



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-02174
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Fahryn E. Hoffman, Esq., Department Counsel  
For Applicant: *Pro se*

02/28/2012

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**Decision**

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LAZZARO, Henry, Administrative Judge

Applicant lost his house through foreclosure in October 2007. He has unpaid delinquent debts that he lacks the financial resources to satisfy. Clearance is denied.

On November 17, 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 December 19, 2011. He admitted all SOR allegations except subparagraph 1.h, and he requested a hearing.

The case was assigned to me on January 26, 2012. A notice of hearing was issued on January 31, 2012, scheduling the hearing for February 13, 2012.<sup>2</sup> The hearing was conducted as scheduled. The Government submitted seven documentary exhibits that were

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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.

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

marked as Government Exhibits (GE) 1-7 and admitted into the record without objection. Applicant testified and submitted 11 documentary exhibits that were marked as Applicant Exhibits (AE) 1-11 and admitted into the record without objection. The transcript was received on February 22, 2012.

### **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 58-year-old man who was employed as a security force watch commander by a federal contractor from November 2002 until the security force was disbanded in November 2011. Applicant was hired by the security force's replacement contractor as an administrative scheduler on December 1, 2011. Applicant submitted several letters of recommendation from current and past co-workers and supervisors that indicate he has earned a reputation for being a very good friend, employee, and co-worker.

Applicant was earning \$32.05 an hour with his prior employer. His current hourly wage is \$14.93. The earnings statements he submitted (AE 3 & 4) disclose that his net bi-weekly pay has decreased from approximately \$2,100 to \$1,300 as a result of the change of employment. Additionally, those documents and Applicant's testimony disclose he no longer maintains health insurance coverage on himself or his family.

Applicant was first married in December 1976. That marriage ended by divorce in October 1986. He has been remarried since November 1988. Applicant has five children, ages 31, 28, 23, 21, and 19. Applicant's three youngest children reside with him and his wife. Additionally, Applicant's son's girlfriend also lives with them. Applicant's youngest child has vision impairment that qualifies her as being significantly disabled. As a result, she is still attending high school and will attend a community college with all expenses paid by the State. Applicant's 23-year-old son pays for the home's internet service and he will be able to obtain a cell-phone for Applicant and his wife through his employment. Applicant's 21-year-old son and his girlfriend are to start minimum wage jobs in March 2012, but Applicant does not anticipate they will be able to contribute to household expenses.

Applicant obtained an associate's degree in liberal arts in 1973. He obtained a second associate's degree in criminal justice in 1977. He obtained a police officer certification in May 1981, and a real estate license in 1981. Applicant testified he worked as a police officer in several different jurisdictions in the 1980s and 1990s. He also was employed as an investigator by an attorney until he was laid off by the attorney in 1989. As a result of losing his job in 1989, Applicant found it necessary to file for Chapter 7 bankruptcy protection. He obtained a Chapter 7 bankruptcy discharge in July 1989.

Applicant inherited an apartment building in a Northeastern state from his parents in 1995. Believing he had sold the building, Applicant discontinued heat to the building in December 1995. The sale was not completed, and, as a result of the heat being turned off, the building suffered severe water damage from burst pipes. Although his testimony on the

subject is unclear (Tr. 53), Applicant apparently obtained a second mortgage on the property to repair the damage but was thereafter unable to sell the building. The building was foreclosed on in 1996.

Applicant purchased a house in 2004. Unbeknownst to him at the time of purchase, the house had substantial defects that caused a porch to collapse and an electrical box to catch fire. It cost about \$25,000 to repair the damage from those events, which was partially paid for by insurance. Additionally, Applicant discovered that a large amount of work had been done on the house before he purchased it without county building permits being obtained. Applicant was required to obtain and pay for the permits. Applicant obtained a loan in the amount of approximately \$16,000 that was secured by a second mortgage on the property to pay for the expenses he incurred in repairing the damage to the property and paying for the building permits.

Applicant's wife was employed with an annual income of about \$35,000 until she lost her job in 2006. Upon the loss of her employment, Applicant was unable to maintain the payments on his first and second home mortgages. He attempted a short sale of the property, but the holder of the second mortgage refused to agree to the sale. As a result, Applicant was evicted and the house was foreclosed on in October 2007. Applicant submitted a document that indicates the principal balance due on the first mortgage was zero, but that document dates back to 2006/07 (GE 4, p. 7). Applicant's credit report, dated October 12, 2011, indicates \$21,000 remains past due on the first mortgage (GE 6). That same credit report indicates \$16,000 owed on the second mortgage was charged off as a bad debt.

Applicant's credit reports disclose four medical accounts, owed in the amounts of \$144, \$125, \$93, and \$284, that have been submitted for collection. Applicant provided a statement in November 2009 (GE 5) in which he claimed the \$284 medical account was originally owed in the amount of \$2,000 and that he had a payment plan in effect under which he was making \$115 monthly payments. He thought the actual amount owed on this debt at that time was about \$450, and he claimed he would continue making payments until this debt was satisfied. Applicant's credit report, dated September 19, 2009, lists the high credit on this debt at \$284, with June 2009 as the date of last activity (GE 2).

Applicant's credit reports disclose an account of unknown origin that has been submitted for collection in the amount of \$1,115. While acknowledging that he probably owed this debt, Applicant testified he did not know its origin, he had done nothing to investigate its origin, and he had not made any payment on the account (Tr. 46).

Applicant's credit report, dated September 19, 2009, discloses a tax lien was filed against him in May 2001 in the amount of \$2,409 (GE 2). In the security clearance application he submitted in September 2009 (GE 1), Applicant listed a debt owed to the Internal Revenue Service (IRS) in the amount of \$600 on which he stated he was "trying to make payments." Applicant testified the Government seized a tax refund that was owed to him in 2009, and that the balance owing on this debt is about \$200 (Tr. 50-51).

Applicant prepared a personal financial statement in September 2011 in which he listed his net monthly income as \$4,063.92, his total monthly expenses as \$3,882, and his

net monthly remainder as \$182 (GE 4). He submitted a monthly budget at the hearing in which he listed his net monthly income as \$2,400, and his net monthly expenses as \$2,344, leaving him a net monthly remainder of \$56. He also asserted in the budget that his wife works occasionally as a waitress adding as much as \$200 to the monthly family income. Applicant did not include in his current budget a \$398 car payment he had listed in the September 2011 personal financial statement. He also reduced the amount he claims to spend on groceries and gas by more than fifty percent.

Applicant contacted an attorney about seeking Chapter 7 bankruptcy protection in July 2011. The cost to retain the attorney, including all related fees, was quoted as \$1,800. Applicant made a payment of \$600 toward the fee on August 8, 2011, and a second payment of \$600 on October 3, 2011 (AE 1). As of the date of the hearing, Applicant had not made any further payment to secure the attorney's service. Applicant has not completed the counseling session necessary to file for bankruptcy protection, nor has he completed any other financial counseling.

### **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.

her.<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>

## 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 lost his house through foreclosure in 2007. The debt which was secured by a second mortgage on that house has been charged of as a bad debt. Applicant has several delinquent medicals accounts that have been submitted for collection. He has a debt of unknown origin that he has neither investigated nor satisfied. In 2001, he had a tax lien filed against him by the IRS on which, at least according to his testimony, he still owes about \$200. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts* and DC 19(c): *a history of not meeting financial obligations* apply.

Applicant had to seek Chapter 7 bankruptcy protection in 1989 after he lost a job. He lost a building through foreclosure in 1996 after he unwisely shut off the heat in the middle of the winter resulting in substantial damage being done to the building. He has a tax lien that has been outstanding for more than a decade despite the fact that he was employed full-time and earning a relatively substantial salary during most of that time. Applicant’s current financial problems, most notably the foreclosure on his residence, occurred after his wife lost her employment in 2006. However, it has been over five years since Applicant’s wife lost her employment and, although he was employed with a net monthly income of over \$4,000 during the vast majority of those years, he has failed to get his financial affairs in order. Accordingly, Applicant is entitled to only partial application of 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,*

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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.

*unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances.*

Applicant's financial problems are long-term, repetitive, ongoing, and unlikely to be resolved in the foreseeable future. In July 2011, he contacted an attorney about once again seeking Chapter 7 bankruptcy protection, but he has been unable to complete making the payments required to obtain representation by that attorney. Applicant's wife provides minimal financial assistance to the family budget. Applicant's two adult sons and one of their girlfriends reside with and are supported by Applicant, but they provide little to no financial assistance to him. Applicant's salary has been greatly reduced and the budget he submitted at the hearing is not realistic. Applicant has not obtained any financial counseling. His history strongly indicates that Applicant's financial problems will continue. Thus, the following mitigating conditions 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(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*. 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 neither 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

Subparagraphs 1.a-h: 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.

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Henry Lazzaro  
Administrative Judge

