



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 10-02135 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

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

November 21, 2011

**Decision**

LAZZARO, Henry, Administrative Judge

Applicant obtained a Chapter 7 bankruptcy discharge in April 2004 as a consequence of a divorce. He thereafter accumulated additional delinquent debts, largely as the result of a second divorce. Applicant has satisfied or successfully disputed a number of his delinquent debts. He credibly attributes his remaining delinquent debt to his second divorce. He established that he is currently living a financially responsible lifestyle. Clearance is granted.

On May 31, 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.<sup>1</sup> The SOR alleges a security concern under Guideline F (financial considerations). Applicant submitted a response to the SOR that was received by DOHA on June 27, 2011. He admitted all SOR allegations except those alleged in subparagraphs 1.b, 1.d, and 1.j. Applicant 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 (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 August 29, 2011. A notice of hearing was issued on October 5, 2011, scheduling the hearing for October 19, 2011.<sup>2</sup> The hearing was conducted as scheduled. The Government submitted five documentary exhibits that were marked as Government Exhibits (GE) 1-5 and admitted into the record without objection. Applicant testified but did not submit any documentary evidence. The record was held open to provide Applicant the opportunity to submit documents in support of his testimony. Fifteen documents were timely received, marked as Applicant's Exhibit (AE) 1-15, and admitted into the record without objection. Department Counsel's forwarding memorandum indicating she did not object to admission of the documents submitted by Applicant was marked as Appellate Exhibit (App. Ex.) I and is included in the file. The transcript was received on November 3, 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 37-year-old man who has been employed as an aviation technician by a federal contractor since June 2009. He was employed as a sheet metal technician by a different federal contractor from October 2008 until June 2009; and as a structural technician by a third federal contractor from November 2004 until October 2008. Applicant worked as a laborer for a cleaning service from May 2004 until November 2004; and as a car salesman from October 2003 until May 2004. He was unemployed from September 2002 until October 2003, due to surgery to repair a damaged knee.

Applicant graduated from high school in May 1993. He obtained an airframe certificate from an aeronautical testing and certification center in March 2007. He received a certificate in an unknown discipline from a technical college in March 2004.

Applicant was first married in October 1997. That marriage ended by divorce in June 2001. Applicant remarried in July 2003, and that marriage ended by divorce in June 2008. Applicant has been remarried since December 2008. Applicant has one child, age 13, and one stepchild, age 8.

Applicant filed for Chapter 7 bankruptcy protection in January 2004. He was awarded a Chapter 7 discharge in April 2004. Applicant testified he found it necessary to seek bankruptcy protection after his first wife returned her vehicle, which was owned in their joint names, to him and then obtained a bankruptcy discharge following their divorce. He was unable to pay the various debts they had jointly acquired during their marriage, and on which they had made payments with their combined salaries.

The SOR lists nine debts, owed in the combined amount of \$19,050, that were submitted for collection. Applicant testified the accounts listed in SOR subparagraphs 1.e and 1.f have been paid, and that he had included receipts verifying those payments with

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<sup>2</sup> Applicant waived the 15-day notice requirement on the record (Tr. 13-14).

his response to interrogatories (GE 3). The receipt he referred to in regard to subparagraph 1.e reflects an entry described as a "charge" was posted to his account in the amount of \$227.67 on February 26, 2011. The receipt he referred to in regard to subparagraph 1.f indicates he was current on an account with the underlying creditor listed in that subparagraph as of February 22, 2011.

Applicant claims he disputed the account listed in SOR subparagraph 1.a, and that the account has been removed from his credit report. That account does not appear in the credit report Applicant submitted with his response to financial interrogatories (GE 3), however, it does appear in the later dated credit report offered by the Government (GE 4) and is listed as being unpaid but disputed by the consumer.

Applicant testified he is going to attempt to work out repayment agreements with the creditors listed in SOR subparagraphs 1.b, 1.c, and 1.d. The most recent credit report included in the record (GE 4) discloses Applicant has disputed each of those accounts and the balance owed on them is \$14,309, \$1,302, and \$1,532, respectively. The account listed in subparagraph 1.b arose from the deficit owing after Applicant voluntarily surrendered an automobile for repossession in 2007. While he accepts present responsibility for the accounts listed in subparagraphs 1.c and 1.d, Applicant credibly attributed those accounts to his ex-wife in a statement he provided on December 22, 2009 (GE 2).

Applicant testified he has disputed the accounts listed in SOR subparagraphs 1.g, 1.h, and 1.i. Those accounts do not appear in either of the two most recent credit reports included in the record. Further, Appellant credibly testified the \$752 debt listed in subparagraph 1.h was acquired by his ex-wife in his name without his permission after they were divorced.

In addition to the delinquent accounts listed in the SOR, Applicant had a judgment entered against him in May 2009, and a medical account from September 2007 that was submitted for collection in about August 2009. Applicant submitted proof in his response to financial interrogatories (GE 3) that the judgment was satisfied as of March 19, 2010, and this collection account was paid on February 24, 2011.

Applicant submitted an amended personal financial statement (AE 2) that indicates he has a net remainder of \$385 each month after he pays his recurring financial obligations. He listed that he has about \$2,500 in a savings account, \$2,285 in a checking account, \$3,150 in stocks, \$150 in bonds, and \$12,106.75 in a 401k account. The verification he submitted for these figures is a wage statement that discloses that as of February 4, 2011, Applicant and his employer had jointly contributed \$853.21 in 2011 to his 401k savings plan (AE 3), and an income tax return that discloses he earned \$82 taxable interest in 2010 (AE 4). Assuming Applicant and his employer have made like contributions to his 401K account during the full term of his employment, he should have the amount listed in the personal financial statement in that account. Likewise, the amount of interest Applicant claimed in his 2010 income tax return is consistent with the amount of money he claims to have in savings.

In addition to the financial woes he experienced as a result of his divorces, Applicant attributes his ongoing financial problems to medical bills he has incurred on behalf of his

wife. He submitted a 2011 health insurance document (AE 6) which discloses that as of October 10, 2011, he incurred \$5,557.15 in medical expenses that were not paid by his health insurance company. The credit card statements he submitted (AE 7-15) establish at least some payments have been made toward his medical debt. Applicant submitted proof that he is current on his home mortgage and the eight credit cards he has open (AE 7-15). The amounts charged on those credit cards are modest and consist almost entirely of everyday living expenses.

Applicant testified he has consulted with credit counseling services, but that he has decided against contracting for their assistance because they did not appear to offer any assistance other than disputing accounts on his behalf. He also testified that he and his wife have consulted a number of online credit counseling sites and incorporated advice they have learned from those sites into their financial decision making.

### **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.<sup>3</sup> The Government has the burden of proving controverted facts.<sup>4</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence,<sup>5</sup> although the Government is required to present substantial evidence to meet its burden of proof.<sup>6</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>7</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

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<sup>3</sup> ISCR Case No. 96-0277 (July 11, 1997) at 2.

<sup>4</sup> ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, Item E3.1.14.

<sup>5</sup> *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

<sup>6</sup> ISCR Case No. 01-20700 (December 19, 2002) at 3 (citations omitted).

<sup>7</sup> ISCR Case No. 98-0761 (December 27, 1999) at 2.

him.<sup>8</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>9</sup>

No one has a right to a security clearance<sup>10</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>11</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>12</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 obtained a Chapter 7 bankruptcy in 2004. He thereafter accumulated the delinquent debts listed in the SOR that were submitted for collection, and one additional collection account and a judgment that were satisfied before the SOR was issued. Giving Applicant full credit for the accounts he testified he has either satisfied or successfully disputed, he still has three collection accounts, owed in the combined amount of \$16,657, that have not been satisfied. 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 2004 Chapter 7 bankruptcy was caused by his first divorce and his ex-wife’s decision to file for bankruptcy leaving him solely responsible for their joint marital debt, including her automobile. He thereafter acquired more delinquent debt, largely as the result of his second divorce. He attributes his inability to resolve his currently delinquent debt to medical expenses he is incurring on behalf of his wife. He submitted proof he has incurred those debts, and some verification that he has made payments on those debts. Mitigating Condition MC 20(b): *the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., . . . , unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances* applies.

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<sup>8</sup> ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, Item E3.1.15.

<sup>9</sup> ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, Item E3.1.15.

<sup>10</sup> *Egan*, 484 U.S. at 528, 531.

<sup>11</sup> *Id.* at 531.

<sup>12</sup> *Egan*, Executive Order 10865, and the Directive.

Applicant has three collection accounts, owed in the combined amount of \$16,657, that remain delinquent. Two of those debts he credibly attributed to his ex-wife, and the largest debt, owed as the result of the voluntary repossession of his automobile, was a direct result of his second divorce. He has a reasonable amount in savings that could be used to at least partially satisfy his remaining delinquent accounts and which should be adequate to prevent a recurrence of the financial problems he experienced in the past. 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 applies.*

Applicant consulted with credit counselling services and concluded they could not provide the assistance he needed. He and his wife thereafter relied on internet sites to obtain individual counseling and learn how to better manage their finances. Applicant paid a number of his delinquent accounts before the SOR was issued. He submitted proof he is current on his home mortgage and the credit card accounts which he utilizes for everyday living expenses. The amounts charged and the combined balance owed on those credit card accounts are minimal. 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 apply.*

Applicant testified he successfully disputed several of the delinquent accounts listed in the SOR. His earlier credit report substantiates that he did dispute a number of accounts, including the three collection accounts for which he testified he is going to attempt to arrange repayment agreements. At least several of the accounts he testified he disputed no longer appear in his credit reports. 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 applies.*

Considering all relevant and material facts and circumstances present in this case, most notably Applicant's long-term employment by federal contractors and his efforts to resolve his delinquent debts even before the SOR was issued, 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 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:

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|---------------------------|---------------|
| Paragraph 1, Guideline F: | FOR APPLICANT |
| Subparagraph 1.a-j:       | 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

