



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-03031
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Pamela Benson, Esq., Department Counsel  
For Applicant: *Pro se*

March 7, 2011

**Decision**

LAZZARO, Henry, Administrative Judge

Applicant purchased a house in anticipation of an employment transfer to a different state. When his employer cancelled the transfer, Applicant was unable to continue the mortgage payments on the house which eventually led to a foreclosure. He has otherwise led a financially responsible lifestyle and his delinquent mortgage debts have now been resolved. Clearance is granted.

On September 2, 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.<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 September 20, 2010. He admitted both SOR allegations and 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 November 17, 2010. A notice of hearing was issued on December 2, 2010, scheduling the hearing for January 13, 2011. The hearing was conducted as scheduled. The government submitted six documentary exhibits that were marked as Government Exhibits (GE) 1-6 and admitted into the record without objection. Applicant testified and submitted 4 documentary exhibits that were marked as Applicant's Exhibit (AE) 1-4 and admitted into the record without objection. Applicant submitted copies of state statutes that were marked as Appellate Exhibit (App. Ex) I. Administrative notice was taken of those statutes without objection.

The record was held open to provide Applicant the opportunity to submit additional documentation in support of his case. One document was timely received, marked as AE 5, and admitted into the record without objection. Department Counsel's forwarding e-mail, indicating she did not object to the admission of AE 5, was marked as App. Ex. II and is included in the record. The transcript was received on January 19, 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 32-year-old man who has worked as an information technology coordinator for a federal contractor since September 2008. Applicant graduated high school in 1996. He graduated from college in August 2001, with a double major in computer science and linguistics. He is single and resides with his fiancée, who he is to marry in early-2011. Applicant currently has no dependents.

Applicant was employed part-time as a substitute teacher from September 2002 until June 2003. He was unemployed from June 2003 until September 2003. Applicant was employed as an estimator/information system administrator from September 2003 until April 2007. Applicant was employed as a land survey coordinator from April 2007 until October 2007. Applicant was unemployed from October 2007 until April 2008.

Applicant's financial problems originated in 2005, when his then employer offered him a position with the company in another state. In anticipation of moving to that state, Applicant purchased a house on which he began making mortgage payments in January 2006. The house was financed with a first and second mortgage totaling \$255,000. Before Applicant was able to relocate to the other state, his employer apparently lost the client Applicant was being transferred to service and cancelled Applicant's relocation.

Applicant's financial problems were exacerbated by an injury he sustained while unemployed and without medical insurance that required him to undergo several surgical procedures. He obtained the medical services at a teaching hospital, but he still incurred a medical debt of \$6,000 that he has now satisfied.

Applicant was sporadically able to find tenants to rent the house he purchased, but it also sat vacant for extended periods of time. Due to real estate market conditions, the value of the house Applicant purchased severely decreased. He considered a short-sale

of the house, but concluded he would be unable to pay the approximate \$35,000 tax liability he would incur from such a sale.

Applicant negotiated a restructuring of the first mortgage on the house which only reduced his monthly payment about \$100. He lacked the financial resources to make the reduced monthly payment. He was unsuccessful in his effort to restructure the second mortgage because the creditor told him they were legally required to charge off that debt. Applicant eventually concluded his only alternative was to allow the mortgage companies to foreclose on the house. Applicant also stopped paying homeowners association dues, which resulted in him incurring a \$1,600 deficiency to the association before the house was foreclosed on.

Applicant's responsibility for the mortgage debts on the house were discharged under applicable state law with the foreclosure. He unsuccessfully attempted to negotiate a settlement with the homeowners association. That association has now informed him they have charged off the debt.

Applicant's credit reports disclose no negative entries other than those related to the home purchase discussed above. He and his fiancée share all living expenses and are marginally living within their means. Applicant's performance report from his current employer discloses he is dependable, committed to his job, and a great asset to the office where he is employed. His letters of recommendation indicate he has earned a reputation as a loyal, honest, dependable, and trustworthy individual.

## **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>2</sup> The Government has the burden of proving controverted facts.<sup>3</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence,<sup>4</sup> although the Government is required to present substantial evidence to meet its burden

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

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

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

of proof.<sup>5</sup> “Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.”<sup>6</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 him.<sup>7</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>8</sup>

No one has a right to a security clearance<sup>9</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>10</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>11</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 prematurely purchased a house in another state in anticipation of a job transfer. When the employment relocation was cancelled, he was unable to sell the house, retain tenants in the house, or maintain the mortgage and homeowners association payments on the house. Disqualifying Condition (DC) 19(a): *inability or unwillingness to satisfy debts* applies.

When Applicant’s job relocation was cancelled, he was unable to sell the house because of a decline in the real estate market. He reasonably, but unsuccessfully, attempted to obtain tenants for the house to allow him to keep up with the mortgage payments. He considered a short-sale, but he concluded he could not afford the taxes he would incur if he was successful in that endeavor. He thereafter unsuccessfully attempted to restructure the mortgage payments to an amount he could afford. Finally, as a last resort, he allowed the property to be foreclosed on, which, under state law, relieved him

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

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

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

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

<sup>9</sup> *Egan*, 484 U.S. at 528, 531.

<sup>10</sup> *Id.* at 531.

<sup>11</sup> *Egan*, Executive Order 10865, and the Directive.

of all responsibility for any deficiency that he might otherwise have owed. Applicant also unsuccessfully attempted to negotiate a settlement of the delinquent homeowners dues which have now been charged off.

Applicant's financial problems with the home he purchased were aggravated by the period of unemployment he experienced between October 2007 and April 2008. Further, while unemployed, Applicant sustained an injury that required multiple surgeries and left him with about \$6,000 in medical expenses that he has satisfied.

Applicant's credit reports indicate he has lived a financially responsible lifestyle and remained current on his debts, with the sole exception of the house he purchased in anticipation of a job-related relocation. The evidence fully supports a finding that Applicant's financial problems were solely due to the unforeseen situation he found himself in when his job transfer was cancelled after he had purchased the home in anticipation of the relocation. There is no reason to suspect that Applicant's financial problems will recur.

The following Mitigating Conditions (MC) 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): *. . . 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 the testimony and other evidence Applicant presented at the hearing, Department Counsel conceded it would be the Government's position that there would not be a security concern in this case if the delinquent mortgage debt alleged in SOR subparagraph 1.a was in fact no longer collectible under applicable state law. The record was held open to provide Applicant the opportunity to provide evidence in support of his testimony to that effect. He thereafter submitted a letter from an attorney in that state who practices in the applicable fields that corroborates Applicant's testimony (AE 5).

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, the employment performance report and letters of recommendation Applicant submitted, 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

Subparagraphs 1.a & b: 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

