



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



In the matter of:)	
)	
)	ISCR Case No. 10-00802
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina Marine, Esq., Department Counsel
For Applicant: *Pro se*

December 16, 2011

Decision

LAZZARO, Henry, Administrative Judge

Applicant has done virtually nothing to resolve his long-standing delinquent debts. Clearance is denied.

On July 25, 2011, 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 August 24, 2011. He admitted all SOR allegations, except subparagraph 1.c, and he requested a hearing.

The case was assigned to me on September 28, 2011. A notice of hearing was issued on October 12, 2011, scheduling the hearing for October 25, 2011. Applicant failed to appear for the hearing, but he contacted department counsel and stated he had automobile problems and was unable to arrange for other transportation. A second notice

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

of hearing was issued on November 8, 2011, rescheduling the hearing for December 5, 2011. The hearing was conducted as rescheduled. The Government submitted four documents that were marked as Government Exhibits (GE) 1-4 and admitted into the record without objection. Applicant testified but did not submit any documentary evidence. The transcript was received on December 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 50 years old. He has been employed as a manufacturing technician by a defense contractor since May 2007. He graduated from high school in June 1979. Applicant enlisted in the U.S. Navy in August 1986, and he served continuously on active duty until he retired in August 2006. Applicant was a petty officer first class when he retired. He possessed a security clearance, including at the top secret level, for most of his time in the Navy and no prior adverse action was ever taken to revoke or downgrade that clearance.

Applicant was first married in April 1987. He and his first wife separated in 2004, and they obtained a divorce in or about September 2006. Applicant has been remarried since September 2006. He does not have any children.

Applicant's April 2011 credit report discloses a delinquent account, owed in the amount of \$34,369, that has been submitted for collection. Applicant attributes this debt to a personal loan he obtained when he and his first wife separated so he could pay for two households and "rejuvenate being a bachelor. . . ." (Tr. 27) He admits he was irresponsible in obtaining the loan. This debt is unpaid.

Applicant's April 2011 credit report discloses another delinquent account, owed in the amount of \$123, that has been submitted for collection. Applicant attributes this debt to contact lenses his wife purchased several years ago. He was questioned about this debt in December 2009, at which time he admitted he had received collection letters from the creditor and stated he would pay the debt. He has not made any payment on this account.

Applicant claims to not recognize the collection account listed in his April 2001 credit report owed in the amount of \$637. He acknowledged he became aware of this alleged delinquent account when he received correspondence from the Government. However, he has done nothing to investigate the origin of the account because he does not have the funds to satisfy the account if it is determined to belong to him.

Applicant acknowledges he is responsible for the collection account, owed in the amount of \$859, listed in his October 2009 credit report. This account arose from cell phone service he discontinued in 2007. He has not made any payment on this account.

Although not alleged in the SOR, Applicant's credit reports disclose a credit union credit card owed in the amount of \$12,464. Applicant testified this account is delinquent,

but he thought he only owed about \$6,000. He claims he has made a few unsuccessful attempts to bring the account current.

Applicant contracted with a consumer law group in 2009 in an effort to resolve his delinquent accounts. He made several payments to the group before he determined it would not actually help him satisfy his delinquent debts. He terminated the service in 2010, and he has not made any further arrangements to satisfy any of his delinquent creditors.

In addition to the irresponsible decision he made in obtaining the personal loan in 2004, Applicant attributes his continuing financial problems to his wife's alcohol problem. He testified she is currently on probation for assaulting him and two driving-under-the-influence charges and he is making court-ordered monthly payments of \$345 as a result of those convictions. Applicant's only plan to resolve his delinquent debt is to apply per diem he expects to receive when his employer assigns him to work in another state.

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 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.

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.² The Government has the burden of proving controverted facts.³ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁴ although the Government is required to present substantial evidence to meet its burden of proof.⁵ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁶ 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

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

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

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

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

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

him.⁷ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁸

No one has a right to a security clearance⁹ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁰ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹¹

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 four delinquent accounts, owed in the combined amount of \$35,988, that have been submitted for collection. Those accounts date back as far as 2004, and Applicant has failed to take any meaningful step to resolve any of these accounts. 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 financial problems are continuing. His largest delinquent debt resulted from his admitted irresponsible decision in obtaining a personal loan which he obviously has been unable to repay. The smallest debt listed in the SOR, owed in the amount of \$123, is for contact lenses his wife purchased. In December 2009, Applicant admitted he had received collection letters from this creditor and stated he would pay the debt. Two years have passed and he has not made any payment on the account.

Applicant contracted with a consumer law group in 2009 in an unsuccessful effort to resolve his delinquent debts. However, he terminated that contract in 2010, and he has done nothing since to resolve any of his delinquent debts. While it is not alleged in the SOR, Applicant’s delinquent credit union credit card debt, owed in the amount of \$12,464, discloses that he continues to live beyond his means.

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

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

⁹ *Egan*, 484 U.S. at 528, 531.

¹⁰ *Id.* at 531.

¹¹ *Egan*, Executive Order 10865, and the Directive.

Applicant attributes his wife's alcohol problems and the probation expenses he has acquired as a result of her numerous convictions as the cause of his inability to resolve his delinquent debt. However, there is nothing in the record to indicate those problems are being resolved or that they will not cause Applicant further financial distress in the future. Finally, Applicant's only plan to begin to satisfy his delinquent debts, i.e., applying per diem he may receive if assigned to work in a different state, is speculative and, based upon Applicant's track record of not dealing with his delinquent debts, unlikely to occur even if he does receive those payments.

I have considered the following Mitigating Conditions (MC) and conclude they do not apply: 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(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*; 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*. 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 factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, the whole-person concept, 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 allegation 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
Subparagraph 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

