



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-08963
)	
Applicant for Security Clearance)	

Appearances

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

June 10, 2009

Decision

LAZZARO, Henry, Administrative Judge

Applicant mitigated the security concern that was alleged as a result of his January 2008 alcohol-related driving offense. However, he failed to mitigate the security concern that still exists due to his ongoing financial problems.

On November 21, 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 security concerns under Guideline F (financial considerations) and Guideline G (alcohol consumption). Applicant submitted a response to the SOR that was received by DOHA on December 29, 2008. 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 five documentary exhibits that were marked as Government Exhibits (GE) 1-5 and admitted into the record without objection. Applicant testified and submitted one documentary exhibit that was marked as Applicant's Exhibit (AE) 1 and admitted into the record without objection. 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 36-year-old man who has been employed as an electronics technician by a defense contractor since February 2008. He was employed outside the defense industry as a mechanic from September 2007 to February 2008, and as a project coordinator from April 2001 to September 2007. He obtained a high school general educational development diploma in 1998.

Applicant was married in August 1995. That marriage was ended by divorce in January 2008. One 12-year-old daughter was born of the marriage. Applicant has joint custody of the child with his wife. He is currently engaged to be remarried to another woman.

Applicant attributes his financial problems to the dissolution of his marriage and the occurrences that accompanied the break-up of his marriage. His wife apparently became dissatisfied with their marital life because, in her view, Applicant was spending an inordinate amount of time working. They discussed the problem, and Applicant quit the job he had been working at for about six years and took a significantly lower paying job to spend more time at home. Despite this effort to save their marriage, Applicant's wife moved out of the marital residence a few months after he had changed jobs. Further exacerbating Applicant's financial problems, his wife, who had assumed sole responsibility for paying the marital debts, applied virtually all their income to paying only those debts that were solely in her name.

Applicant testified his income went from somewhere between \$45-65,000 annually to about \$35,000 annually as a result of his change of employment. Additionally, Applicant no longer had available the approximately \$20,000 his wife had earned annually to apply to the debts he became responsible for through the divorce.

Applicant remained in the marital home and was solely responsible for the home mortgage once he and his wife divorced. He provided a somewhat convoluted explanation of what happened with the home mortgage. Essentially, the mortgage was sold to a company which, through an administrative error, expended the funds in Applicant's escrow account to pay the real estate taxes on someone else's property. Thereafter, Applicant's mortgage payments were improperly not applied to his account and a foreclosure was imminent despite Applicant's continuing attempts to rectify the problems with the mortgage

company. Applicant was able to sell the house before foreclosure but at a price that left him only enough funds to satisfy the mortgage and closing expenses.

The account listed in SOR subparagraph 1.a is from a department store credit card debt that was charged off in the amount of \$445. Applicant testified he has begun to negotiate with the creditor in an effort to establish a repayment plan. No payment had been made on the account as of the date of the hearing. Applicant's January 2009 credit bureau report (CBR) indicates this account was reported as transferred or sold in December 2008.

Applicant testified the account listed in SOR subparagraph 1.b arose from furniture his ex-wife purchased. He believes she should be solely responsible for this account. Applicant's January 2009 CBR indicates this account was reported as charged off and closed by the credit grantor as of December 2008, with a balance of \$2,634 still owing. Applicant testified he contacted the creditor while working for his previous employer but he did not earn enough money to make the payments required to resolve the account.

The account listed in SOR subparagraph 1.c is listed in Applicant's January 2009 CBR as a current collection account owing in the past due amount of \$2,014. The \$42 increase in the amount of this debt from the amount listed in the SOR and Applicant's September 2008 CBR is apparently due to accrued interest. Applicant has not made any payments on this account.

The account listed in SOR subparagraph 1.d is listed in Applicant's January 2009 CBR as a current collection account owing in the past due amount of \$4,239. The name of the creditor indicates this is a credit card debt. The \$104 increase in the amount of this debt from the amount listed in the SOR and Applicant's September 2008 CBR is apparently also due to accrued interest. Applicant has not made any payments on this account.

Applicant testified the debt listed in SOR subparagraph 1.e is a debt owed on a truck that belongs to his ex-wife's brother. He also testified his brother-in-law is currently making payments on the loan. Applicant's September 2008 CBR lists \$8,709 as the amount owing on this account with \$233 being past due. Applicant's January 2009 CBR lists \$7,479 as the amount owing on this account with \$233 still being past due. The \$1,230 reduction in the balance owing on the account corroborates Applicant's testimony that payments are being made on the loan.

The account listed in SOR subparagraph 1.f is a debt owed to a credit union in the total amount of \$2,673 that was reported as past due in the amount of \$1,490 in Applicant's September 2008 CBR. Applicant's January 2009 CBR discloses the past due amount had risen to \$2,318 as of December 2008. Applicant testified he had made a payment on the account and he submitted AE 1 in verification of the payment having been made. AE 1 is a receipt from a court that discloses a judgment was entered against Applicant on this account, that the total amount due as a result of the judgment was \$3,039.22, and that Applicant made a \$100 payment on the judgment on April 7, 2009.

The account listed in SOR subparagraph 1.g arose from a four-wheel vehicle Applicant had purchased. Applicant thought this vehicle was insured through his home

owner's insurance policy. However, when the vehicle was stolen from his house the insurance company refused to pay for the loss. The creditor then demanded full payment on the outstanding balance owing in the amount of \$5,589 due to the loss of the collateral. Applicant has not made any payment on this loan since the vehicle was stolen. Applicant's January 2009 CBR discloses this account was reported as charged off as of January 2008.

Applicant obtained a loan in the amount of \$15,000 from his sister and brother-in-law to purchase an apparently run down house that he plans to repair and sell. He currently is working on various projects in the house in his spare time. Once he has completed the necessary repairs, Applicant plans to sell the house and use the proceeds to satisfy his delinquent creditors.

Applicant resides with his mother and pays about \$450 a month for groceries and other household expenses. After paying his other recurring monthly expenses, Applicant has about \$84 left from his wages. However, he also claims he is paying \$400 per month on the loan from his sister and brother-in-law and \$200 on a credit union loan. He explained he obtains the money to make the loan payments by picking up odd jobs when he can and by "rob(bing) Peter to pay Paul" (Tr. 66) when he can't.

Applicant was arrested on January 3, 2008, and charged with driving under the influence (DUI) and resisting arrest. Applicant's blood alcohol concentration (BAC) was 0.08 at the time of his arrest. He only went to trial on the DUI charge (apparently the resisting arrest charge was dropped as part of a pretrial negotiation that required him to waive his right to a jury trial). Applicant was convicted of DUI and sentenced to serve five days in jail, pay about \$400 in fines, and attend an alcohol abuse awareness class.

Applicant wrote a lengthy explanation about the arrest and conviction as part of his response to the SOR. He had consumed a couple of beers with his mother and others and then went with his fiance to a residence where they were to attend a social gathering and spend the night. No one was home when they arrived at the location. Applicant and his fiance sat in his car in the driveway to the house and consumed a small amount of alcohol they had brought with them while waiting for others to arrive. Police officers arrested him as he and his fiance were sitting in the car in the driveway. Applicant credibly testified he did not resist arrest.

Applicant was questioned at length about his history of alcohol consumption at the hearing. He first consumed alcohol when he was about 19 years old. His description of his alcohol use since that time is consistent with that of what is commonly referred to as a social drinker. He denies ever driving an automobile when he has consumed anything more than a very small amount of alcohol.

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) and Guideline G (alcohol consumption), with their disqualifying and mitigating conditions, 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.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)

Information contained in Applicant's September 2008 and January 2009 CBRs corroborate his testimony that the account alleged in SOR subparagraph 1.e is based on a truck loan on which his brother-in-law is making regular payments. That subparagraph is decided for Applicant.

Applicant has made only one \$100 payment on any of the other debts alleged in the SOR. That payment was only made after a judgment had been entered against him for that debt. With that payment, Applicant still owes \$17,860.22 on the six accounts alleged in the SOR. Those accounts have either charged off, submitted for collection, listed as seriously past due or have resulted in a judgment being entered against Applicant. 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 arose from the dissolution of his marriage and the financial problems he experienced as a result thereof. Those problems included a significant reduction in his income and his ex-wife using their joint funds to solely pay her debts in anticipation of their divorce. Applicant's financial problems were exacerbated by the misapplication of money from his home mortgage escrow account to pay someone else's property taxes and the need to thereafter sell his home for less than he might otherwise have been able to obtain to prevent a foreclosure.

However, Applicant has done virtually nothing to resolve his lingering financial problems. He has not sought credit counseling in an effort to bring his financial problems under control, nor has he made any meaningful effort to resolve any delinquent accounts. These factors preclude finding that Applicant has acted responsibly since his financial problems began.

Also, Applicant failed to present any probative evidence to establish that his goal of remodelling the house he is currently working on will actually provide him with funds to apply to his delinquent debts. Also troubling is that his January 2009 CBR discloses a utility bill owing in the amount of \$396 that was just listed as having been submitted for collection in October 2008.¹²

As a result of the above, 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): *the person has received or is receiving counseling for the problem and/or there*

¹² Although not alleged in the SOR, the existence of this newly listed account is probative of the application of mitigating conditions.

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.

Guideline G, Alcohol Consumption

Paragraph 21: Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. (Adjudicative Guideline [AG] 21)

Applicant's arrest and conviction for DUI is an aberration in his otherwise law abiding life. There is no evidence to indicate he ever before abused alcohol. Indeed, his testimony on the subject establishes he is properly categorized as no more than a social drinker. DC 22(a): *alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent* applies. However, that disqualifying condition is overwhelming outweighed by application of MC 23(a): *so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment.*

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 has mitigated the alcohol consumption security concern but he has failed to mitigate the financial considerations security concern. He has not overcome the case against him nor has he satisfied his ultimate burden of persuasion in regard to the financial considerations security concern. It is not clearly consistent with the national interest to grant Applicant a security clearance. Guideline G is decided for Applicant. 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-d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f & 1.e:	Against Applicant

Paragraph 2, Guideline G:

FOR APPLICANT

Subparagraph 2.a:

For 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

