



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-07344
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

January 12, 2009

**Decision**

LAZZARO, Henry, Administrative Judge

Applicant mitigated the security concern that arose from the delinquent accounts listed in his credit bureau reports.

On September 8, 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 a security concern under Guideline F (financial considerations). Applicant submitted a response to the SOR that was received by DOHA on October 6, 2008, admitted all SOR allegations and requested a hearing.

The case was assigned to me on October 23, 2008. A notice of hearing was issued on October 28, 2008, scheduling the hearing for November 17, 2008. The hearing was conducted as scheduled. The government submitted four documentary exhibits that were

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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), and revised adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

marked as Government Exhibits (GE) 1-4 and admitted into the record without objection. Applicant testified and submitted three documentary exhibits that were marked as Applicant's Exhibits (AE) 1-3 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. One document was timely received, marked as AE 4 and admitted into the record without objection. Department Counsel's forwarding memorandum was marked as Appellate Exhibit (App. Ex.) I and is included in the file. The transcript was received on December 1, 2008.

### **Findings of Fact**

After a thorough review of the pleadings, testimony and exhibits, I make the following findings of fact:

Applicant is a 45-year-old high school graduate who has been employed by a defense contractor as a transportation freight specialist since December 2007. He was employed in private industry as a machine operator from July 1983 until March 2007 when he lost his job due to the company downsizing. Applicant relocated to a different state from April until August 2007 in an unsuccessful attempt to establish a new career. He returned to his original state of residence in September 2007 where he was unable to find employment until he was hired by the defense contractor in December 2007.

Applicant was first married in 1987. That marriage ended in divorce in 1992. He does not have any children from that marriage. He has been remarried since February 1993. His wife had two daughters when they married who are now 34 and 25 years old. Applicant adopted the younger daughter who is now working as a nurse. She lives with Applicant and his wife and assists them in paying some family living expenses.

Applicant's employer from 1983 to 2007 was in the business of manufacturing automobile parts for a major U.S. automobile manufacturer. Economic conditions caused the employer to start significantly downsizing in or about 2004. Applicant's wife, who worked for the same employer for almost 18 years, was earning about \$30,000 a year when she had to leave her job in 2005. Applicant worked a significant amount of overtime before the downsizing began and was earning \$70,000 or more a year up until that time.

Applicant and his wife were living within their financial means when the employer's downsizing began. However, they were not accumulating any savings. Realizing their jobs were in jeopardy, they sold the house they owned which was valued at approximately \$190,000 and moved into a house owned by one of Applicant's relatives. Still, once his wife lost her job and the amount of overtime he was able to work was reduced and/or eliminated they were unable to remain current on their debts.

Applicant testified he was current on his debts up to the time when he and his wife lost their jobs, although he "was just keeping my head above water." (Tr. p. 44) A review of his February 12, 2008 credit report (GE 3) discloses the method of payment for the numerous accounts listed is "As Agreed" until the middle of 2006. Thereafter, they started to be submitted for collection or charged off as bad debts.

The SOR lists 12 accounts, totaling \$35,067, that have been submitted for collection and two accounts, totaling \$2,310, that have been charged off as bad debts.<sup>2</sup> Two of the collection accounts, totaling \$5,511, represent the balances owed on leased automobiles Applicant returned to dealers in a further effort to reduce his expenses when he and his wife lost their employment. The remaining accounts are household expenses and revolving charge accounts.

Applicant filed for Chapter 7 bankruptcy protection on September 17, 2008. The petition (GE 4) discloses Applicant's wife's income was \$21,666.02 in 2006, \$ 12,610.73 in 2007, and \$500.16 as of the date of filing in 2008. Applicant's income was \$41,070.98 in 2006, \$58,816.27<sup>3</sup> in 2007, and \$22,004.23 as of the date of filing in 2008. The petition also discloses that Applicant and his wife's combined average monthly income, as of the date of filing, was \$3,017.09. Applicant's attorney anticipates a discharge under Chapter 7 of the bankruptcy code will be awarded to Applicant and his wife in January 2009. (AE 4)

### **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.<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

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<sup>2</sup> The account listed in subparagraph 1.m was erroneously listed in the SOR and is not included in these figures. (Tr. pp. 67-70)

<sup>3</sup> This figure includes \$15,000 in severance pay Applicant received from his long-term employment.

<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).

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 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>

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## 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’s credit reports disclose 14 accounts, totalling over \$37,000, that have either been submitted for collection or charged off as bad debts in the past few years. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19C(c): *a history of not meeting financial obligations* apply.

Applicant was living within his financial means until both he and his wife lost income and eventually their long-term employment due to their employer being forced to significantly downsize. Their combined income fell from what he estimates was in excess of \$100,000 several years ago to approximately \$36,000 annually at present. In between, he experienced at least two months of unemployment and greatly increased living expenses as he attempted to find a new career in a different state. Applicant took significant steps to reduce his expenditures when he foresaw his family’s loss of income and employment and he immediately sought new employment when he actually lost his job. 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, . . . ), and the individual acted responsibly under the circumstances* applies.

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<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.

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

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

Applicant once again has permanent employment. However, he is earning much less than he did when he accumulated the delinquent debt alleged in the SOR. Having no other recourse, he filed for Chapter 7 bankruptcy protection in September 2008, and his attorney anticipates he will be awarded a Chapter 7 discharge in January 2009. MC 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* applies.

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, his long-term employment history, the drastic steps he took in an effort to minimize the impact the loss of income and eventually his job would have on he and his family, his previous lengthy history of financial stability, the factors listed in ¶ 6.3.1 through ¶6.3.6 of the Directive, and the mitigating conditions that apply, 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

Subparagraphs 1.a-o:               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

