



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



In the matter of:)	
)	
)	ISCR Case No. 10-03245
)	
Applicant for Security Clearance)	

Appearances

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

November 15, 2011

Decision

LAZZARO, Henry, Administrative Judge

Applicant’s financial problems are long-standing and unresolved. He failed to mitigate the financial considerations security concern. Clearance is denied.

On March 28, 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 security concerns under Guideline J (criminal conduct), Guideline G (alcohol consumption), and Guideline F (financial considerations). Applicant submitted a response to the SOR that was received by DOHA on April 18, 2011. He admitted all SOR allegations, except those contained in subparagraphs 3.g, 3.h, and 3.i., 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 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 18, 2011.² The hearing was conducted as scheduled. The Government submitted seventeen documents that were marked as Government Exhibits (GE) 1-17 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. Four documents were timely received, marked as Applicant Exhibits (AE) 1-4, and admitted into the record without objection. Department Counsel's forwarding memorandum of AE 1-4 was marked as Appellate Exhibit (App. Ex.) I, and is included in the file. The transcript was received on November 2, 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 39-year-old man who has been employed as a mechanical technician by a defense contractor since June 2009. Applicant has been employed by a number of different employers, including four other defense contractors, as either a sheet metal technician or machine operator since October 1999. He also experienced periods of unemployment from January 2003 until April 2003, and again from May 2009 until June 2009.

Applicant graduated from high school in May 1990. He has completed about 50 credit hours of college work. Applicant served on active duty in the U.S. Army from June 1990 until November 1992, including deployed service in support of Operation Desert Storm. He possessed a top secret security clearance while in the Army and no reported adverse action was ever taken to revoke or downgrade that clearance. He was awarded an honorable discharge.

Applicant was first married in June 1993. That marriage ended in divorce in August 1995. Applicant was remarried in February 1998, and that marriage ended in divorce in June 2001. Applicant has three children, ages 17, 15, and 13. Applicant's monthly child support obligation is \$1,184.25 (AE 2 and AE 3). The SOR alleges a child support arrearage in the amount of \$2,578. Applicant testified the arrearage has been satisfied (Tr. 27-28), but he admits he now has a new arrearage, owed in the amount of \$1,718.07 (AE 2), as a result of his last period of unemployment.

Applicant threw a can from a moving vehicle which struck a street sign in 1990. He was charged with and convicted of damage to property and received a fine for this offense. He was convicted of resisting a police officer, reckless driving, and motorcycle wheel off ground in March 2009, for an incident that occurred in December 2008. This incident involved Applicant driving a motorcycle at an excessive speed, performing a "wheelie", and attempting to avoid a police officer when he attempted to arrest Applicant. Applicant was

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

placed on probation for one year for the resisting a police officer and reckless driving charges. He was fined \$1,000 for the motorcycle wheel off ground charge.

Applicant was charged with driving under the influence (DUI) in November 2009. He credibly testified he had not been driving the vehicle that had been observed being operated improperly, and that his arrest was a mistake by the police. The charge was dismissed. A violation of probation (VOP) notice was filed against Applicant as a result of this DUI charge. The VOP was dismissed.

Applicant was charged with DUI in June 2010. He entered a plea of nolo contendere to this charge in September 2010. Applicant was sentenced to reporting probation for one year, fined \$500, ordered to perform 50 hours community service, and directed to attend DUI school and a victim impact panel. Applicant successfully completed this period of probation in September 2011.

Applicant obtained a substance abuse evaluation from a licensed mental health counselor at an established addiction counseling service in January 2011 (AE 4). He thereafter attended counseling sessions with her for a period of eight weeks as part of his probation for the June 2010 DUI. The counselor did not provide any substance abuse diagnosis, noted that Applicant had complied with all treatment recommendations, and expressed her opinion that Applicant did not require further treatment. With the exception of his DUI conviction, Applicant's history of alcohol use essentially consists of appropriate use in social settings (AE 4 and Tr. 31-34).

SOR subparagraphs 1.a through 1.e list delinquent debts, owed in the combined amount of \$24,056, that have either been charged off or submitted for collection. Subparagraph 1f. lists the deficiency owed in the amount of \$11,012 after an automobile repossession. Applicant has not made any payment on these debts and does not currently have the resources to begin making payments on any of these debts. Subparagraph 1.g lists the child support arrearage discussed earlier. The debt alleged in subparagraph 1.h is a medical debt incurred by Applicant's ex-wife that is included in the child support arrearage alleged in subparagraph 1.g. Applicant submitted proof that he has resolved the \$148 delinquent debt alleged in subparagraph 1.i (AE 1).

Applicant attributes his delinquent debts to a girlfriend who resided with him during the summer of 2007 (GE 2). According to Applicant, he gave the girlfriend money to pay household bills and other expenses. Instead of paying the bills, and without his knowledge, she kept the money. He discovered what she was doing when his landlord contacted him about unpaid rent and when she staged a burglary of his apartment. However, Applicant's credit report, dated November 11, 2009 (GE 17), discloses a collection account pertaining to an automobile, owed in the amount of \$7,540, with a last activity date of March 2006; and a second account that was submitted for collection with a last activity date of September 2006, that does not reflect a balance owed.

Applicant submitted a personal financial statement when he was interviewed in July 2010 that reflected he had \$615 left each month after paying his living expenses (GE 2). He testified that was inaccurate because it did not include the approximately \$500 he spends each month on gas for his automobile (Tr. 46).

Applicant has been remarried since May 2011 to an Air Force technical sergeant (paygrade E-6). They maintain separate accounts and continue to assume sole responsibility for their individual debts. Applicant's wife owns the home they reside in and he continues to pay her \$550 a month as rent. He believes she earns about \$50,000 a year and has approximately \$15,000 in credit card debt.

Applicant expects his net income to increase in December 2011, when his oldest son turns 18, because he expects his child support obligation to be reduced by one-half. However, his son is unsure what he will do when he completes high school, and Applicant acknowledged that his support obligation will continue in the same amount if his son decides to attend college. Applicant has not obtained any financial counseling or attempted to obtain the assistance of a debt consolidation service (GE 2).

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 the 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. Considering the evidence as a whole, Guideline J (criminal conduct), Guideline G (alcohol consumption), and Guideline F (financial considerations), with their disqualifying and mitigating conditions, are 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.³ The Government has the burden of proving controverted facts.⁴ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁵ although the Government is required to present substantial evidence to meet its burden of proof.⁶ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁷ 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

³ ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

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

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

⁶ ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

⁷ ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

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

No one has a right to a security clearance¹⁰ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹¹ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹²

Analysis

Guideline J, Criminal Conduct

Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations. (Adjudicative Guideline [AG] 30)

Applicant was convicted and fined for a minor damage to property offense he committed as a teenager in 1990. He was convicted of relatively serious traffic offenses in 2009, and of DUI in 2010. His sentences for those offenses included periods of probation, fines, community service, and attendance at a DUI class. Disqualifying Conditions (DC) 31(a): *a single serious crime or multiple lesser offenses*; and DC 31(c): *allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted* apply.

Applicant is 39 years old. With the exception of the minor offense he committed as a teenager, he had no criminal history before the 2009 traffic offenses. There is no indication Applicant has an alcohol problem or that he ever committed an alcohol-related offense before his 2010 DUI arrest. Although they both involved the operation of a motor vehicle, Applicant’s two offenses are otherwise dissimilar. He successfully completed the probationary sentences that were imposed following his two convictions, including attendance at a DUI class.

Applicant has a long and successful work history, including deployed military service during Operation Desert Storm. The mental health counselor who evaluated Applicant and who provided counseling sessions he was required to attend following his DUI conviction, gave Applicant a very favorable evaluation. Applicant’s reported use of alcohol is social and acceptable. The totality of the available evidence strongly indicates that Applicant will not again engage in similar criminal conduct.

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

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

¹⁰ *Egan*, 484 U.S. at 528, 531.

¹¹ *Id.* at 531.

¹² *Egan*, Executive Order 10865, and the Directive.

Mitigating Condition (MC) 32(a): . . . *the criminal behavior . . . happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment* applies. Considering the dissimilarity of the criminal incidents, the favorable alcohol evaluation, Applicant's successful completion of the periods of probation to which he was sentenced, and Applicant's work and military history, I am satisfied he has mitigated the criminal conduct security concern.

Guideline G, Alcohol Consumption

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. AG 21

Applicant was convicted of DUI in 2010. DC 22(a): *alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent* applies.

Applicant attended alcohol counseling sessions and received a favorable prognosis from a mental health counselor. His history of alcohol use is acceptable social use. His offense is isolated and unlikely to recur. MC 23(a): . . . *the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*; and MC 23(d): *the individual has successfully completed inpatient or outpatient counseling . . . and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program* apply. Applicant mitigated the alcohol consumption security concern.

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. . . . AG 18

The SOR alleges over \$35,000 in delinquent debt that Applicant admits remains unpaid. He satisfied the child support arrearage alleged in the SOR, but now has a new arrearage, owed in the amount of \$1,700. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19(c): *a history of not meeting financial obligations* apply.

Applicant attributes his delinquent debt to his live-in girlfriend misappropriating funds he gave her during the summer of 2007 to pay their joint living expenses and other debts. However, at least one substantial debt and one debt on which no balance owed is reflected were submitted for collection during the preceding year. Over four years have passed since Applicant's girlfriend's misdeeds, during which he was employed full-time for all but one or two months, and he has failed to take any action to resolve all but one of the delinquent

debts. Applicant has not obtained counseling or sought the service of a debt consolidation service. His only plan to obtain funds to satisfy his delinquent creditors is to hope that his oldest son does not attend college. I have considered all mitigating conditions and conclude that none apply.

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 has he 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 allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline J:	FOR APPLICANT
Subparagraphs 1.a-e:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraphs 3.a-f:	Against Applicant
Subparagraphs 3.g-i:	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

