



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



In the matter of:)	
)	
)	ISCR Case No. 08-00540
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro Se*

November 5, 2008

Decision

LAZZARO, Henry, Administrative Judge:

Applicant failed to mitigate the security concern that arises from his financial irresponsibility as demonstrated by the many debts he has allowed to remain delinquent for a number of years.

On April 16, 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 security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). Applicant submitted an answer to the SOR, dated June

¹This 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.

5, 2008, in which he admitted all Guideline F allegations and denied the sole Guideline E allegation. He requested a clearance decision based on the written record without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on July 28, 2008, that was mailed to Applicant on July 31, 2008. Applicant was notified 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 August 11, 2008. He did not respond to the FORM, object to anything contained in the FORM, or submit any additional information he wanted considered within the time provided to him. The case was assigned to me on October 10, 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,² I make the following findings of fact:

Applicant is a 40-year-old single man who has been employed as a "baser" by a defense contractor since January 2001. He was employed as a "cutter" outside the defense industry from June 1995 to June 2000. He was unemployed from July 2000 to January 2001. There is no information in the file concerning his educational background. He did not report having any dependents.

Applicant's credit reports and his admissions to the allegations contained in the SOR establish he has six accounts, totalling \$6,635, that were submitted for collection, one account, owing in the amount of \$679, that was charged off as a bad debt, and two accounts, totalling \$4,402, that resulted in judgments being entered against him.³ The credit reports indicate the collection accounts were submitted for collection at various times between September 2001 and June 2007. The judgments were recorded in September 2003 and April 2005.

In his response to the SOR, Applicant stated: "I am in the process of getting my debts consolidated and intend to pay them off." On the bottom of the personal financial statement he submitted, Applicant indicated he was making payments to a debt counseling service and stated: "\$270.00 payments as of today 203.00" He provided no other information about his contractual relationship with the counseling service, what debts, if any, of those alleged in the SOR might be included in any repayment plan he may have agreed to with the counseling service, or what are the terms of any repayment plan he may

² In addition to the SOR and Applicant's response, the attachments to the FORM consist of a security clearance application, two credit reports, Applicant's personal financial statement, a wage stub and several computer printouts concerning two judgments that have been recorded against Applicant.

³ The identity of the creditors and the amount owing on the charged off account alleged in SOR subparagraph 1.c and the judgment alleged in SOR subparagraph 1.d are identical. Department Counsel conceded in the FORM these appear to be duplicate allegations of the same account. Thus, SOR subparagraph 1.c will be found for Applicant.

have entered into with the counseling service. Most importantly, he provided no information about why he allowed the debts alleged in the SOR to become or remain delinquent.

The SOR alleges Applicant deliberately falsified the security clearance application he submitted in June 2007, by failing to disclose the two judgments that had been entered against him. However, he did disclose in that security clearance application that his wages had been garnished and that he had accounts that were more than 90 and more than 180 days past due.

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) and Guideline E (personal conduct), with their respective DC and MC, are 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 evidence⁶, 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.

Applicant has six accounts, totalling \$6,635, that have been submitted for collection, and two accounts, totalling \$4,402, that have resulted in judgments being entered against him. Those accounts have been delinquent for many years ranging as far back as September 2001. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; DC 19(c): *a history of not meeting financial obligations* apply.

Applicant failed to provide any explanation for the delinquent debts. His security clearance application discloses a six-month period of unemployment in 2000. However, the unemployment occurred in many cases long before any of the debts alleged in the SOR became delinquent. Further, he has been continuously employed since January 2001, during which time all of the alleged debts became delinquent. Thus, Mitigating Condition (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* does not apply.

Applicant asserted in his response to the SOR that he was consolidating and intended to satisfy his debts. He made entries on the personal financial statement he submitted that may indicate he has contracted with a debt consulting service and may be making payments on his debts through that service. However, the entries are so vague and incomplete that it is impossible to conclude he has actually entered into a repayment plan that includes the delinquent debts alleged in the SOR or that he has made continuous payments under any plan he may have entered into. Accordingly, 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 20(d): *the individual initiated a good-*

¹¹ *Egan*, 484 U.S. at 528, 531.

¹² *Id* at 531.

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

faith effort to repay overdue creditors or otherwise resolve debts do not apply. The remaining mitigating conditions have no applicability to the facts of this case.

Guideline E, Personal Conduct

Personal conduct is always a concern because conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the (sensitive position eligibility) process or any failure to cooperate with the (sensitive position eligibility) process.

Applicant failed to disclose the two judgments that were entered against him, as required, in the security clearance application he submitted in June 2007. However, he did disclose the adverse financial information about his wages being garnished and accounts that were more than 90 and 180 days past due. In his response to the SOR, Applicant stated the omission about the judgments was due to his not understanding the question. Considering Applicant's explanation and the adverse financial information he did disclose, I conclude Applicant did not deliberately fail to disclose the judgments.

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 & b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d - 1.i:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For 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.

HENRY LAZZARO
Administrative Judge

Henry Lazzaro
Administrative Judge

