



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



In the matter of:)	
)	
)	ISCR Case No. 09-00525
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

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

December 31, 2009

Decision

LAZZARO, Henry, Administrative Judge

Applicant failed to mitigate the security concern created by his history of financial irresponsibility. He has 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. Clearance is denied.

On June 3, 2009, the Defense Office of Hearings and Appeals (DOHA) issued an 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 a response to the SOR, dated July 6, 2009, admitted all SOR allegations except the allegation contained in subparagraph 1.b, 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 September 9, 2009. A notice of hearing was issued on October 9, 2009, scheduling the hearing for October 26, 2009. The hearing was conducted as scheduled. The government submitted six documentary exhibits that were marked as Government Exhibits (GE) 1-6 and admitted into the record without objection. Applicant testified and submitted 14 documentary exhibits that were marked as Applicant's Exhibits (AE) 1-14 and admitted into the record without objection. The transcript was received on November 4, 2009.

Procedural Matters

_____ Following the close of the record in this case, I received an envelope, postmarked December 19, 2009, containing:

- 1) an unsigned note from Applicant, dated December 18, 2009 (AE 15);
- 2) an unsigned letter from Applicant, dated December 17, 2009 (AE 16);
- 3) an unsigned letter from Applicant's wife, dated December 16, 2009 (AE 17);
- 4) a list of creditors, dated December 17, 2009 (AE 18);
- 5) a letter from one of Applicant's creditors, dated December 17, 2009 (AE 19);
- 6) a payment receipt from one of Applicant's creditors, dated December 17, 2009 (AE 20);
- 7) a note from Applicant's wife, dated December 17, 2009 (AE 21); and
- 8) a credit report, dated December 15, 2009 (AE 22).

The documents were marked as indicated above.

Department Counsel submitted a memorandum in which he points out that AE 15-22 were submitted after the close of the record and the submission of these documents is therefore untimely. However, he also specifically stated he did not object to the documents being admitted into evidence. Accordingly, AE 15-22 are admitted into the record without objection. Department Counsel's memorandum has been marked as Appellate Exhibit (App. Ex.) I, and is included in the record.

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 48-year-old man who has been employed as a research analyst and writer by a defense contractor since August 2008. From August 2004 until February 2008, he worked with his brother installing heating and air conditioning equipment. He was unemployed from February 2008 until August 2008.

Applicant graduated from high school in May 1979. He enlisted in the Navy in May 1981, and he served as an enlisted Sailor until he was given a Navy Reserve Officer Training Corps scholarship in August 1986. He attended college from August 1986, until he was awarded a bachelor of science degree in history and commissioned as an ensign in the Navy in November 1989. After commissioning, Applicant attended flight school to become a Naval Flight Officer but he was unable to complete the training due to a medical condition. He then became a surface warfare officer and served as such until he retired as a lieutenant commander in August 2004.

Applicant decided to retire at the time he did because he realized he would not be promoted to commander because he had failed to attend certain training. However, he could have remained on active duty for at least two more years as a lieutenant commander. Applicant submitted his request to retire from the Navy about one year in advance of his actual retirement.

Applicant was first married in January 1982. That marriage ended in divorce in January 2000, and his ex-wife died in April 2006. No children were born of the marriage. Applicant's first wife was also a retired Naval officer and, as a result, she did not receive any part of his military pension when they divorced. Applicant has been remarried since August 2007. He has a four-year-old stepson from this marriage.

Applicant purchased a recreational vehicle in August 2001, at a cost of approximately \$43,500. He had intended to live in the vehicle on some vacant land he owned after his retirement. Applicant was current on the payments on the vehicle while he was in the Navy, but he was unable to continue making the payments after he retired and found himself underemployed. The vehicle was repossessed in February 2008, and there is now a \$27,325 deficit owing after the resale of the vehicle. Applicant has not made any payments on this debt.

The SOR alleges a credit card debt, owing in the amount of \$5,037, that was charged off as a bad debt. Applicant's credit bureau report (CBR), dated April 9, 2009, discloses \$1,453 was past due on that account as of the date of that CBR. The date of last activity on this account is listed in that CBR as September 2007. Applicant's CBR, dated December 15, 2009, discloses the past due amount has increased to \$2,095. Applicant submitted a note, dated December 17, 2009, in which he claims to have entered into a repayment agreement with this creditor. However, he did not submit any verification of that alleged agreement or any proof that he had actually made a payment in accord with the alleged agreement.

The SOR alleges a second credit card debt, owing in the amount \$6,655, that is listed in Applicant's CBR, dated September 26, 2008, as over 120 days late. The date of last activity is listed in that CBR as January 2008. Applicant submitted verification that he made one \$100 payment on this account on December 17, 2009.

The SOR alleges a medical bill that has been submitted for collection in the amount of \$2,476. Applicant's CBR, dated April 9, 2009, indicates this account dates back to October 2007. His CBR, dated December 15, 2009, discloses this account was transferred to a collection agency as of December 2008, and the past due amount had increased to

\$2,620.² Applicant denies he is responsible for this bill and claims to have no knowledge of how it came to be listed in his credit report. He has had health insurance through the military since he retired and now has additional health insurance through his current employer. He admits his stepson has recurring medical problems that require treatment but asserts that treatment should be covered by one or both of his health insurance carriers. He has not disputed this account through the credit reporting agencies nor has he done anything else to either satisfy or challenge the account.

Applicant has at least four accounts not listed in the SOR that were severely delinquent. He has entered into repayment plans on those accounts and is making the agreed upon payments. The balance owing on those accounts is approximately \$16,000.

Applicant attributes his financial problems to his having acquired substantial debt while on active duty in the Navy that he was unable to remain current on after he retired. He thought he would earn more money working with his brother in the heating and air conditioning business than he did. When he figured out he could not earn enough to pay his debts he unsuccessfully sought other employment for several years until he was hired by his current employer. His financial problems increased when a mobile home he had purchased was destroyed by a tornado. While insurance paid for the trailer, he had to obtain a federal emergency loan to clean up the property the trailer had been on before he could sell the property. He is now paying \$108 a month on that loan which has a balance owing of almost \$8,000.

Applicant spoke with an attorney about filing for Chapter 7 bankruptcy protection last year. The attorney advised him that he earned too much money to file for Chapter 7 protection and instead recommended that he seek Chapter 13 bankruptcy protection. Applicant decided he did not want to pursue the Chapter 13 bankruptcy. Applicant has not obtained any financial counseling nor has he attempted to establish a budget. He admits he lacks the ability to manage his finances and he has no plan to resolve his inadequacy in this area.

Applicant's net monthly salary is approximately \$4,000. He additionally receives about \$2,900 each month in retirement pay. He submitted a personal financial statement in which he listed his monthly living expenses as \$2,450, and his monthly debt payments as \$730. He valued his total assets at \$2,250. He does not have any savings and he cannot account for where the rest of his income is spent. However, although Applicant's wife does not work, she does maintain separate accounts which she pays from Applicant's income. He does not know what accounts she has or what amount of money she spends on them.

Applicant's Certificate of Release from Active Duty (DD 214) discloses his Naval awards include a Joint Service Commendation Medal, five Navy and Marine Corps Commendation Medals, three Navy and Marine Corps Achievement Medals, and a Good Conduct Medal. He possessed a security clearance, including a top secret clearance with

² Applicant crossed out the entry in this CBR that listed the account as a medical bill and wrote a note about having made a payment arrangement with a gasoline charge card company. However, the account number listed in the CBR, dated December 15, 2009, is identical to the account number listed in the CBR, dated April 9, 2009.

sensitive compartmented information (SCI) access, for most of the time he was on active duty. There is no information to indicate he ever mishandled or risked the compromise of classified information while possessing a security clearance.

Applicant submitted letters of recommendation from a neighbor and several co-workers. Each of those persons attest to his outstanding good character and believe he can and should be entrusted with access to classified information.

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. 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 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 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

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

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

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

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

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

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

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

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 owes \$27,325 on the deficit remaining after the sale of his repossessed recreational vehicle. He has two delinquent credit card debts owing in the total amount of \$11,692. He has a medical debt that has been submitted for collection owing in the amount of \$2,476. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19(c): *a history of not meeting financial obligations* apply.

Applicant acquired substantial debt while he was on active duty that he was able to service with his active duty pay. However, he freely chose to retire at least two years earlier than he had to without either reducing his debt or acquiring sufficient replacement income to remain current with his debt payments after his retirement. Instead, he opted to work with his brother without determining if he would be able to earn enough to pay his bills. As a result, 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*; and 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* do not apply.

Applicant made a \$100 payment on a delinquent debt that is listed in the SOR about two months after the hearing. He has been making payments on several debts that are not listed in the SOR. He submitted a letter verifying he has entered into a repayment agreement with a creditor that is not listed in the SOR, but he did not submit proof that he has actually made a payment to that creditor. It will be many years before he has satisfied the debts on which he has been making payments, and he has no plan to make any payments on three of the debts listed in the SOR until after he has satisfied the ones he is now working on.

¹⁰ *Egan*, 484 U.S. at 528, 531.

¹¹ *Id.* at 531.

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

Applicant admits he is unable to properly manage his finances, but he has not sought out any assistance in dealing with his financial problems other than to obtain a recommendation that he seek Chapter 13 bankruptcy protection which he rejected. Finally, Applicant's personal financial statement discloses that he should have substantial discretionary income to apply to his debts, but he has no idea where that money is being spent. I have considered 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 MC 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* and conclude they do not apply.

Applicant disputes the medical debt based on his having health insurance that he believes would have paid for any medical treatment he, his wife, or his stepson would have received. This debt predates Applicant's current employment, so the only possible insurance coverage would have been through his military insurance. However, this debt arose only two months after Applicant married his current wife and he failed to submit any proof that he timely added his wife and/or stepson to his military insurance. Further, he has not taken any meaningful action to resolve or dispute this debt. Accordingly, 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 is entitled to substantial consideration under the whole person concept for the many years that he served honorably in the Navy and the many awards he received in recognition of his outstanding Naval career. Additionally, he has a proven track record of being entrusted with access to classified information, including SCI, without a blemish. The letters of recommendation he submitted attest to his reputation as a trustworthy and honorable man. However, considering the disregard he has demonstrated since retiring from the Navy for keeping his financial affairs in order and the continuing disregard he has shown for resolving the financial problems he is experiencing, I find the whole person analysis is insufficient to overcome the financial considerations concern that exists.

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 financial considerations security concern. 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. 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

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

