



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-08106
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

September 24, 2009

**Decision**

LAZZARO, Henry, Administrative Judge

Applicant failed to mitigate the security concern created by his long history of financial irresponsibility. 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 give little reason to anticipate he will resolve those debts in the foreseeable future.

On March 11, 2009, 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, dated March 24, 2009, admitted all SOR allegations, and requested a hearing.

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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.

The case was assigned to me on May 29, 2009. A notice of hearing was issued on July 15, 2009, scheduling the hearing for August 17, 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 and submitted two documentary exhibits that were marked as Applicant's Exhibits (AE) 1 & 2 and admitted into the record without objection. The transcript was received on August 25, 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 40-year-old man who has been employed as a security officer by a defense contractor since March 2008. From June 2001 until October 2007, he worked as a corrections officer in the state where he resides. He was fired from that position because he failed to report misconduct committed by another corrections officer as was required of him. Applicant previously worked as a corrections officer in another state from October 1996, until either June 2001, or sometime in late 1999.<sup>2</sup>

Applicant graduated from high school in June 1987. He was awarded a bachelor of science degree in criminal justice in December 2006, and a master of public administration degree through an online program in May 2009.

Applicant served on active duty in the United States Army from November 1988 until August 1996. The highest rank he attained was sergeant (paygrade E-5). He was discharged as a private (paygrade E-2). He testified the reduction in rank was solely due to him being absent without leave for a week and that he received an honorable discharge. (Tr. 90)

Applicant was first married in July 1988. That marriage ended in divorce in January 1997. He has been remarried since July 1999. Applicant has three children, ages 20, 13, and 5. His oldest daughter is attending college on a full scholarship and he provides her with about \$200 per month in financial assistance. The two younger children reside with Applicant and his wife.

Applicant filed for Chapter 13 bankruptcy protection in August 1999. The bankruptcy was dismissed in April 2001, because Applicant failed to comply with the plan that had been established to repay his creditors. The listed creditors in the bankruptcy included a 1997 judgment based on a repossessed automobile, student loans, personal loans, a bank overdraft, and at least several credit card companies. Applicant never attempted to make repayment arrangements with any of these creditors after the bankruptcy was dismissed.

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<sup>2</sup> In the security clearance application he submitted in March 2008 (GE 1), Applicant listed continuous employment from October 1996 to October 2007. However, he testified he was actually unemployed for about one year from some time in 1999 until sometime in 2000. (Tr. 47-52)

Applicant owes delinquent federal income taxes for tax years 2002, 2003, and 2006. As of August 5, 2009, the total amount he owed was \$3,746.70.<sup>3</sup> Applicant contacted the Internal Revenue Service shortly before the hearing of this case and entered into a repayment agreement that requires him to make monthly payments of \$200 commencing on August 15, 2009. Applicant testified he placed the first payment in the mail on August 11, 2009 (Tr. 97), but he did not submit any verification in support of that testimony.

The judgment listed in Applicant's 1999 bankruptcy as owing in the amount of \$7,071, and in the SOR as owing in the amount of \$7,061, has now risen to approximately \$11,500 through the accumulation of interest. (Tr. 62-63) The judgment is currently being satisfied through a garnishment of Applicant's wages.

The SOR lists 11 delinquent accounts, totaling \$7,957, that have been submitted for collection. The dates of last activity on those accounts range from December 2001 to January 2008. Most of the dates of last activity occurred between September 2005 and September 2007. Applicant has not made any payment on any of these debts. He also has not contacted any of these creditors in an effort to make repayment arrangements. The only action he has taken to resolve his delinquent debts is to obtain a packet of bankruptcy documents from a document preparation service and fill them out in contemplation of filing for Chapter 7 bankruptcy protection sometime in the near future.

Applicant attributes his financial problems to his reported periods of unemployment, his current low wages, and to his wife leaving her employment with the same company for which he now works. When he was interviewed on July 14, 2008, Applicant stated he and his wife each earned \$31,000 annually. (GE 3) He now earns \$13.50 per hour working full-time, and his wife earns \$11 per hour working about 20-30 hours per week.

## **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 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

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<sup>3</sup> This amount includes \$370.41 that is listed in Applicant's monthly statement from the IRS (AE 2) under the heading of "Liabilities not shown."

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 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 filed for Chapter 13 bankruptcy protection in 1999. The repayment plan established for him under that bankruptcy was dismissed in 2001 due to his noncompliance with the plan. He owes delinquent federal income taxes for tax years 2002, 2003, and 2006. He has 11 delinquent collection accounts, totalling \$7,957, that have been

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

<sup>5</sup> ISCR Case No. 97-0016 (December 31, 1997) at 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 3 (citations omitted).

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

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

<sup>10</sup> ISCR Case No. 93-1390 (January 27, 1995) at 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.

delinquent for years.<sup>14</sup> Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19(c): *a history of not meeting financial obligations* apply.

Applicant listed continuous employment from October 1996 until October 2007 in the security clearance application he submitted in March 2008, when he obtained his current employment. He testified to the contrary that he was actually unemployed for about one year between 1999 and 2000. He was fired from a job that he held from June 2001 until October 2007, because he failed to abide by a condition of his employment as a corrections officer that he report the misconduct of co-workers. He partly attributes his financial problems to these periods of unemployment. He also blames his financial problems to low income due partly to his wife voluntarily leaving a job that was paying her \$31,000 annually.

The record establishes that a judgment was entered against Applicant based on a repossessed auto in 1997, long before he ever became unemployed. He owes delinquent federal income taxes for three years during which he was employed as a corrections officer. The date of last activity on most of his delinquent accounts occurred before he was fired from his job in October 2007. Accordingly, and regardless if he was unemployed from 1999 until 2000 or not, his financial problems began before either period of unemployment, continued through his lengthy period of employment as a corrections officer, and have not begun to be resolved.

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. 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 failed to mitigate the

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<sup>14</sup> A review of Applicant's credit report (GE 4) indicates it is possible that some accounts listed in the SOR are duplicates of other accounts listed therein. However, it is impossible to make such a determination solely through a review of the credit report with any degree of certainty. Applicant admitted each account in his response to the SOR and thereafter failed to provide any evidence to meet his burden of establishing that any account is in fact a duplication of any other account.

financial considerations security concern. He has not overcome the case against him or 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-n: 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

