



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



In the matter of:)	
)	
)	ISCR Case No. 08-08686
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: *Pro Se*

January 21, 2009

Decision

LAZZARO, Henry, Administrative Judge:

Applicant mitigated the security concern that arose from her debts that became severely delinquent following a lengthy period of unemployment.

On October 10, 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 an answer to the SOR, dated October 24, 2008, in which she admitted all allegations except that alleged in SOR subparagraph 1.i. She requested a clearance decision based on the written record without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on November 18, 2008, which was mailed to Applicant on November 24, 2008. Applicant was notified she had 30 days from receipt of the FORM to submit her objections thereto or any additional information she wanted considered. Applicant acknowledged receipt of the FORM on December 1, 2008. She submitted a response to the FORM with numerous attachments on December 15, 2008. On or about December 29, 2008, Department Counsel indicated he did not object to the admissibility of the materials submitted by Applicant. The case was assigned to another administrative judge on January 6, 2009, and reassigned to me on January 14, 2009, due to caseload considerations.

Findings of Fact

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is a 27-year-old woman who has been employed as a material control handler by a defense contractor since April 2008. She graduated from high school in June 2000. Applicant worked as a sandwich maker while attending high school and continued in that employment until February 2001. She enlisted in the Army reserve in February 2001, and served on active duty while attending basic training until July 2001. She was employed as an accounting file clerk from July 2001 until May 2002. Applicant served on active duty in the Army from June 2002 until June 2005, and attained the rank of specialist (paygrade E-4).

From June 2005 until February 2006, Applicant was unemployed following the birth of her child and her release from active military service. She worked as an administrative assistant/receiving clerk from February 2006 until July 2007. Applicant quit her job in July 2007 to accept employment with another company engaged in the same line of work. However, after she quit her job she discovered someone else had been hired for the position she had anticipated. Applicant was unemployed from July 2007 until she was hired by a temporary agency in February 2008. She continued to work for the temporary agency until she was hired by the defense contractor in April 2008.

¹This 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.

Applicant has been married since October 2003. She has one child who was born in January 2005. Applicant's husband is employed full-time in private industry where he earns \$18.81 per hour. His net bi-weekly pay is \$965.61. Applicant currently earns \$20.20 per hour at her full-time employment. Her net bi-weekly pay is \$1,455.47.

Applicant submitted a detailed monthly and annual budget as part of her response to the FORM. The amount of income listed in the budget is consistent with the above earnings which are verified by wage statements she submitted for herself and her husband as part of her response to the FORM. All estimated recurring living expenses listed in the budgets are reasonable. The budgets include payments on all debts listed in the SOR that remain outstanding. The amounts Applicant has budgeted for family living expenses leaves her family discretionary annual income in the amount of \$7,915.36.

Applicant's May 16, 2008 credit report discloses only one account with a negative entry prior to her unemployment that began in July 2007. That account, owed in the amount of \$300, is listed as having been submitted for collection in 2004. However, her September 15, 2008 credit report shows a settlement was accepted on this account and the account was closed by the credit grantor sometime in or about March 2005. Those credit reports also disclose Applicant always "paid as agreed" on the many other accounts she had prior to her July 2007 unemployment.

The SOR alleges Applicant has nine accounts, totalling over \$30,000, that are delinquent. One of those accounts is alleged to be past due and the remaining accounts are alleged to have either been submitted for collection or charged off as bad debts.

The account listed in subparagraph 1.a arose when Applicant's satellite TV service was disconnected in December 2007. She has now returned the TV service company's equipment and paid the balance due on the account.

The account listed in subparagraph 1.b became delinquent when Applicant failed to cancel her membership at a gym under the mistaken belief the membership would automatically terminate after one year. She has entered into a repayment agreement with the creditor whereby approximately \$75 is debited from her bank each month. The amount to be paid under the agreement is automatically debited from Applicant's bank account.

Applicant has contracted with a credit counselling service to repay a number of her delinquent accounts. Under the terms of the agreement, she is to pay \$365.20 per month for 60 months to satisfy the debts listed in subparagraphs 1.c, 1.d, 1.e, 1.f, and 1.g. The debts listed under those subparagraphs arose from delinquent credit card charges and the deficiency that remained after her repossessed vehicle had been sold. The amount to be paid under the agreement is also automatically debited from Applicant's bank account.

The account listed in subparagraph 1.h arose from delinquent cell phone charges. Applicant has made two payments, totalling \$375, toward the \$585 balance that was

owing. In her response to the FORM, she indicated the remaining balance of \$210 would be paid in full by the end of January 2009.

The account listed in subparagraph 1.i arose from charges assessed against Applicant by a book club she joined. She has satisfied this account in full.

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) with its respective DC and MC 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 evidence⁴, 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 or her.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.

As alleged in the SOR, Applicant allowed nine accounts, totalling over \$30,000, to become delinquent. One of those accounts is listed in her credit reports as past due and the remaining accounts have either been submitted for collection or charged off as bad debts. Disqualifying Condition (DC) 19(a): *inability or unwillingness to satisfy debts* applies. Based on Applicant’s employment and credit history before she became unemployed in July 2007, I have concluded DC 19(c): *a history of not meeting financial obligations* does not apply in this case.

Basically, Applicant’s financial problems all arose after she became unemployed in July 2007. Department Counsel asserted in the FORM that 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* should not apply in this case because Applicant chose to quit her job in July 2007 without having secured replacement employment. In her responses to the SOR and the FORM, Applicant indicated she anticipated securing specific replacement employment when she quit her job in 2007. Considering Applicant’s steady employment history from her senior year in high school until she became unemployed in July 2007, excepting a period of about seven months of unemployment shortly after the birth of her child and release from active duty service in the Army, and her stable credit history up to that time, I find her explanation for the unemployment credible and conclude MC 20(b) applies. For the same reason, I conclude MC 20(a): *the behavior . . . occurred under such circumstances that it*

⁹ *Egan*, 484 U.S. at 528, 531.

¹⁰ *Id* at 531.

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

is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment applies.

Applicant has fully satisfied two of the debts alleged in the SOR. She has entered into repayment agreements with two other creditors and made payments under those agreements that indicate those debts will be satisfied in the near future. Applicant has contracted with a credit counselling service to satisfy the remaining debts through a repayment plan under which the funds are automatically debited from her bank account. Most significantly, Applicant submitted detailed monthly and annual budgets with her response to the FORM that disclose she and her husband have the financial ability to meet their recurring living expenses, satisfy all their delinquent debts and still have substantial discretionary income to deal with any unforeseen financial problems they may experience in the future. Accordingly, MC 20(c): *the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control*; and 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* 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 his or her 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, including Applicant's employment and credit history, her military service, her current family income, the period of unemployment that led to her financial problems, the steps she has taken thus far to resolve her delinquent accounts, and the detailed and reasonable budgets she submitted with her response to the FORM, 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, Applicant has mitigated the security concern that arose from the financial considerations present in this case. She has overcome the case against her and satisfied her ultimate burden of persuasion. It is 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:	FOR APPLICANT
Subparagraphs 1.a - i:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

HENRY LAZZARO
Administrative Judge

Henry Lazzaro
Administrative Judge

