



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



In the matter of:)	
)	
)	ISCR Case No. 08-06556
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro Se*

June 15, 2009

Decision

LAZZARO, Henry, Administrative Judge

Applicant failed to mitigate the security concern created by his debts that have remained delinquent for many years. He failed to take any action to resolve most of the debts listed in the Statement of Reasons (SOR), and his testimony and the evidence he presented gives little reason to anticipate he will resolve those debts in the foreseeable future.

On November 13, 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, dated December 8, 2008, admitted all SOR allegations and requested a hearing.

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.

The case was assigned to me on February 25, 2009. A notice of hearing was issued on April 2, 2009, scheduling the hearing for April 27, 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. Applicant testified, called one witness, and submitted 6 documentary exhibits that were marked as Applicant's Exhibits (AE) 1-6 and admitted into the record without objection. The transcript was received on May 5, 2009.

Findings of Fact

Applicant's admissions to the allegations in the SOR 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 35-year-old man who has been employed as a senior communications equipment analyst by a defense contractor since October 2002. From July 2002 through September 2002, he worked for this same employer through placement by a staffing agency. Applicant's manager testified he has known Applicant since October 2004, and has continuing and regular contact with him. In his opinion, Applicant is an outstanding and innovative technician who is reliable and trustworthy. He is confident Applicant has the ability to safeguard classified information.

Applicant graduated from high school in 1992, and he attended a technical school from November 1992 to July 1994. He did not graduate from the technical school.

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on October 29, 2007, in which he listed his employment history prior to working for the defense contractor as follows: 09/2001 to 06/2002 - customer service through a staffing agency; 08/2001 to 08/2001 - unemployment; 07/2001 to 07/2001 - computer technician through a staffing agency; 06/2001 to 06/2001 - factory worker through a staffing agency; 05/2001 to 05/2001 - unemployment; 02/2001 to 04/2001 - sales representative for a security alarm service; 06/1999 to 01/2001 - regional sales representative for a computer company; and 11/94 to 06/1999 - service technician for a systems company. Applicant also disclosed in the e-QIP that he left the job with the security alarm service due to an allegation of unsatisfactory performance.

Applicant has been married since September 1998. Two children have been born of this marriage, ages ten and four. Applicant also has two children, ages 11 and 15, from an earlier relationship. His wages are garnished about \$650 per month for child support and to liquidate a child support arrearage.

Applicant attributes the beginning of his financial problems to his loss of employment as a sales representative in January 2001. He testified he was earning about \$60,000 annually from that job and his income declined considerably thereafter. (Tr. 72) His work history from January 2001 to October 2002, as evidenced by the information contained in the e-QIP, fully corroborates that testimony.

Applicant testified his finances were further strained when he and his wife separated for a period of time in 2003, due to the increased expenses of maintaining two households on their combined incomes. Following their reconciliation and into 2005, Applicant's wife was mobilized by the military reserve and stationed in the United States, but away from home, for eighteen months. The record does not establish what loss of income, if any, they experienced as a result of her military service. However, she currently works as a licensed practical nurse (LPN), earning about \$18 an hour, and serves as a corporal/specialist (paygrade E-4) in the reserve, making it very likely that there was a loss of income while she was activated. Finally, Applicant experienced a number of unplanned for emergency expenses in the past several years.

Applicant's current net pay is about \$2,400 per month. His wife works weekends and her net monthly pay varies from about \$1,400 to \$1,990. According to Applicant, she also earns about \$180 per month from the reserves. However, her earning statement, dated July 23, 2008, listed her net pay as \$51.41, due in part to a thrift savings plan loan repayment in the amount of \$75.38. (GE 4) Applicant testified that after payment of his mortgage, recurring monthly expenses, and payments on three debts, his monthly discretionary income is about \$540.

Applicant submitted proof that he has fully satisfied the \$803 collection debt listed in SOR subparagraph 1.c with the payment of the negotiated settlement sum of \$166.91. He has also satisfied the collection accounts listed in subparagraphs 1.e and 1.f, which had been owing in the combined amount of \$186, by making payment-in-full. All three of these accounts were paid in March 2009.

Applicant testified the \$530 collection account listed in subparagraph 1.b arose from the non-payment of the last month of cable service and the failure to return the cable box. He admits he still has the cable box and that he did not pay for the last month of service, but claims he cannot return the box or pay for the service because of the transfer of the account to a collection agency and the sale of the original cable provider to another company.

Applicant admits he is responsible for the other six collection accounts, owing in the total amount of \$16,261, and that he has not taken any action to resolve any of them. Each of these debts are for medical expenses. Applicant testified the majority of this debt was incurred when he experienced a serious medical emergency while he was either unemployed or employed without insurance. When Department Counsel asked Applicant if he had contacted his creditors, Applicant testified as follows:

I've talked to just about all the creditors at any given point. Whether I contact them or they contact me. And when we discuss the account, if I have money I will try to pay something and if they - - you know, they've tried to enter into some kind of financial arrangement. And with the other debt that I have, the other payments that I have, I just basically say I don't have anything, I can't commit to anything right now. I will pay you as much as I can when I can. (Tr. 47-48)

Applicant's bank account statement for the period March 6, 2009 to April 6, 2009 (AE 3), discloses he and/or his wife visited either regular restaurants or fast food restaurants on at least 22 occasions and spent over \$300. They also disclose the purchase of a video game at the cost of \$102.20. When Applicant was asked why, considering the pending hearing on the SOR, he and/or his wife weren't willing to cut back on these type expenses to at least satisfy some of the smaller debts listed in the SOR, Applicant's only response was: "I don't have a good answer for that because I absolutely see your point and I respect it." (Tr. 79)

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.² The government has the burden of proving controverted facts.³ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁴ although the government is required to present substantial evidence to meet its burden of proof.⁵ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁶ 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.⁷ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁸

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

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

⁴ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

⁶ ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

⁷ ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

⁸ 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 clearance⁹ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁰ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹¹

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)

The SOR alleges 10 accounts that were submitted for collection, owing in the combined amount of \$17,780. Each of these accounts had been delinquent for at least a couple of years to as much as eight years. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19(c): *a history of not meeting financial obligations* apply.

Applicant’s financial problems commenced when he lost a higher paying job in January 2001. He spent the next year and a half working at a variety of temporary positions that were interrupted by two brief periods of unemployment. His financial problems were compounded by a marital separation and, in all likelihood, by his wife’s activation by the military reserve. Additionally, the greatest portion of his delinquent debt is due to a medical emergency he suffered in either 2001/02 while he was uninsured.

Applicant has been continuously employed by his present employer since October 2002. All of the significant problems to which he attributes his delinquent accounts were resolved about four years ago. He has had contact with his delinquent creditors, but he did nothing to resolve any of the debts listed in the SOR until March 2009, four months after issuance of the SOR.

Applicant satisfied one creditor, owed \$803, with a payment of \$166.91. He satisfied two other creditors, owed a total of \$186, with payment-in-full. However, he has taken no action to satisfy six creditors, owed a total of \$16,261. As to the last outstanding debt listed in the SOR, Applicant is unable to return the cable box due to the passage of time. The collection agency is seeking payment as opposed to a return of the merchandise, and Applicant has done nothing to satisfy the debt.

⁹ *Egan*, 484 U.S. at 528, 531.

¹⁰ *Id.* at 531.

¹¹ *Egan*, Executive Order 10865, and the Directive.

The 22 restaurant visits and game purchase disclosed in Applicant's bank statement would not normally be considered inappropriate. However, considering the long-standing delinquent debt and the pendency of the SOR, spending disposable income in that fashion exhibits a lack of judgment and continuing financial irresponsibility.

Based on the above, I find Applicant has not acted responsibly since the problems that created his delinquent accounts were resolved. He continues to exhibit financial irresponsibility and poor judgment in resolving his delinquent debt. Waiting until four months after issuance of the SOR, and then satisfying only a few of the smaller debts that were owing, especially in consideration of the discretionary income Applicant testified was available to him, does not exhibit a good-faith effort to repay overdue creditors.

Accordingly, I conclude Mitigating Condition (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(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*; MC 20(c): *. . . 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* do not 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, the factors listed in ¶ 6.3.1 through ¶6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant failed to mitigate the financial considerations security concern. 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. 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 & b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraphs 1.e & f:	For Applicant
Subparagraphs 1.g - j:	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

