



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



| | | |
|----------------------------------|---|------------------------|
| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 08-05354 |
| SSN: |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro Se*

August 31, 2009

Decision

LAZZARO, Henry, Administrative Judge

Applicant has a history of financial irresponsibility that dates back to at least 1994. He received a General Discharge Under Honorable Conditions from the Army in September 1995, based, in part, on his either neglecting or mishandling his financial affairs after having been repeatedly counseled about them. He obtained a Chapter 7 bankruptcy discharge in September 2002. Since obtaining the bankruptcy discharge, Applicant has accumulated over \$17,000 in delinquent debt that has been submitted for collection or charged off as bad debt and which remains unsatisfied. Clearance is denied.

On November 17, 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 February 18, 2009.

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.

Applicant admitted all SOR allegations, except those contained in subparagraphs 1.g through 1.l, and 1.n, and requested a hearing. At the hearing, Applicant moved to amend his response to the SOR to allow him to admit all SOR allegations. That motion was allowed without objection.

The case was assigned to me on April 2, 2009. A notice of hearing was issued on May 6, 2009, scheduling the hearing for June 2, 2009. The hearing was conducted as scheduled. The government submitted five documentary exhibits that were marked as Government Exhibits (GE) 1-5 and admitted into the record without objection. Department Counsel also submitted a document describing where in the exhibits admitted into the record the various accounts alleged in the SOR were listed. That document was marked as Appellate Exhibit (App. Ex. I) and made a part of the record. 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 transcript was received on June 11, 2009.

Procedural Matters

At the hearing, Department Counsel moved to withdraw the allegation contained in SOR subparagraph 1.l based on her concession that it was a duplicate of the allegation contained in SOR subparagraph 1.j. That motion was granted without objection.

Several days after completion of the hearing, an envelope was delivered to me from the DOHA mail room. Upon opening the envelope, I discovered it contained Applicant's military records that had apparently been requested by Department Counsel sometime prior to the hearing. I immediately delivered the records to Department Counsel without reviewing them. Subsequently, on June 10, 2009, I received a pleading from Department Counsel entitled *Request to Re-Open the Record*. Following a conference call with Department Counsel and Applicant, I agreed to reconvene the hearing at the original hearing location.

A notice of hearing was issued on June 19, 2009, scheduling the reconvened hearing for July 10, 2009. The hearing was reconvened as scheduled. The *Request to Re-Open the Record* was marked as App. Ex. II and made part of the record. Department Counsel submitted a group of documents consisting of Applicant's military records that were marked as AE 6 and admitted into the record without objection. Applicant testified but did not offer any additional documentary evidence. The transcript of the reconvened hearing was received on July 21, 2009.

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 a 38-year-old man who has been employed as an instructional designer by a defense contractor since June 2007. He graduated from high school in 1989, enlisted in the U.S. Army in August 1989, and he served continuously on active duty until he was

discharged in September 1995, with a General Discharge Under Honorable Conditions (General). (GE 6)

Applicant held a top secret security clearance while he was in the Army. A Report of Unfavorable Information for Security Determination was filed against Applicant in late-1994 because:

On 7 November 1994, this detachment received written notification from (omitted) that (Applicant) was significantly behind on his Deferred Payment Plan payment. On 18 November 1994, this detachment received a call from the (omitted) regarding a failure on the part of (Applicant) to pay his monthly child support obligation of \$500.00 to his wife. On 18 November 1994, this detachment received a call from the Housing Office regarding (Applicant's) late rental payment as far back as October 1994. (GE 5)

As a result of the above report, Applicant was ordered to move into a barracks and he was encouraged to initiate an allotment to pay his support obligation. Additionally, a local Bar to Reenlistment was imposed on him. However, his access to classified information was not withdrawn.

Applicant was notified by a memorandum, dated May 16, 1995, that action was being initiated to separate him from the Army based on a pattern of misconduct. The specific reasons for his proposed separation were as follows:

. . . on 24 Feb 95 you were counseled for your unauthorized presence in the Commander's office after duty hours; you were late for the 0615 PT formation on 27 Feb 95; you illegally housed your dependent son in the BEQ; you returned from leave late on 22 Feb 95; you were counseled on 22 Feb 95 for financial irresponsibility; you failed to obey a lawful order on 17 Jan 95; you were counseled for not having POV insurance; on 18 Nov 94 you were counseled for making a late rent payment; also on 18 Nov 94 you were counseled for failing to pay monthly child support; you were significantly behind on DPP payments in Nov 94; you received a Summarized Article 15 on 18 Aug 94 for disobeying an order and writing bad checks; you were given a letter of reprimand on 19 Aug 94 for failing to obey a lawful order; on 29 Jun 94 you were counseled on dishonored checks and again on 21 Jun 94; and you wrongfully used a government vehicle from 17 Jun 94 to 21 Jun 94. (GE 6)

Applicant's work history from the time he was separated from the Army until he began his current employment is as follows: January 1996 to April 1998 (investigations manager); April 1998 to November 1999 (special investigator); November 1999 to December 2000 (sales representative); January 2000 to April 2002 (bartender/waiter); April 2002 to November 2003 (store manager); November 2003 to November 2004 (residential/commercial inspector); January 2004 to May 2007 (sales/network). He left his employment as a store manager in November 2003 because his performance was alleged to have been unsatisfactory. He left his employment as a residential/commercial inspector in November 2004 because of alleged misconduct. Applicant disagrees with the reasons

given by his employers as to why he was forced to leave these jobs by mutual agreement. In the security clearance application he submitted in June 2007 (GE 1), Applicant explained he lost the first job because he did not receive adequate guidance from his district manager and he lost the second job because he disagreed with his employer on how to perform inspections and evaluate findings.

Applicant was first married in September 1991. That marriage ended in divorce in May 1998. Applicant has one 17-year-old child from that marriage. Applicant has been remarried since July 1999. He has two children, ages nine and seven, from this marriage. Applicant's wife did not work from the time of the birth of their first child in 2000, until she accepted a position with a university in 2007 that pays her approximately \$1,200 per month.

Applicant filed for Chapter 7 bankruptcy protection in May 2002. He received a Chapter 7 bankruptcy discharge in September 2002, which discharged approximately \$54,000 in debt. Applicant attributes his need to seek bankruptcy protection to medical expenses he incurred as a result of surgery his wife underwent to remove a cyst while she was pregnant with their second child. He did not provide any documentation to establish what portion of the amount that was discharged in the bankruptcy was actually attributable to medical expenses.

The SOR alleges 12 delinquent accounts, totaling over \$11,000, that have been submitted for collection.² The SOR also alleges an account that was charged off as a bad debt in the amount of \$7,052, which resulted from the repossession of an automobile. With the exception of the delinquent accounts alleged in subparagraphs 1.k, 1.n, and 1.p, each of the accounts listed in the SOR remains listed as being in a collection status in Applicant's CBR, dated May 11, 2009 (AE 1). The dates those accounts were submitted for collection range from February 2006 to April 2008. These accounts all remain unpaid.

Applicant testified his current financial problems arose from his inability to make the required payments on the delinquent debts while he was employed at a position in which he was paid solely based on commissions. (Tr. 32) He also testified that since he began working at his current job he has been able to pay his current debts on time as evidenced by the accounts listed in his CBR, dated May 11, 2009 (AE 1), but that he has not been earning enough to also make payments on his delinquent debt. (Tr. 32) He anticipates being able to satisfy his delinquent debts within about ten months now that his wife has resumed working full-time. (Tr. 38)

² The account listed in subparagraph 1.l was withdrawn by Department Counsel and is not included in this total. A comparison of the amount listed as owing in Applicant's CBRs, dated May 11, 2009 (AE 1), and July 19, 2007 (GE 3), convincingly establishes that the debt alleged in subparagraph 1.o is a duplicate of the debt alleged in subparagraph 1.i and, therefore, the debt alleged in subparagraph 1.o is not included in this total. Applicant testified he only had one account with the creditor that is listed in subparagraphs 1.h and 1.n. He did not provide any documentation in support of that assertion and a comparison of the amounts listed as owing in his CBRs, dated May 11, 2009, and July 19, 2007, convincingly establishes they are not duplicate accounts.

In February 2009, Applicant sought the assistance of a consumer credit counseling service in preparing a budget (AE 4). However, Applicant has not used the credit counseling service to actually repay any of his delinquent creditors.

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

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.

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)

Applicant was counseled about his financial affairs on several occasions while he served in the Army. His continued financial irresponsibility eventually contributed to his involuntary separation from the Army with a General Discharge. He sought Chapter 7 bankruptcy protection in May 2002, and he was granted a Chapter 7 discharge in September 2002. He discharged approximately \$54,000 in debt at that time. Since obtaining the bankruptcy discharge, Applicant has allowed numerous accounts to become delinquent. Those accounts, totalling over \$11,000, were submitted for collection between February 2006 and April 2008. Additionally, Applicant had an automobile repossessed which resulted in his liability therefore being charged off as a bad debt in the amount of \$7,052. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19(c): *a history of not meeting financial obligations* apply.

Applicant has exhibited continued financial irresponsibility dating back to at least 1994. He attributes his need to file for bankruptcy protection in 2002 to his wife’s medical condition. However, he did not provide any documentation to indicate what portion of the \$54,000 that was discharged was actually medical debt. He continued to obviously live beyond his means as exhibited by debts that began to be submitted for collection within just a few years after he was granted the bankruptcy discharge. Those debts were submitted for collection as far back as three and one-half years ago and as recently as one and one-half years ago. Applicant obtained the assistance of a consumer credit counseling service in preparing a budget, but he has not utilized its assistance in actually resolving any of his delinquent debt. In fact, he has not made any meaningful effort to satisfy any of his delinquent creditors. His assertion that he will be able to resolve all his delinquent debt within the next ten months now that his wife is working full-time rings hollow when compared with his 15-year history of financial irresponsibility.

I have considered the possible application of Mitigating Condition (MC) 20(a): *the behavior happened so long ago, was so infrequent, or 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*

¹¹ *Id.* at 531.

¹² *Egan*, Executive Order 10865, and the Directive.

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): the person has received or is receiving counseling for the problems and 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. Based on Applicant's 15-year history of financial irresponsibility, I conclude none of these mitigating conditions 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 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-k: | Against Applicant |
| Subparagraph 1.l: | Withdrawn |
| Subparagraphs 1.m & n: | Against Applicant |
| Subparagraph 1.o: | For Applicant |
| Subparagraph 1.p: | 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

