



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



In the matter of:)	
)	
)	ISCR Case No. 09-05515
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

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

June 17, 2010

Decision

LAZZARO, Henry, Administrative Judge

Applicant failed to mitigate the security concern created by his history of financial irresponsibility which has not been resolved. Clearance is denied.

On January 11, 2010, 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 a response to the SOR that was received by DOHA on February 16, 2010. He admitted all SOR allegations and requested a decision be made without a hearing. On February 25, 2010, Department Counsel requested a hearing pursuant to Paragraph E3.1.7 of the Additional Procedural Guidance of Enclosure 3 of DoD Directive 5220.6.

¹ This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive), and the adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

The case was assigned to me on March 10, 2010. A notice of hearing was issued on March 12, 2010, scheduling the hearing for April 13, 2010. The hearing was conducted as scheduled. The government submitted ten documentary exhibits that were marked as Government Exhibits (GE) 1-10 and admitted into the record without objection. Applicant testified and submitted nine documentary exhibits that were marked as Applicant's Exhibits (AE) 1-9 and admitted into the record without objection. The transcript was received on April 23, 2010.

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 55-year-old man who has been employed by a defense contractor since September 2008. He was previously employed by a different defense contractor from April 2008 until September 2008. Applicant enlisted in the U. S. Army in February 1986, and he served continuously on active duty until he retired in May 2008. Applicant was a sergeant first class (paygrade E-7) when he retired. His personal military awards consist of three Meritorious Service Medals, seven Army Commendation Medals, eight Army Achievement Medals, and three Good Conduct Medals.

Applicant graduated from high school in May 1973. He has been married four times with each marriage ending by divorce. Applicant is unsure about the dates of his first two marriages, but believes one began and ended in the 1970s, and the other began and ended in the 1980s. He has a 26-year-old daughter from the second marriage. Applicant's third marriage occurred in May 1994, and ended in January 2000. His last marriage occurred in February 2001, and ended in October 2005. Applicant's only continuing financial responsibility to any of his ex-wives is a \$300 monthly payment to his last wife that will continue until 2014 to satisfy her interest in their marital residence which has now been sold.

The Army issued Applicant a Memorandum of Intent to Revoke Security Clearance (MOI) on May 30, 2006. The SOR in that matter alleged security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). Applicant failed to respond to the MOI and the Army Personnel Security Clearance Facility revoked his security clearance on September 5, 2006. Applicant chose not to respond to the MOI because he was planning on retiring and did not need a security clearance to continue working in the position where he was to remain assigned until the date of his retirement. The three debts alleged in the May 30, 2006 SOR, are also alleged in the current SOR.

SOR subparagraphs 1.a and 1.d allege delinquent accounts payable to creditors with similar names. Applicant testified these are duplicate entries of the same account. A comparison of the information contained in GE 4 pertaining to these two accounts, including the various dates listed and the amounts owing, strongly indicates that the creditor listed in subparagraph 1.a is a successor creditor to the one listed in subparagraph 1.d. Accordingly, subparagraph 1.d will be found for Applicant and will not be discussed further. Applicant made \$75 payments on this debt in June and July 2009. He made additional

payments of \$200 in March 2010, and \$82.24 in April 2010.² The balance owed on this account as of the date of the hearing was \$328.96.

SOR subparagraph 1.b alleges a credit card debt that was 120 days or more past due in the amount of \$473. That account has now been placed for collection. Although Applicant made payments on this account in June, July and August 2009, the balance owed had increased to \$1,666.85 as of November 23, 2009. Applicant testified he has entered into a repayment agreement with the collection agency whereby he is to make monthly payments that will have the account satisfied in full in June 2011.

SOR subparagraph 1.c alleges a collection account owing in the amount of \$22,533. This account was alleged in the SOR the Army issued in 2006, and arose from an automobile that was repossessed in 2004. Applicant provided a statement in June 2009 (GE 2), in which he claimed he left this vehicle with his daughter while he was deployed overseas and it was repossessed because she failed to make payments on it as she had agreed. However, he testified at the hearing that payments on the vehicle were automatically taken from his bank account while he was deployed and he was current on all payments when the vehicle was repossessed. While Applicant is making payments of \$110 a month on this debt, the amount owing as of March 24, 2010, had increased to \$22,779.59 (AE 5).

The collection account alleged in SOR subparagraph 1.e, owing in the amount of \$4,975, was alleged in the SOR the Army issued in 2006. Applicant testified he paid this debt in 2004 (Tr. 63). He did not submit any documentation to substantiate that claim. This account is listed in Applicant's credit report, dated May 12, 2009, as having been charged off to profit and loss in February 2004 (GE 5).

The collection account alleged in SOR subparagraph 1.f, owing in the amount of \$6,195, was also alleged in the SOR issued by the Army in 2006. Applicant has not made any payment on this account because he claims he is disputing his liability for this account. He did not submit any documentation to substantiate that a dispute has been filed. This account is listed as having been submitted for collection in Applicant's credit report, dated January 14, 2003, under the name of the original creditor (GE10).

In addition to his statement wherein he blamed his daughter for not making car payments for him as she had agreed, Applicant primarily attributes his delinquent accounts to his third and fourth wives' failure to pay marital debts while he was deployed overseas. Applicant also claims he loaned his daughter \$2,500 several years ago and that when she failed to repay him he was forced to borrow money to pay his own bills. Applicant sought

² A comparison of the name of the original creditor listed in AE 7 with the creditor listed in subparagraph 1.a, and the amount of the payment listed in AE 7 with the amount of the payment listed in AE 8 corroborates Applicant's testimony that the March and April 2010 payments he described in AE 1 were applied to the debt listed in subparagraph 1.a.

the assistance of a credit counseling service a number of years ago but discontinued its service when he determined they were not actually making any payments toward his debts.

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

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

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.

¹⁰ *Egan*, 484 U.S. at 528, 531.

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 has multiple accounts that have been submitted for collection. The total owing on those accounts is approximately \$35,000. The three largest collection accounts were first alleged in an SOR issued by the Army in 2006, which resulted in the revocation of Applicant’s security clearance. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19(c): *a history of not meeting financial obligations* apply.

Applicant attributes his delinquent accounts to his daughter and his ex-wives failing to pay his bills while he was deployed overseas with the Army. However, he was last divorced in 2005, and he has been retired from the Army and not deployed anywhere since sometime before his retirement in May 2008. He has no dependents and a relatively minimal continuing financial obligation of \$300 per month to his last wife to satisfy her interest in their marital residence which has now been sold.

Applicant failed to take any action to resolve his delinquent accounts when he was notified of the security concern they created with issuance of an SOR by the Army in 2006. Instead, he failed to respond to that SOR and allowed the accounts to remain delinquent and his security clearance to be revoked. He has been continuously employed since his retirement from the Army in 2008, but he has made very little headway in resolving his delinquent accounts. Applicant once sought the assistance of a credit counseling service but discontinued making payments through that service when he determined it was not actually making any payments toward his debt. The payments and the payment arrangements Applicant has recently made have done little to resolve his financial problems. In at least two cases, the amount Applicant owes has actually increased despite payments he has made.

¹¹ *Id.* at 531.

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

I have considered the following Mitigating Conditions (MC) and conclude they do not apply: 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 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*.

Applicant claims he is disputing one debt listed in the SOR which was submitted for collection sometime before January 2003. However, he failed to present any evidence in support of this alleged dispute. 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.

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-c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e and f:	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

