



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-05021
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Pamela Benson, Esq., Department Counsel  
For Applicant: *Pro Se*

December 29, 2009

**Decision**

LAZZARO, Henry, Administrative Judge

Applicant mitigated the security concern caused by the delinquent accounts listed in his credit reports. His financial problems began after he was medically discharged from the Marine Corps, and then had to undergo numerous surgeries that prevented him from obtaining replacement employment. Applicant has now either resolved, or taken substantial steps to resolve, the majority of his delinquent accounts. Clearance is granted.

On August 10, 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 August 25, 2009, admitted all SOR allegations except those contained in subparagraphs 1.c, 1.d, and 1.h, 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 September 29, 2009. A notice of hearing was issued on October 7, 2009, scheduling the hearing for October 23, 2009. The hearing was conducted as scheduled. The government submitted four documentary exhibits that were marked as Government Exhibits (GE) 1-4 and admitted into the record without objection. Applicant testified and submitted 11 documentary exhibits that were marked as Applicant's Exhibits (AE) 1-11 and admitted into the record without objection. The transcript was received on November 3, 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 31-year-old man who has been employed as an aircraft structural mechanic by a defense contractor since February 2009. He served on active duty in the Marine Corps from July 1996 until he was medically discharged in July 2001. He was either unemployed or attended college as a full-time student from July 2001 until October 2007. He worked as a fund raiser, earning \$8.25 an hour, from October 2007 until January 2008. He worked as a customer service representative, earning \$12.38 an hour, from January 2008 until February 2009. His present employment pays him \$21.39 an hour.

Applicant's military career ended as a result of a severe leg injury he sustained in November 1999. He underwent surgery for the injury but had to be medically discharged as a result of the injury. He was given approximately \$17,000 in severance pay, but was unable to obtain any disability payment from the Veterans' Administration (VA) until the severance pay was repaid from the 10% disability rating he was eventually awarded. Applicant's credit bureau reports (CBR) disclose he was current with his debts prior to being medically discharged from the Marine Corps.

Following his discharge from the Marine Corps, Applicant underwent six or seven further surgeries on his leg at a VA hospital. The surgeries were performed on the leg that was not injured while he was in the Marine Corps but were attributable to complications that arose from the original injury. Applicant was unable to work for several years following his discharge because the issues with his legs impeded his ability to walk. Once he completed the surgeries, he attended college and was awarded a bachelor of science degree in business administration in August 2007.

Applicant was first married in November 1998. That marriage ended in divorce in July 2001. No children were born of the marriage, but Applicant testified a substantial portion of the severance pay he received from the Marine Corps was expended during the course of the divorce proceedings. Applicant has been remarried since May 2005. He has a step-child, age 13, from this marriage.

The debt listed in SOR subparagraph 1.a is a \$14,406 judgment that was entered against Applicant as the result of an automobile accident. His automobile insurance company declined to cover the damages from the accident claiming it had terminated his coverage shortly before the accident. Applicant began making \$75 monthly payments to

satisfy the judgment about five years ago. He increased the monthly payments to \$100 once he obtained his current employment. As of the date of the hearing, Applicant had paid \$4,646 toward the judgment and reduced the amount owing, including accumulated interest, to \$10,394.51.

Applicant submitted verification at the hearing that he has satisfied the debts listed in SOR subparagraphs 1.b, 1.c, 1.h, 1.i, and 1.m. He successfully disputed the debt listed in SOR subparagraph 1.d when the creditor agreed it had erred in claiming that he had failed to return cable television equipment. Appellant is currently making \$150 monthly payments to satisfy the debt listed in SOR subparagraph 1.n. The debt listed in SOR subparagraph 1.i is a duplicate entry of the debt listed in SOR subparagraph 1.b.

In 2006, Applicant became ill and passed out in his automobile while his wife was driving him to a VA hospital. Concerned for his immediate well-being, she diverted to a civilian hospital where he was subsequently hospitalized for four days. Applicant did not have health insurance at the time. The debts listed in SOR subparagraphs 1.e, 1.f, 1.g, 1.j, 1.k, 1.l, 1.m, and 1.n all arose from this hospitalization. As noted above, Applicant has either satisfied or entered into repayment plans on several of those debts. However, the collection agency holding the debts listed in SOR subparagraphs 1.e, 1.f, and 1.g has refused to provide Applicant any information concerning those debts, and he has refused to pay them believing they are included in the other medical debts that he has either paid or on which he is making payments. The debts listed in SOR subparagraphs 1.j and 1.k are duplicate entries of the debts alleged in SOR subparagraphs 1.e, 1.f and 1.g.

## **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.<sup>2</sup> The government has the burden of proving controverted facts.<sup>3</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence,<sup>4</sup> although the government is required to present substantial evidence to meet its burden of

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

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

<sup>4</sup> *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

proof.<sup>5</sup> “Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.”<sup>6</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>7</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>8</sup>

No one has a right to a security clearance<sup>9</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>10</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>11</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 had a number of accounts that became delinquent while he was unemployed and attending college after he was medically discharged from the Marine Corps in 2001. 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 CBRs disclose he was current at all times with his debt payments before he was medically discharged from the Marine Corps. A large portion of the severance pay he received was expended during the course of his divorce that occurred at the same time as his discharge. He was forced to undergo numerous surgeries after his discharge that prohibited him from obtaining employment. Once he was able to walk, he attended college and quickly earned a degree. Shortly after graduating college he obtained full-time employment, but at a low hourly rate. He followed that with a slightly better paying job where he worked until he was able to acquire his present employment. Now that he is

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<sup>5</sup> ISCR Case No. 01-20700 (December 19, 2002) at 3 (citations omitted).

<sup>6</sup> ISCR Case No. 98-0761 (December 27, 1999) at 2.

<sup>7</sup> ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, Item E3.1.15.

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

<sup>9</sup> *Egan*, 484 U.S. at 528, 531.

<sup>10</sup> *Id.* at 531.

<sup>11</sup> *Egan*, Executive Order 10865, and the Directive.

earning a liveable wage, he has quickly satisfied, disputed, or entered into repayment plans on the debts listed in the SOR. Additionally, he submitted proof that he has been making regular payments for years that have resulted in a substantial reduction of the amount owing on the largest debt listed in the SOR.

Applicant is entitled to application of the following Mitigating Conditions (MC): 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*; MC 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*; and 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.*

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 mitigated the financial considerations security concern. He has overcome the case against him and satisfied his ultimate burden of persuasion. It is clearly consistent with the national interest to grant Applicant a security clearance. Guideline F is decided for 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:                      FOR APPLICANT

Subparagraphs 1.a-n:                      For Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Henry Lazzaro  
Administrative Judge

