay is \$1,337.23, \$323.70 is withheld from his pay for taxes, \$344.53 for insurance and savings, and his net weekly pay is \$578.19. His total monthly expenses are \$1,620 and his net remainder is \$368. He has about \$1,000 in savings. (GE 5)

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.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

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.

Applicant allowed nine credit card accounts, totalling more than \$82,000, to become severely delinquent and charged off as bad debts. Those accounts remained delinquent for a number of years without any effort being made to satisfy them. Additionally, Applicant attempted to seek Chapter 7 bankruptcy protection in 2004, but had his petition dismissed by the court based due to his indifferent spending habits and inability to produce required documentation. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19(c): *a history of not meeting financial obligations* apply.

Applicant did satisfy one delinquent creditor that is not listed in the SOR in August 2006. He recently obtained a loan from his employer, negotiated reduced payments with four creditors, and has now satisfied those debts. A fifth account has also been satisfied, although it cannot be determined if that creditor was paid in full or through a negotiated settlement. Applicant’s wage and personal financial statements indicate he is now living

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.

within his means and may have the potential to resolve his remaining debts and assume a financially responsible lifestyle. However, as alleged in the SOR, Applicant still has four delinquent accounts outstanding, totalling over \$55,000.

While Applicant has taken steps to begin to resolve his financial problems they are currently ongoing. The debts were caused by the poor decisions Applicant freely chose to make, such as quitting a job and pursuing higher education without first making adequate financial arrangements to do so, and then deciding to obtain funds from credit cards to gamble in the stock market in an effort to support himself. He has not received debt counselling, and, although he initiated a good-faith effort to repay some overdue creditors, there is no indication he has taken any steps to resolve others. I have considered all mitigating conditions and none apply.

I have considered all relevant and material facts and circumstances present in this case, including the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying conditions. Applicant has failed to mitigate the security concern caused by the financial considerations present in this case. He has failed to overcome the case against him or satisfy his ultimate burden of persuasion. Guideline F is decided against Applicant. 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-c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraphs 1.f-i:	For Applicant
Subparagraphs 1.j & k:	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

