



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-06808
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: James F. Duffy, Esquire, Department Counsel  
For Applicant: *Pro Se*

December 30, 2008

**Decision**

LAZZARO, Henry, Administrative Judge:

Applicant failed to mitigate the security concerns that arise from his financial irresponsibility, as demonstrated by the many debts he has allowed to remain delinquent for a number of years, and his failure to disclose those debts, as required, in a security clearance application he submitted in March 2008.

On August 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.<sup>1</sup> The SOR alleges security concerns under Guideline F (financial considerations) and

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<sup>1</sup>This 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.

Guideline E (personal conduct). Applicant submitted an undated answer to the SOR in which he admitted all allegations and requested a clearance decision based on the written record without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on September 29, 2008, that was mailed to Applicant the same day. 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 October 9, 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 December 12, 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,<sup>2</sup> I make the following findings of fact:

Applicant is 31 years old. He has been employed as a network technician by a defense contractor since July 2005. He worked in the same location and under the same supervisor but for a different employer from March 2005 until July 2006.<sup>3</sup> The Electronic Questionnaire for Investigations Processing (e-QIP) Applicant submitted on March 11, 2008, lists periods of employment as either a network technician or network engineer with three different employers between October 2000 and April 2003. It also lists periods of unemployment from December 2001 until February 2002, and May 2003 until February 2005. There is no record evidence to explain why Applicant left his prior employments.

Applicant was awarded a bachelor of arts degree in organizational communication in May 1999. He is single and he did not list any dependents in the e-QIP he submitted.

The SOR lists 16 collection accounts owing in the total amount of \$26,906. A review of the credit reports contained in the FORM discloses that most of the delinquent accounts arose from student loans, medical expenses, credit cards, cellular phone charges and cable television charges. These accounts have been delinquent for varying periods of time with some delinquencies dating as far back as 2002. Other than the periods of unemployment, the last of which ended in February 2005, there is no record evidence to explain why the accounts became delinquent. Further, there is no record evidence that Applicant has made any effort to satisfy any of the accounts since he resumed employment in March 2005.

Applicant admitted in his response to the SOR that he deliberately falsified the e-QIP he submitted in March 2008 by failing to disclose his many delinquent accounts in

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<sup>2</sup> In addition to the SOR and Applicant's response, the attachments to the FORM consist only of transmittal documents, an Electronic Questionnaire for Investigations Processing (e-QIP) and two credit reports.

<sup>3</sup> This information is taken from the e-QIP in the FORM. There is no explanation for the discrepant dates of employment.

response to questions asking if he was currently over 90 days delinquent on any debt or if he had been over 180 days delinquent on any debts in the preceding seven years. There is no record evidence to explain or mitigate the falsification.

## 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.<sup>4</sup> The government has the burden of proving controverted facts.<sup>5</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence<sup>6</sup>, although the government is required to present substantial evidence to meet its burden of proof.<sup>7</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>8</sup> 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.<sup>9</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>10</sup>

No one has a right to a security clearance<sup>11</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of

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<sup>4</sup> ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

<sup>5</sup> ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

<sup>6</sup> *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

<sup>7</sup> ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

<sup>8</sup> ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

<sup>9</sup> ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

<sup>10</sup> ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

<sup>11</sup> *Egan*, 484 U.S. at 528, 531.

denials.”<sup>12</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>13</sup>

## 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 16 accounts, totalling almost \$27,000, that have been submitted for collection. There is no record evidence to indicate he has taken any steps to resolve any of the delinquent accounts. 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 why the accounts became delinquent. The e-QIP he submitted lists two periods of unemployment and the credit reports in the FORM disclose that a number of the delinquent accounts are related to medical expenses. However, Applicant failed to provide any information as to what, if any, impact those factors had on his ability to satisfy his creditors or remain current on his debts. Likewise, he did not provide any information on what actions he may or may not have taken as a result of his unemployment or medical issues to minimize the impact those episodes had on his ability to remain financially secure. Most importantly, Applicant failed to provide any evidence or explanation why he has not made any effort to resolve any of the accounts since he resumed employment almost four years ago.

I have considered 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* and conclude it does not apply because of Applicant’s failure to provide evidence that he acted responsibly while either unemployed or ill. The record is devoid of any evidence on which to base application of any other mitigating condition.

### 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

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<sup>12</sup> *Id.*, at 531.

<sup>13</sup> *Egan*, Executive Order 10865, and the Directive.

classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any failure to cooperate with the security clearance process.

Applicant failed to disclose his many delinquent accounts in the e-QIP he submitted in March 2008 in response to questions asking if he had accounts that were more than 90 and 180 days past due. He admitted in his SOR response that he deliberately falsified the e-QIP. He failed to provide any explanation or other mitigating evidence that in anyway would mitigate the falsification. DC 16(a): *deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities* applies. Again, the record is devoid of any evidence on which to base application of any mitigating condition.

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 the very limited facts of record about Applicant, 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 and his personal conduct. 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-p:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against 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

