



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



In the matter of:)	
)	
)	ISCR Case No. 08-08983
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert E. Coacher, Esq., Department Counsel
For Applicant: *Pro Se*

May 29, 2009

Decision

LAZZARO, Henry, Administrative Judge

Applicant failed to mitigate the security concerns that arise from his outstanding delinquent debts and his failure to disclose those debts in the security clearance application he submitted on May 21, 2008.

On December 22, 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 E (personal conduct). Applicant submitted a response to the SOR, dated January 21, 2009, and requested a decision based on the written record without a hearing. He denied all allegations listed in the SOR.

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.

Department Counsel prepared a File of Relevant Material (FORM) on February 19, 2009, that was mailed to Applicant on February 20, 2009. Applicant was informed he had 30 days from receipt of the FORM to submit his objections to any information contained in the FORM or to submit any additional information he wanted considered. It is unclear when Applicant actually received the FORM. However, on March 25, 2009, Applicant requested additional time to respond to the FORM. Although the file does not contain any information that anyone connected with DOHA approved Applicant's request for additional time, it does contain Applicant's response to the FORM, dated April 25, 2009. On May 1, 2009, Department Counsel executed a memorandum indicating he did not object to the admissibility of Applicant's submissions. The case was assigned to me on May 11, 2009.

Findings of Fact

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

Applicant is a 57-year-old man who has been employed by a defense contractor as a project manager since May 2008. From February 2004 until May 2008, he was employed by a hospital as a project manager. From June 2001 until January 2004, he was employed by a construction company as a project manager.

Applicant has been married since August 1978. He was previously married in May 1972, but that marriage ended in divorce in May 1977. He did not list any children in the security clearance application he submitted on May 21, 2008.

The SOR alleges 12 delinquent accounts, totaling \$26,649, that have been submitted for collection, charged off as bad debts, or reported as past due. Applicant denied each of these debts in his response to the SOR with notations that they were either "Pending Insurance Settlement" or "Pending Agreed Settlement Offer." In response to interrogatories propounded to him by DOHA, Applicant submitted various documents that purported to show the status of some of the accounts. In response to the FORM, Applicant submitted more documents which he asserted showed the majority of the accounts had been satisfied.

SOR subparagraph 1.a alleges a medical debt owing in the amount of \$937. Applicant's June and November Credit Bureau Reports (CBR) disclose this account was opened by the listed collection agency in June 2004. In his response to interrogatories, Applicant stated he was disputing this account with an insurance carrier. In his response to the FORM, Applicant stated he is still disputing this account with an insurance carrier, that the balance listed is incorrect, and that once the insurance carrier acknowledges the balance owing should only be \$401 he will set up a payment plan and satisfy the debt in four installments. The record does not contain information from which a conclusion can be drawn that the documentation Applicant submitted relates to the debt listed in subparagraph 1.a.

SOR subparagraph 1.b alleges a medical debt owing in the amount of \$755. The June and November CBRs disclose this account was opened by the listed collection agency in December 2003. In his response to interrogatories, Applicant stated he was

disputing this account with an insurance carrier. In his response to the FORM, Applicant stated he had found the records that show the account was satisfied. In support thereof, he included a hospital bill, dated June 20, 2001, that disclosed charges due in the amount of \$526.39, with all but \$75 having been paid by insurance. Hand written on the bill is a notation that the \$75 had been paid. The record does not contain information from which a conclusion can be drawn that the documentation Applicant submitted relates to the debt listed in subparagraph 1.b.

SOR subparagraph 1.c alleges a medical debt owing in the amount of \$393. The June and November CBRs disclose this account was opened by the listed collection agency in August 2004. Applicant did not address this debt in his response to interrogatories or in his response to the FORM.

SOR subparagraph 1.d alleges a medical debt owing in the amount of \$915. Applicant's June and November Credit Bureau Reports (CBR) disclose this account was opened by the listed collection agency in June 2003. In his response to interrogatories, Applicant stated he was disputing this account with an insurance carrier. In his response to the FORM, Applicant stated he had found the records to show the account was satisfied. In support thereof, he submitted copies of two checks, both dated June 2, 2002, one payable to a hospital in the amount of \$540, and the second payable to a physician's group in the amount of \$52.60. The record does not contain information from which a conclusion can be drawn that the documentation Applicant submitted relates to the debt listed in subparagraph 1.d.

SOR subparagraph 1.e alleges a credit card account owing in the amount of \$470. In his response to interrogatories, Applicant stated this account was paid in full. He attached to his response a letter from a collection agency indicating the account had been transferred to another collection agency, letters from another firm with an offer to settle an account that lists the original collection agency on this account but with different account numbers and balances due, and a cashier's check payable to the last listed firm payable in an amount that is different from that listed in any of the other letters. In his response to the FORM, Applicant again stated the account was paid in full but that he is unable to find documents to support that assertion.

SOR subparagraph 1.f alleges a debt owing in the amount of \$5,055 that is listed in Applicant's June 2008 CBR as "unknown loan type." In his response to interrogatories, Applicant stated this account was the result of fraud and that he was disputing the account in anticipation of eventual arbitration. He attached to his response a letter from the original account holder, dated April 14, 2005, which indicate Applicant had submitted a forgery claim to the bank and was required to close the account which may have caused the return of checks that had been written on the account. In his response to the FORM, Applicant stated the bank had charged off this account based on his claim of fraud and that his CBR, dated March 5, 2009, listed a zero balance owing. Actually, the March 2009 CBR, lists the creditor alleged in subparagraph 1.f with a current balance owing in the amount of \$5,286. There is no evidence in the record to conclude this delinquency in any way relates to the forgery claim made to the bank.

SOR subparagraph 1.g alleges a debt owing for cellular telephone service in the amount of \$192. Applicant's June and November 2008 CBRs disclose the last activity on this account occurred in May 2002, and the date of the report listed by the collection agency is June 2004. In his response to interrogatories, Applicant asserted this account had been paid in full. He did not submit any proof of payment at that time. In his response to the FORM, Applicant again asserted the account had been paid in full and included two checks, dated January 16, 2002 and December 16, 2002, in the total amount of \$254.39 that were made payable to the cellular phone company. This account is not listed in Applicant's March 2009 CBR. It is impossible to tell from the record if the checks submitted by Applicant represent the total amount owed on the account at the time, and, if so, why the account would have been submitted for collection a year and a half after the last payment was made on the account.

SOR subparagraph 1.h alleges the balance owing on a repossessed automobile in the amount of \$14,025. Applicant's June and November 2008 CBRs disclose this account was opened in November 2004, and the date of last activity on the account was May 2006. In his response to interrogatories, Applicant stated the account was being disputed because the car had been auctioned for more than was owed on the account. He also asserted it was "Under legal counsel." In his response to the FORM, Applicant repeated the assertions he had made in his response to interrogatories. He also submitted checks made payable to the creditor which again appear to relate to the debt alleged in subparagraph 1.i.

SOR subparagraph 1.l alleges late automobile payments owing in the amount of \$2,382. Applicant's June and November 2008 CBRs disclose this account was opened in November 1999, and the date of last activity on the account was August 2002. In his response to interrogatories, Applicant asserted that this account had been paid in full and his payment had been returned after the car was repossessed. However, he inexplicably also asserted that he was disputing the account because the balance was incorrect and he was requesting arbitration. In his response to the FORM, Applicant again asserted the account had been paid in full and went on to note it no longer appeared in his March 2009 CBR. He also enclosed two checks, dated October 15, 2002, and December 16, 2002, that were made payable to this creditor.

Applicant submitted documents from the creditor listed in SOR subparagraphs 1.h and 1.l that do not appear to relate to either account based on the January and March 2006 dates on those documents. However, because he obliterated the account numbers on the documents it is impossible to state with certainty to what account(s) they relate.

SOR subparagraph 1.j alleges a medical bill owing in the amount of \$739. Applicant's June 2008 CBR discloses this account was opened in May 2003, and the date of last activity was May 2008. In his response to interrogatories, Applicant stated he was disputing this account with an insurance carrier. He submitted a number of medical statements and other documents pertaining to medical bills that may or may not be connected to this bill. In his response to the FORM, Applicant asserted this bill had been paid in full by insurance paying a portion of the bill and him paying the balance. He attached four checks, three of which are dated June 2, 2002, with the fourth check being dated August 8, 2002, that appear to be made payable to two radiology practices. The total

amount paid by those checks is \$101.88. While it is impossible to determine with certainty from the record evidence if those checks relate to the account alleged in subparagraph 1.j, it must be noted that Applicant's March 2009 CBR does indicate the account arose from radiologic services provided by a creditor with a name similar to that listed on the checks submitted by Applicant. However, the March 2009 CBR also discloses the account was updated in January 2009, and remains in a collection status with a balance owing of \$739.

SOR subparagraph 1.k alleges a medical bill owing in the amount of \$561. Applicant's June 2008 CBR discloses this account was opened in August 2003, and the date of last activity was May 2008. In his response to interrogatories, Applicant asserted this account was in dispute with an insurance carrier. This account is also listed in Applicant's March 2009 CBR, which also lists the name of the medical provider who submitted the claim. Applicant included two statements with his response to interrogatories and with his response to the FORM that indicated Applicant and his wife owed the provider \$401 after insurance payments were applied to the account. Applicant provided a somewhat lengthy explanation in his response to the FORM in which he asserted he was unable to find a check to verify he had made a payment on this account and the insurance carrier had merged with another carrier preventing him from obtaining information from the insurance company.

SOR subparagraph 1.l alleges a medical bill owing in the amount of \$92. Applicant's June 2008 CBR discloses this account was opened in September 2003, and the date of last activity was May 2008. In his response to interrogatories, Applicant again asserted he was in dispute with an insurance carrier over this bill. This account is also listed in Applicant's March 2009 CBR, which identifies the original creditor as an anesthesiology practice. Applicant submitted a statement, dated June 2003, from this creditor with his response to interrogatories. That statement indicates Applicant owed a balance of \$92.35 for services provided to his wife after insurance payments in the amount of \$1,180.65 had been applied to the account. In his response to the FORM, Applicant stated this account had been paid as part of the claim submitted in connection with the debt alleged in subparagraph 1.k, and was an example of "double dipping" which is an example of why he is disputing the medical bills alleged in the SOR.

Applicant submitted wage statements, dated June 3, 2008, and June 17, 2008, with his response to interrogatories that establish his net bi-weekly earnings at that time were \$2,616.13. He also submitted a personal financial statement at the same time in which he only claimed to have a net monthly income of \$4,369. He listed his recurring monthly expenses at \$1,450, his monthly debt payments at \$1,555 and his net remainder at \$1,364.² He also listed his total assets as being \$955,000, of which \$700,000 was asserted to consist of stocks and/or bonds.

Applicant's only explanations for his delinquent indebtedness was contained in his response to the SOR wherein he attributed his financial problems to a medical emergency and loss of a job. He did not elaborate on how these incidents affected his ability to pay his debts, especially in consideration of the substantial assets he claims to possess, or what

² Applicant actually listed his monthly payments as being \$3,005. However, the math makes clear that he combined his recurring monthly expenses and debts payments to arrive at that figure.

actions he took to mitigate the problems other than to assert “the records will also show where we were able to request relief from the creditors until such time we could recover and begin to make restitution.”

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) in May 2008. In response to applicable questions, he failed to disclose, as required, that he had been over 180 days delinquent on any debt in the preceding seven years or that he was then currently over 90 days delinquent on any debt. His June and November 2008 CBRs disclose he had numerous accounts that should have been disclosed in response to those questions, most dating back several years.

In his response to the SOR, Applicant denied both personal conduct allegations by incredibly claiming that because he had “ongoing communication of settlement offers” from some creditors he did not deem the accounts to be delinquent. The settlement offers he was referring to are apparently those he included with his response to interrogatories that date from January 2006 to March 2007. In his response to interrogatories, he justified his failure to disclose the delinquent accounts by asserting he considers the accounts “unresolved and therefore not of final record.” He reasserted this position in his response to the FORM, along with the additional claim that in his opinion “until such time full resolution has been accomplished they are not of final record.”

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 E (personal conduct), 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.³ The government has the burden of proving controverted facts.⁴ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁵ although the government is required to present substantial evidence to meet its burden of

³ ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

⁴ ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

⁵ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

proof.⁶ “Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.”⁷ 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.⁸ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁹

No one has a right to a security clearance¹⁰ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹¹ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹²

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 June and November 2008 CBRs disclose 12 delinquent accounts, owing in the total amount of over \$26,000, that have been submitted for collection, charged off as bad debts, or reported as being severely delinquent. Those CBRs and the statements and the documents Applicant submitted in response to the SOR, the FORM and the interrogatories propounded to him by the Government clearly establish that the Government has met its burden of proof and shown that Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19C(c): *a history of not meeting financial obligations* apply.

On the other hand, Applicant failed to meet his burden to present evidence of refutation, extenuation, or mitigation to overcome the case against him. An exhaustive review of Applicant’s assertions and the evidence he submitted fails to prove he has satisfied any of the debts listed in the SOR. While some of the documents he submitted

⁶ ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

⁷ ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

⁸ ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

⁹ ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

¹⁰ *Egan*, 484 U.S. at 528, 531.

¹¹ *Id.* at 531.

¹² *Egan*, Executive Order 10865, and the Directive.

may or may not relate to specified debts as he alleges, there is no record evidence that permits a definitive conclusion they relate to those debts. Further, and most compelling, is that even if they do relate to the debts as alleged by Applicant, the record is devoid of evidence from which a conclusion can be reached that those debts have been satisfied. As a result, Mitigating Condition (MC) 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* does not apply.

As to the medical debts, Applicant repeatedly asserted he was in dispute with insurance carriers over those debts. However, the documentary evidence he submitted in connection with those debts generally established that the insurance company had paid the majority of the debts leaving comparatively small portions of the debt to be paid by Applicant. There is nothing in the record to provide any basis for concluding the insurance company did not pay the amount of the debts it was contractually obligated to pay. Applicant also disputed the largest debt that resulted from a repossessed automobile, but he failed to provide any documentation in support of his claims, including evidence that he had retained legal counsel to dispute the claim as he asserted in his response to the FORM. Thus, MC 20(e): *the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue* does not apply.

Applicant attributes the financial problems evidenced by the delinquent debts to a medical emergency and loss of employment. While the record clearly establishes his wife experienced some serious medical problem in or about early-2003, and that he may also have had some medical issues about that time, there is no record evidence other than delinquent medical bills to indicate how this affected his ability to remain current on his accounts. As to the loss of employment, the e-QIP Applicant submitted indicates he has been continuously employed since at least June 2001. Additionally, the large assets and the amount of discretionary income Applicant claimed in the personal financial statement he submitted indicates he has the ability to satisfy all listed delinquent accounts when and if he so chooses. Therefore, 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* does not apply.

Finally, there is no record evidence from which to find that either of the remaining potentially applicable mitigating conditions, i.e., 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*; or 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* apply.

Guideline E, Personal Conduct

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is

any failure to provide truthful and candid answers during the security clearance process or any failure to cooperate with the security clearance process.

In response to applicable questions contained in the e-QIP he submitted in May 2008, Applicant failed to disclose, as required, that he had been over 180 days delinquent on any debt in the preceding seven years or that he was then currently over 90 days delinquent on any debt. His June and November 2008 CBRs disclose he had numerous accounts that should have been disclosed in response to those questions, most dating back several years.

In his response to the SOR, Applicant asserted that because he had “ongoing communication of settlement offers” from some creditors he did not deem the accounts to be delinquent. The settlement offers he attached to his response to interrogatories were sent to him by a few of his creditors between January 2006 and March 2007. His assertion to the effect that all of his delinquent accounts, most of which had been delinquent for years, somehow in his mind became no longer delinquent because a few of his delinquent creditors made settlement offers which he chose to ignore is not credible.

In his response to interrogatories, Applicant claimed he did not disclose the accounts because he considered them “unresolved and therefore not of final record.” He essentially reasserted this last justification in his response to the FORM. Applicant’s failure to resolve his accounts and to instead permit them to remain in a collection status for years can hardly be considered a basis for asserting that they are not delinquent. Like his response to the SOR, these attempted justifications are not credible.

Accordingly, DC 16(a): *deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities* applies. I have considered all potential mitigating conditions and conclude that none 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 has failed to mitigate the financial considerations and personal conduct security concerns. 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. Guidelines F and E are 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-l:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a & b:	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

