



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



In the matter of:)	
)	
)	ISCR Case No. 08-07316
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul Delaney, Esq., Department Counsel
For Applicant: *Pro Se*

June 19, 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 received a Chapter 7 bankruptcy discharge in March 2001. He quickly thereafter accumulated numerous delinquent accounts which he has failed to take any meaningful action to resolve.

On December 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 a security concern under Guideline F (financial considerations). Applicant submitted a response to the SOR that was received by DOHA on January 21, 2009. He 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 5, 2009. A notice of hearing was issued on March 5, 2009, scheduling the hearing for April 22, 2009. The hearing was conducted as scheduled. The government submitted four documentary exhibits that were marked as Government Exhibits (GE) 1-4 and admitted into the record without objection. Applicant testified and submitted 5 documentary exhibits that were marked as Applicant's Exhibits (AE) 1-5. AE 1, AE 2 & AE 5 were admitted into the record without objection. The Government's relevancy objections to AE 3 & AE 4 were sustained. The transcript was received on May 1, 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 38-year-old man who has been employed as a heavy equipment operator by a defense contractor since December 2007. Applicant graduated from high school in 1989. He enlisted in the Army in November 1990, and he served continuously until he was released from active duty in July 1994. He possessed a secret security clearance while in the Army, and no adverse action was ever taken to revoke or downgrade that clearance. Applicant attended college from January until December 1999, and again from January 2002 to July 2003, but he did not receive a degree.

Applicant's employment history before he began working for the defense contractor is as follows: 11/2007 to 12/2007 - unemployed; 03/2007 to 11/2007 - corrections officer; 10/2003 to 03/2007 - route driver/sales; 07/2003 to 10/2003 - unemployed; 10/2003 to 10/2003 - driver; 02/2002 to 06/2003 - administrative assistant; 12/2001 to 02/2002 - unemployed; 09/2001 to 11/2001 - administrative assistant; 01/2001 to 09/2001 - driver/sales; 10/1998 to 02/2001 - data transcriber; and 11/2000 to 01/2001 - administrative assistant.

Applicant submitted a work performance evaluation for the period ending November 30, 2008, that indicates he is effectively performing his duties. He submitted a letter of recommendation from a co-worker who has known him for over seven years. That person attests to Applicant being a respected member of the community and their church. He also avers that Applicant is trustworthy and he possesses sound judgment.

Applicant has been married since November 2004. He has four children from this relationship, twin sons, age 9, another son, age 8, and a daughter, age 5. His wife has a son, age 14, who resides with them. Applicant attributes his financial problems to the various periods of unemployment he has experienced, medical expenses caused by the premature birth and extended post-delivery hospitalization of his twin sons, and his wife's decision to stay home with the children after the twins were born.

Applicant filed for Chapter 13 bankruptcy protection in May 1999. That bankruptcy was converted to a Chapter 7 bankruptcy in December 2000, and Applicant obtained a Chapter 7 discharge in March 2001. Applicant estimated the amount of debt discharged was \$15-20,000. He attributes his need to seek bankruptcy protection at that time to the

loss of a job and the reduction in pay he experienced when he found new employment at a lower wage.

The largest debt listed in the SOR, subparagraph 1.I, arises from an automobile repossession with an unpaid deficit owing of \$14,407. Applicant's January 23, 2008 credit bureau report (CBR) discloses this account was opened in the month Applicant obtained a bankruptcy discharge. The last activity on the account is listed as occurring a mere three months after he obtained the bankruptcy discharge.

The SOR alleges 14 accounts, including the account listed in subparagraph 1.I, that have been submitted for collection and are owing in the total amount of \$21,221; one charge off account that is owing in the amount of \$648; and two accounts in default that are owing in the combined amount of \$12,824. The two default accounts arose from student loans. Applicant's November 9, 2008 CBR indicates claims have been filed against the guarantor on these accounts. The SOR also alleges a judgment that was entered against Applicant in October 2004, owing in the amount of \$360. Applicant admitted he is responsible for each of these accounts and that he has not paid anything toward any of the accounts.

Applicant testified he is a one-third owner in a house that once belonged to his now deceased father and two other relatives. One of the other relatives is also now deceased and the third wants to sell the property under a federal government program enacted to aid hurricane victims. Applicant does not know how much money he will receive from the sale of the house or when he will receive his share of the proceeds from the sale of the house if the house is actually purchased under the program. He intends to apply the money he receives from the sale to satisfy as much of his delinquent debt as possible.

Applicant contacted a financial planning consultant sometime before the hearing and scheduled an initial meeting with the consultant two days after the hearing. The purpose of the scheduled consultation was to seek advice in establishing a budget and ways to prevent Applicant and his wife from squandering any proceeds they may receive from the sale of his father's former residence. Applicant admits that he and his wife have not wisely handled their financial affairs over the years and that they have been unsuccessful in their previous efforts to establish a budget.

The combined net monthly income of Applicant and his wife is approximately \$4,200. She also receives \$140 a month as child support. Their recurring monthly living expenses are about \$3,650, including car payments of \$500 for a new vehicle purchased in January 2007, and \$360 for a used vehicle purchased in February 2009. Applicant testified that as of the date of the hearing he had \$328 in a savings account and \$462 in a checking account.

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

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,

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.

⁹ *Egan*, 484 U.S. at 528, 531.

¹⁰ *Id.* at 531.

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

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 obtained a Chapter 7 bankruptcy discharge in March 2001. He purchased an automobile the same month he obtained the discharge, and three months later the automobile was repossessed. The deficit on that account, owing in the amount of \$14,407, was placed for collection and remains outstanding. Applicant has 17 additional accounts, owing in the total amount of \$20,646, that have been defaulted on, submitted for collection, charged off as bad debts, or that resulted in a judgment being entered against him. Some of those accounts have been delinquent for at least several years. Applicant has not taken any meaningful action to resolve any of these accounts. 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 are due in part to the periods of unemployment he has experienced over the years. They were further contributed to by the medical expenses that accompanied the premature births of his twin sons and the need for his wife to stop working in order to care for their children.

However, Applicant's twin sons were born in June 2000. After they were born, he obtained the Chapter 7 bankruptcy and the chance to start with a clean financial slate. Instead of acting responsibly, he purchased a car he obviously could not afford as evidenced by it being repossessed within a few months. Since then, he has continued to accumulate debt he could not service. He admits he and his wife have been unsuccessful in living within any budget they attempt to establish. Indeed, as his recent automobile purchases illustrate, including the purchase of a second car after issuance of the SOR and just a few months before the hearing, he continues to spend the money he earns without consideration of the delinquent debts he has accumulated.

Applicant's proposed plans to resolve his financial problems involve application of the proceeds from the sale of a house to the federal government and the meeting with a financial counselor a couple of days after the hearing. It is unknown when or if the house will be sold. It is also unknown how much money Applicant will receive from the sale of the house if it does sell. Assuming Applicant kept the financial counseling appointment, it is unclear how that will help him out of his current financial distress considering the longstanding nature of his financial problems and his inability to live within the budgets he and his wife have attempted to set for themselves in the past.

Based on the above, I find Applicant has not acted responsibly in addressing the problems that created his delinquent accounts were resolved. Instead of making any payments toward his delinquent debt, even after issuance of the SOR, Applicant purchased a second vehicle. He continues to exhibit financial irresponsibility and poor judgment in resolving his delinquent debt, and he provides only vague and speculative proposals to rid himself of that debt.

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 - s: 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

