



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



In the matter of:)	
)	
)	ISCR Case No. 10-00600
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: Matthew F. Leitman, Esq.

September 17, 2010

Decision

LAZZARO, Henry, Administrative Judge

Applicant had an unblemished financial record until he became unemployed in March 2009. He sought Chapter 13 bankruptcy protection in December 2009, and he has remained current with all payments required under the Chapter 13 bankruptcy plan that was approved in March 2010. He has mitigated the financial considerations security concern that was alleged in this case. Clearance is granted.

On March 17, 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 April 15, 2010. He admitted the sole SOR allegation 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 the adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

The case was assigned to another administrative judge on June 9, 2010, and reassigned to me on June 30, 2010, to be consolidated with another hearing I had pending in the same locale. A notice of hearing was issued on July 16, 2010, scheduling the hearing for August 4, 2010. The hearing was conducted as scheduled. The government submitted eight documentary exhibits that were marked as Government Exhibits (GE) 1-8 and admitted into the record without objection. Applicant testified, called his employer to testify on his behalf, and submitted three documentary exhibits that were marked as Applicant's Exhibits (AE) 1-3 and admitted into the record without objection. The transcript was received on August 13, 2010.

Findings of Fact

Applicant's admission to the SOR allegation is incorporated herein. In addition, after a thorough review of the pleadings, testimony and exhibits, I make the following findings of fact:

Applicant is a 59-year-old man who has been employed as a senior engineer by a defense contractor since September 2009. Applicant graduated from high school in 1969. He was awarded an associate of arts degree in or about 1985. He was awarded a bachelor of science degree in electrical engineering in May 1995.

Applicant served on active duty in the U. S. Navy from August 1972 until August 1978. He held a security clearance while in the Navy and no adverse action was ever taken to revoke or downgrade that clearance. He received an honorable discharge from the Navy. Applicant worked as a civilian mechanical engineering technician for the U. S. Army from 1979 until 1985. He was employed by a defense contractor as a senior quality assurance engineer from 1985 until 1986. Applicant unsuccessfully attempted to start his own consulting business in 1986, but he eventually accepted work as a contract employee for an automotive company in 1988. He was hired as a salaried employee by the automotive company in June 1990, and he remained employed by that company and its successor company until June 2008.

Applicant retired from the automobile company in June 2008, to accept employment at a higher salary as a systems engineer with a different company. He was laid off from his new employment and provided a severance payout that consisted of approximately two months salary in March 2009. Applicant immediately received employment counseling and sought replacement employment. However, he was unable to secure new employment until September 2009. The owner of Applicant's current company testified that Applicant has earned a reputation as the "go-to guy" in the electronics field. He also believes, based upon Applicant's work ethic and work performance, that Applicant is an honest and trustworthy individual.

Applicant has resided in the same residence since 1980. His initial mortgage on that residence was approximately \$100,000. Applicant lived in that home with his wife, who he married in October 1977, and their daughter who was born in March 1981. He and his wife obtained a divorce in May 1994, and he was awarded custody of his daughter. He had to refinance the residence to pay his ex-wife her share of the equity that had accrued in the

home. As a result, the current mortgage owing on the residence is approximately \$200,000. Applicant also owes approximately \$45,000 on a home equity loan.

Applicant married his current wife in March 1996. Unbeknownst to him at the time of his remarriage, his wife owed delinquent 1995 federal income taxes that currently remain owing in the amount of \$46,680.

Applicant's credit reports (GE 3² and GE 5-8) list his payment history on various accounts dating as far back as 1999. His first reported late payment on any account did not occur until April 2009, the month after he was laid off. The vast majority of his delinquent accounts fell into arrears between June and August 2009.

Applicant sold a large amount of personal property, ranging from jewelry to tools, while he was unemployed to obtain funds to support himself and pay what bills he could. He sought financial counseling from two agencies, and, with their assistance, attempted to renegotiate his mortgage to avoid foreclosure. He was unsuccessful in renegotiating the mortgage because the mortgage company was concerned that he had excessive credit card debt. Accordingly, and upon the advice of his financial counselors, Applicant sought Chapter 13 bankruptcy protection in December 2009.

A Chapter 13 bankruptcy plan was approved in March 2010. Under the plan, \$1,395.98 is automatically withheld from Applicant's biweekly salary. The plan is scheduled to continue for 36 months, at which time Applicant will have repaid his delinquent creditors \$108,886.49, about 40% of the total amount owed to them. Applicant is repaying the home equity loan and an automobile loan outside the bankruptcy.

Applicant's net biweekly salary, after deduction of the bankruptcy payment, is \$1,284.68. He also receives a monthly pension in the amount of \$1,145.62. He prepared a detailed and realistic budget (AE 3) that leaves him with a monthly remainder of \$378.02. He also testified of actions that he is presently taking to further reduce what he had described as "discretionary" expenses in his budget.

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 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.

² A credit report is included in the Chapter 13 Plan marked as GE 3.

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 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)

Following the loss of his employment in March 2009, and his inability to renegotiate a mortgage repayment plan, Applicant had to seek Chapter 13 bankruptcy protection. Disqualifying Condition (DC) 19(a): *inability . . . to satisfy debts* applies.

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.

¹¹ *Id.* at 531.

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

Applicant's credit reports disclose he always paid his bills on time until he unexpectedly lost his job in March 2009. He immediately sought employment counseling in an effort to find a new job, but it took him six months to actually find that job. He sold various items to obtain funds to support himself and he remained current on most of his bills until several months after he lost his job. He obtained credit counseling and attempted to renegotiate a workable payment plan on his mortgage. He has now obtained an approved Chapter 13 bankruptcy plan and he has remained current on the payments due under that plan. Applicant is also paying off at least two of his large debts outside the bankruptcy plan. Finally, Applicant has established a reasonable and feasible budget that leaves him with several hundred dollars left over each month.

The following Mitigating Conditions 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 . . .) 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*.

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 allegation 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

Subparagraph 1.a: 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

