



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



In the matter of:)	
)	
)	ISCR Case No. 09-06037
)	
Applicant for Security Clearance)	

Appearances

For Government: Stephanie Hess, Esq., Department Counsel
For Applicant: *Pro se*

June 24, 2011

Decision

LAZZARO, Henry, Administrative Judge

Applicant committed three alcohol-related driving offenses between 1998 and 2007. He has not satisfied any of the delinquent debts alleged in the Statement of Reasons (SOR). Applicant failed to mitigate the security concerns that exist due to his alcohol consumption that has resulted in multiple arrests and convictions and his ongoing financial problems. Clearance is denied.

On October 5, 2010, 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 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 7, 2010. He admitted all SOR allegations, except those contained in subparagraphs 1.c, 1.d, and 1.h,² and he requested a hearing.

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

² Applicant misnumbered subparagraph 1.h as a second subparagraph 1.g in his response.

The case was assigned to me on March 10, 2011. A notice of hearing was issued on April 19, 2011, scheduling the hearing for May 5, 2011. An amended notice of hearing was issued on April 21, 2011, changing the location of the hearing but not the date or time of the hearing.³ The hearing was conducted as scheduled. The Government submitted six documents that were marked as Government Exhibits (GE) 1-6 and admitted into the record without objection. Applicant testified and submitted six documents that were marked as Applicant's Exhibit (AE) 1-6 and admitted into the record without objection. The transcript was received on May 13, 2011.

Findings of Fact

Applicant's admissions to the SOR allegations 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 systems administrator by defense contractors since August 2007. Applicant has been working at the same job, but there has been a change of contractors by whom he is employed. As a result of the change of employers, Applicant's salary has decreased approximately \$600 per month.

Applicant has never been married. He served on active duty in the Air Force from January 1986 until May 2006, when he retired at the rank of technical sergeant. Applicant was awarded a bachelor of science degree in computer information systems in July 2006.

Applicant obtained employment as a computer technician in July 2006, but he voluntarily quit that job in September 2006, because he "was not happy with the job, and distant [sic] was too far." (GE 1, p.18) Applicant did not have replacement employment when he opted to quit his job, and he remained unemployed until March 2007, when he began working as a cashier in a retail store. He continued working as a cashier until he was hired for his present employment.

SOR subparagraph 1.a alleges a delinquent credit card debt owed in the amount of \$6,545. Applicant testified he went to mediation on this debt and entered into an agreement to make payments of \$200 per month. However, he claims the creditor never sent him information about where to send payments, and, instead, he received notice that a default judgment was entered against him. He has done nothing to resolve the default judgment. (Tr. p. 33-36)

Applicant claims he made one payment on the \$760 debt owed to the university that is alleged in SOR subparagraph 1.b the day before the hearing, and that he entered into an agreement to make payments of \$110 every two weeks until the debt is satisfied. He did not submit any documentation to verify those assertions. Applicant has not made any payment on the \$743 cellular phone debt alleged in SOR subparagraph 1.c because he believes it is an unfair charge. The \$224 debt alleged in SOR subparagraph 1.d is based

³ Applicant waived on the record any technical defect that may be deemed to exist due to the amended notice of hearing being issued less than 15 days prior to the hearing. (Tr. p. 17)

on unreturned cable equipment Applicant retained after he moved from a former residence. He still has the equipment and he has not made any arrangement to either return the equipment or pay the debt.

The \$448 debt alleged in SOR subparagraph 1.e arose from unpaid charges for a security system Applicant had in his former residence. He has done nothing to satisfy this debt. The credit card debts alleged in SOR subparagraphs 1.f and 1.g are owed in the combined amount of \$13,730. Applicant has not taken any action to resolve these debts. The \$137 debt alleged in SOR subparagraph 1.h is based on a municipal charge for gas service provided to Applicant's former residence. He claims this debt has been satisfied, but he did not submit any documentation in support of that assertion. Applicant submitted verification that he has satisfied a judgment that was entered against him in August 2008, in the amount of \$9,765.70, that is not alleged in the SOR. (AE 2)

Applicant attributes his delinquent debts to unemployment he experienced after he retired from the Air Force and after he quit his job, and to unexpected expenses he has incurred for such things as automobile repairs. (see: AE 3 and AE 4) However, he provided a statement in August 2002, in connection with an earlier security clearance investigation, in which he acknowledged having numerous delinquent debts and having retained the services of a debt consolidation company to satisfy some of his creditors.

Applicant testified he has about \$1,100 in disposable income each month after he pays all his recurring monthly expenses that he deposits in his checking account and does not apply to his delinquent debt because "it's kind of like a rainy day kind of thing." (Tr. p. 42) He then went on to testify that after he paid his mortgage that month he would have about \$600 to \$1,000 left in his checking account. (Tr. p. 43) He submitted a budget he prepared in which he lists his monthly disposable income at \$926. (AE 1)

Applicant was punished under the Uniform Code of Military Justice (UCMJ), Article 15 for the offense of operating a vehicle while drunk. This offense occurred on August 2, 1998, while Applicant was stationed in a foreign country, as he attempted to drive onto a military base while intoxicated. He was sentenced to a suspended reduction in rank, forfeiture of \$700 pay per month for two months, and 30 days extra duty.

Applicant was arrested and charged with driving under the influence (DUI) in March 2003. He entered a plea of nolo contendere to the DUI charge on June 20, 2003, and he was sentenced to 12 months probation, fined \$250, assessed court costs in the amount of \$283.50, and he was ordered to perform 50 hours community service and attend DUI school. Additionally, Applicant's drivers license was suspended for six months, and his car was impounded for ten days. He completed all conditions of his probation and it was terminated on August 2, 2004.

Applicant was charged with DUI and Damage to Property on March 22, 2007. He entered a plea of nolo contendere to an amended charge of Reckless Driving on March 9, 2009, and he was sentenced to 12 months probation, fines and costs of \$500 or community service work, make restitution in an amount that was to be determined, and he was ordered to attend repeat offender DUI school, a drunk driver victim impact panel, submit to random breath/urine testing, and not to be in bars or places where alcohol was the primary source

of business for the first 90 days of his probation. Applicant completed all conditions of his probation and it was terminated on March 11, 2010.

Applicant completed a Level I substance abuse and driving education program on July 30, 2003. He completed a 21 hour Level II substance abuse course and evaluation on August 27, 2007. He completed a substance abuse II group class on November 4, 2009. Applicant submitted verification that he attended six alcoholics anonymous (AA) meetings, presumably between October 6 and November 3, 2009.⁴ (GE 2)

In response to interrogatories that were sent to him, Applicant admitted that he continues to consume alcohol, but denied he drinks to the point of intoxication. He also claimed that he was participating in AA meetings, but asserted that he intended to continue drinking alcoholic beverages in the future. He stated that AA taught him that he is not dependent on alcohol and gave him a glimpse of where he could be if he allowed alcohol to take over his life. He reported that he drinks beer and wine socially, with the frequency of his use consisting of consuming three beers occasionally and on weekends. He averred that he does not drive even after only have one alcoholic beverage.

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. 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.⁵ The Government has the burden of proving controverted facts.⁶ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁷ although the Government is required to present substantial evidence to meet its burden of proof.⁸ "Substantial evidence is more than a scintilla, but less than a preponderance of the

⁴ The document he submitted does not contain the year the meetings were attended, but appears to coincide with the group session he completed on November 4, 2009.

⁵ ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

⁶ ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

⁷ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

⁸ ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

evidence.”⁹ 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.¹⁰ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹¹

No one has a right to a security clearance¹² and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹³ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹⁴

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)

The SOR alleges over \$22,000 in delinquent debt. Applicant acknowledged that he is responsible for the debt and that he has done nothing to satisfy the overwhelming majority of that debt. He claims he has satisfied one small debt and entered into a repayment plan with another creditor to satisfy a relatively small debt. However, he failed to submit any proof in support of those assertions, although he did submit verification that he satisfied a judgment that was not alleged in the SOR. 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 debts to unexpected expenses he incurred and periods of unemployment he experienced following his retirement from the Air Force and after he voluntarily quit the job he acquired after completing college. Applicant’s retirement was foreseeable and an event he could have planned for by: accumulating sufficient savings before he retired to carry him over until he found replacement employment; or by actually acquiring replacement employment before he retired; or by delaying his retirement until he did have replacement employment available. In fact, Applicant acquired

⁹ ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

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

¹¹ ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

¹² *Egan*, 484 U.S. at 528, 531.

¹³ *Id.* at 531.

¹⁴ *Egan*, Executive Order 10865, and the Directive.

replacement employment a mere two months after he retired, which he voluntarily quit without having other employment in place.

Applicant's failure to act responsibly was the chief cause of the two periods of unemployment he experienced. Accordingly, Mitigating Condition (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.

As disclosed in the statement he provided in August 2002, Applicant accumulated substantial debt while he was on active duty in the Air Force. He did not have any dependents at that time and he does not have any at present. Applicant has been gainfully employed consistently since March 2007. He has been continuously employed by government contractors since August 2007. He testified he has about \$1,100 in disposable income each month, and he submitted a budget in which he reports disposable income in the amount of \$926. Despite having funds available to make substantial payments toward his debt, Applicant has made no effort to satisfy the overwhelming majority of his delinquent debts. He has not obtained any recent credit counseling and there is no indication his financial problems are going to be resolved within the foreseeable future.

As a result of the above, I conclude Mitigating Condition (MC) 20(a): *the behavior happened so long ago, was so infrequent, or 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(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* do not apply. The remaining mitigating conditions have no applicability to the facts of this case.

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 was punished under UCMJ Article 15 in 1998, for driving drunk while he was stationed in a foreign country. He was convicted of DUI in 2003, and of a reduced charge of Reckless Driving that was based on his arrest for DUI and Damage to Property. 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.

Applicant has received two sentences of probation that included mandatory attendance at alcohol awareness classes. He completed those classes in 2003 and 2009, and a third class in 2007. He submitted proof he attended six AA meetings, and he averred in his response to interrogatories he was attending AA meetings. Despite having committed

repeated alcohol-related criminal offenses and being ordered to attend classes and meetings that were designed to make him aware of the risk of a person with his history of alcohol-related offenses continuing to consume alcohol, he continues to consume alcohol.

Applicant's most recent offense occurred over four years ago, but he did not complete his term of probation for that offense until just over one year ago. Considering his three alcohol-related offenses occurred over the period of about nine years, and each offense occurred about three to four years after the previous offense, I conclude insufficient time has elapsed since Applicant's last alcohol-related offense to find, based on his continued consumption of alcohol, that he has mitigated the alcohol consumption security concern. Accordingly, 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* does not apply.

While there is no evidence to suggest that Applicant has been diagnosed as alcohol dependent or as an alcohol abuser, his continued consumption of alcohol following three alcohol-related driving offenses, including one that clearly involved damage to another person's property, creates a continuing security concern. He asserts that AA taught him that he is not dependent on alcohol and it gave him a glimpse of where he could end up if he allowed alcohol to take over his life. Despite those assertions, he continues to consume alcohol despite the harm it has caused to him through his convictions and to the person whose property he damaged in the last offense he committed. Therefore, I conclude that MC 23(b): *the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome the problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)* does not apply.

Applicant committed his third alcohol-related offense after he attended a substance abuse and driving education course. Although he only submitted proof he attended six AA meetings, Applicant claimed, in response to interrogatories, that he is attending AA meetings. But, he still consumes alcohol. He is not otherwise currently participating in counseling or a treatment program. He did not submit a favorable prognosis from a medical professional or licensed clinical social worker. Accordingly, the remaining mitigating conditions have no applicability to the facts of this case.

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 and alcohol consumption security concerns. He has not overcome the case against him, nor has he satisfied his ultimate burden of persuasion. It is not clearly consistent with the national interest to grant Applicant a security clearance. Guideline F and Guideline G 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-h:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraphs 2.a-c:	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

