



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 10-02747
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. DeLaney, Esq., Department Counsel
For Applicant: Stacie Pope, Personal Representative

November 8, 2010

Decision

LAZZARO, Henry, Administrative Judge

Applicant acquired about \$14,000 in delinquent debt after he lost his job in March 2005. Since losing that job, he has obtained approximately \$40,000 in student loans and borrowed about \$24,000 from a relative. He has not repaid any of the debt he has acquired, delinquent or not, and there is little prospect that he will be able to satisfy the debt in the future. Clearance is denied.

On April 19, 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, dated April 29, 2010. He admitted the allegations alleged in subparagraphs 1.a, 1.c, and 1.d; he denied the allegations alleged in subparagraphs 1.b, 1.e, and 1.f; 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 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 July 13, 2010. A notice of hearing was issued on July 23, 2010, scheduling the hearing for August 18, 2010. The hearing was conducted as scheduled. The government submitted four documentary exhibits that were marked as Government Exhibits (GE) 1-4 and admitted into the record without objection. Applicant testified, called two witnesses to testify on his behalf, and he submitted ten documentary exhibits that were marked as Applicant's Exhibits (AE) 1-10 and admitted into the record. The transcript was received on August 27, 2010.

Findings of Fact

Applicant's admissions to SOR allegations 1.a, 1.c, and 1.d 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 38-year-old man who has been offered a job as a system administrator at an annual salary of \$39,500, contingent upon him obtaining a security clearance. He was employed as an account representative for a telephone company from October 1997 until March 2005, when his employment was terminated due to the company downsizing. Applicant was offered employment by the company in another city when it downsized, but he decided not to accept that position for family reasons. Applicant has been married since February 2005. He has a ten-year-old step-daughter from this marriage.

In addition to Applicant's long-term employment with the telephone company, he reported the following employment history in his July 2009 security clearance application: May 2009 to present, ferris wheel operator; August 1997 to November 2005, ferris wheel operator; June 2008 to January 2009, application quality assurance co-op; June 2007 to January 2008, windows server team co-op; January 2008 to June 2008, student assistant; September 2006 to June 2007, student assistant; April 2006 to October 2006, management information systems intern. Applicant also reported periods of unemployment from November 2005 to March 2006, and January 2009 to May 2009.

Applicant submitted his social security earnings records which disclose that between 2000 and 2006 his reported social security wages ranged from a low of \$37,783 to a high of \$50,619. Those wages fell to \$8,660 in 2006, \$21,615 in 2007, \$20,800 in 2008, and \$3,636 in 2009. Applicant also submitted his wife's social security earnings records which disclose that since they have been married her social security wages were reported as zero 2005 and 2006, \$4,618 in 2007, \$9,035 in 2008, and \$5,445 in 2009. The joint income tax returns Applicant and his wife filed list their adjusted gross income as \$40,589 in 2005, \$17,954 in 2006, \$49,082 in 2008, and \$25,704 in 2009.²

Applicant returned to school to obtain a college degree when he lost his job in 2005. He was awarded a bachelor of science degree in information systems technology in December 2008. Applicant obtained about \$27,000 in student loans while obtaining the bachelors degree that are currently in deferment because he is now working on a master's

² Applicant did not submit his 2007 tax return.

degree. He has thus far acquired an additional \$12,000 in student loans for the master's degree. Applicant's wife also attended college full-time after they were married, but the record does not reflect whether or not she too obtained student loans.

The SOR alleges a delinquent credit card debt that has resulted in a judgment being entered against Applicant, a second delinquent credit card debt that has been submitted for collection, and a third delinquent credit card debt that has been reported as being charged off.³ The total owing on those three accounts is \$8,485. A second judgment, owing in the amount of \$5,353, originated from energy efficient windows Applicant had installed in his house after he lost his job with the telephone company.⁴ The last debt alleged is a collection account, owing in the amount of \$153, that arose from a salary overpayment he received from the telephone company after he was terminated.

Applicant has not made any payment on any of the alleged debts. He testified that, except for the debt arising from the salary overpayment, he had contacted the various creditors and none of them would agree to payment plans but instead insisted on full payment of the debt in a lump sum. As to the salary overpayment, Applicant testified he sent a money order for \$153 to the collection agency but that it was returned to him because the collection agency was no longer accepting payments on the telephone company's accounts.⁵ He went on to testify that he has since contacted the telephone company and they are demanding an additional \$103 in satisfaction of that debt which he intends to pay when he receives his next student loan payment.

Applicant has not obtained any credit counseling. He testified he worked out a budget sometime ago, but he did not submit anything in support of that testimony. Applicant's wife's grandmother has provided them with about \$24,000 in financial support in the nature of personal loans. He testified he hopes she will just forgive those loans, although he has no assurance from her that she will do so. Applicant's wife is employed as a substitute teacher.

Applicant's mortgage payment is \$900 a month. His wife's grandmother gave him a used car earlier this year for a nominal payment of \$20. However, Applicant and his wife purchased a new car for her use in November 2008, on which they are making monthly payments of \$388. Applicant submitted a personal financial statement in March 2010, in which he estimated his total monthly expenses at \$2,987, and his total monthly income as \$2,000. He indicated he has bank savings in the amount of \$2,300.

Applicant called two friends who he has known for a number of years to testify on his behalf. They both believe he is a responsible individual and have never seen anything

³ Applicant initially testified he believed the debts listed in SOR subparagraphs 1.c and 1.e were duplicate entries. However, his testimony during cross examination, the information contained in his credit report, and the information he supplied in his security application establish these are separate debts.

⁴ The debt alleged in subparagraph 1.f is a duplicate entry for this debt.

⁵ In support of this testimony, Applicant submitted a copy of a money order he purchased on May 7, 2010.

to indicate he has ever lived beyond his means. They feel confident that if they were to lend him money he would repay them.

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.

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.⁶ The Government has the burden of proving controverted facts.⁷ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁸ although the Government is required to present substantial evidence to meet its burden of proof.⁹ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."¹⁰ 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.¹¹ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹²

No one has a right to a security clearance¹³ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of

⁶ ISCR Case No. 96-0277 (July 11, 1997) at 2.

⁷ ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, Item E3.1.14.

⁸ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

⁹ ISCR Case No. 01-20700 (December 19, 2002) at 3 (citations omitted).

¹⁰ ISCR Case No. 98-0761 (December 27, 1999) at 2.

¹¹ ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, Item E3.1.15.

¹² ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, Item E3.1.15.

¹³ *Egan*, 484 U.S. at 528, 531.

denials.”¹⁴ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹⁵

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 five debts, totalling approximately \$14,000, that have been charged off, submitted for collection, or that have resulted in judgments being entered against him. No payment had been made on any of those debts as of the date of the hearing. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and 19(c): *a history of not meeting financial obligations* apply.

There is no question that Applicant’s financial problems began when he lost his long-time and relatively high paying position with the telephone company. His reported income fell from a high of over \$50,000 in 2003, to lows of \$8,660 in 2006, and \$3,636 in 2009. Upon losing his job, Applicant chose to return to college to earn a degree and support his family by obtaining student loans and working at a variety of comparatively low-paying jobs. In so doing, he qualified himself for employment with a salary commensurate with what he previously earned and acquired substantial additional debt. 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 . . .) and the individual acted responsibly under the circumstances* applies.

Applicant’s 2008 income tax return reveals an adjusted gross income of \$49,052. Although this was one of the best earning years Applicant ever had, he failed to apply any of this income to his delinquent debts. In March 2010, Applicant listed his monthly expenses at \$2,987. His wife works as a substitute teacher. Applicant’s anticipated gross annual income from his pending employment offer is \$39,500. It is improbable he will be able to service his current debt, student loans, the loans obtained from his wife’s grandmother in the event she does not forgive them, and the delinquent debt listed in the SOR with the disposable income he will have available even if he obtains the pending employment with the defense contractor.

I have considered the following mitigating conditions 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*

¹⁴ *Id.* at 531.

¹⁵ *Egan*, Executive Order 10865, and the Directive.

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.

Applicant found himself in financial distress as the result of the loss of his long-term employment with the telephone company through no fault of his own. However, his actions in the ensuing years, while well-intentioned, have added substantially to his overall debt and presented him with financial problems that he will not be able to overcome by simply acquiring a new job at a salary of \$39,500. He has not otherwise sought to remedy the financial issues that confront him.

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 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
Subparagraphs 1.a-e:	Against Applicant
Subparagraph 1.f:	For 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

