



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



In the matter of:)	
)	
)	ISCR Case No. 08-03081
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James B. Norman, Esq., Department Counsel
For Applicant: *Pro Se*

November 10, 2008

Decision

LAZZARO, Henry, Administrative Judge

Applicant mitigated the security concern that arose by his filing for Chapter 7 bankruptcy protection in March 2008.

On May 21, 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 the DOHA on June 20, 2008, admitted the sole SOR allegation and requested a hearing.²

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's request for a hearing in his response is somewhat ambiguous. However, he sent Department Counsel a note on June 26, 2008, clearly indicating he was requesting a hearing. That note was marked as Appellate Exhibit (App. Ex.) I and is included in the file.

The case was assigned to me on July 28, 2008. A notice of hearing was issued on August 15, 2008, scheduling the hearing for September 26, 2008. The hearing was conducted as scheduled. The government submitted two documentary exhibits that were marked as Government Exhibits (GE) 1 and 2 and admitted into the record without objection. Applicant testified and submitted five documentary exhibits that were marked as Applicant's Exhibits (AE) 1-5 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 were timely received, marked as AE 6-9 and admitted into the record without objection. Department Counsel's forwarding memorandum was marked as App. Ex. II and is included in the file.³ The transcript was received on October 8, 2008.

Findings of Fact

Applicant's admission to the sole SOR allegation is incorporated herein. In addition, after a thorough review of the pleadings, testimony and exhibits, I make the following findings of fact:

Applicant is 32 years old and has been employed as a database administrator by a defense contractor since April 2007. He graduated from high school in May 1994, and served on active duty in the U.S. Air Force as an F-15 crew chief from June 1994 to June 1998. He was awarded an honorable discharge. Applicant worked at a retail store in 1998-99 while attending a technical college from which he received an associate's degree. Applicant continued his education while working in the private sector as a systems analyst from May 1999 to October 2000, and as a technology developer from October 2000 to April 2007. He was awarded a bachelor's degree in 2007.

Applicant was married in October 2000. That marriage ended by divorce in February 2002. No children were born of this marriage. Applicant has been remarried since February 2002. He has a three-year-old daughter, a nine-year-old adopted son, and a 13-year-old stepdaughter from this marriage. Individuals who have known Applicant and his family for many years attest to him being a dependable and trustworthy person. (AE 8 and AE 9)

Applicant filed for Chapter 7 bankruptcy protection in March 2008. He listed 48 creditors holding unsecured nonpriority claims totaling \$213,474 in the petition. However, the petition discloses 14 of the listed creditors were not owed anything, the single largest creditor listed was the mortgage company that foreclosed on his former residence which, although the amount of the claim listed is \$138,369, is actually owed nothing, and three student loans, totaling \$32,320, on which collection has been deferred. Additionally, some accounts are listed on more than one occasion in the petition. Applicant explained that his attorney went through his credit report and listed everything contained in the report. (Tr. p 54) Applicant received a Chapter 7 bankruptcy discharge in July 2008. (AE 6)

³ App. Ex. II indicates Department Counsel forwarded three pages of documents to me. He subsequently send me a fourth page (AE 8) with a small handwritten note requesting it be included with Applicant's post-hearing submissions and that he also did not object to that document.

Applicant's financial problems began in or about the latter part of 2005. He purchased a residence in 2003 with an adjustable rate mortgage. His original mortgage payment of \$930 had increased to approximately \$1,400 by 2006, and his real estate taxes increased by about 60%. Unable to maintain the payments on the residence and service his other debts, including several credit cards, he immediately sought ways to resolve his financial dilemma.

Applicant's residence was foreclosed on in 2007, after he was unsuccessful in efforts to sell the house or work out a payment arrangement with the mortgage company. He moved his family into a home owned by his father-in-law on which he is currently paying rent of \$1,000. The present rent includes charges for renovations made on the residence and will be reduced to \$800 at the end of 2008.

Applicant stopped using most of his credit cards in 2006, and has not acquired any new credit card charge since August 2007. He allowed a vehicle he had been making payments on to be repossessed and began driving an older truck that was paid off and a van his father-in-law allowed him to use. He completed a course on personal financial management in May 2008. (AE 2) Having obtained the Chapter 7 discharge, Applicant is now debt free except for the student loans. He and his wife have developed a reasonable budget that allows them to live on his income and includes substantial payments on the student loans and a modest contribution to savings. (AE 7)

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

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).

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

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 found himself in financial straits beginning in 2005 that eventually caused him to seek Chapter 7 bankruptcy protection in March 2008. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19C(c): *a history of not meeting financial obligations* apply.

Applicant’s financial problems were caused in large part by the dramatic increases in his mortgage payments and real estate taxes that occurred in or about 2005. However, having obtained an adjustable rate mortgage, those are events that Applicant should have anticipated. 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.

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.

¹¹ *Egan*, 484 U.S. at 528, 531.

¹² *Id.* at 531.

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

Applicant took immediate steps to regain control of his finances when he realized the extent of his financial distress. He stopped using credit cards, secured a residence he could afford, and began to live within his financial means. He successfully completed a financial counselling program, has worked out a reasonable and manageable budget, and he obtained a Chapter 7 discharge that leaves him debt free except for his student loans. 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(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* 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, including Applicant's appearance and demeanor while testifying, the letters of reference he submitted, the aggressive action he took to bring his finances under control, 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

 Subparagraph 1.a: 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

