



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



In the matter of:)	
)	
)	ISCR Case No. 10-03884
)	
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 were the result of an economic downturn that caused his commission based salary to suddenly and dramatically decrease. With the assistance of his father, Applicant has now satisfied all his delinquent debt and resumed a financially stable lifestyle. Clearance is granted.

On July 26, 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 a security concern under Guideline F (financial considerations). Applicant submitted a response to the SOR that was received by DOHA on August 26, 2011. He admitted both SOR allegations and 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 September 30, 2011. A notice of hearing was issued on October 5, 2011, scheduling the hearing for October 19, 2011.² 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 and submitted three documentary exhibits that were marked as Applicant's Exhibit (AE) 1-3 and admitted into the record without objection. 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 41-year-old man who has been employed as a maintenance trades helper by a federal contractor since November 2009. He also currently works part-time delivering pizzas to supplement his income. Applicant was previously employed full-time by the same pizza restaurant as a general manager from 2005 until 2009. His salary was partly based on commissions, and, as the national economy underwent a substantial downturn, Applicant's salary decreased about \$800 to \$1,000 a month. As a result of the decrease in his income, Applicant became delinquent on a number of accounts.

Applicant submitted verification with his response to financial interrogatories, dated May 24, 2011, that he had settled the majority of his delinquent accounts (GE 3). The SOR listed two delinquent accounts that remained outstanding. Applicant submitted proof at the hearing that those two accounts have now been satisfied (AE 1 and AE 2). Applicant's father provided him financial assistance in settling his delinquent accounts. Applicant's repayment agreement with his father is that Applicant will provide financial assistance to his mother in the event that his father predeceases her.

Applicant graduated high school in 1989. He served in the Air Force from March 1989 until August 1989. He was given an entry level separation from the Air Force. Applicant has been married since May 1993. He has two children, ages 18 and 7, who reside with him and his wife in a home that he has owned since 1998.

Applicant's credit reports disclose he lived a financially responsible lifestyle until his income began to decline with the national economic downturn. He submitted a personal financial statement that indicates he is currently living within his financial means. His wife works outside the home and earns about \$800 per month. Applicant has \$200 automatically deducted from his salary each pay day that is deposited into a savings account that he will not be able to access until it reaches a presently undetermined balance. Neither Applicant nor his wife have any credit cards, and it is Applicant's intention to avoid reliance on credit to the maximum extent possible in the future.

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

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.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 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

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

⁴ ISCR Case No. 97-0016 (December 31, 1997) at 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 3 (citations omitted).

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

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

⁹ ISCR Case No. 93-1390 (January 27, 1995) at 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.

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 had a number of accounts that became delinquent. Those accounts remained delinquent for a number of years until Applicant began to satisfy them after obtaining employment with a federal contractor. The SOR lists two remaining delinquent accounts that had not been satisfied when it was issued. 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 delinquent accounts were the result of a substantial decrease in his income that coincided with a national economic downturn. With the assistance of his father, Applicant has now resolved all his delinquent accounts. He no longer relies on credit, and his testimony and personal financial statement indicate he is living a financially stable and responsible lifestyle. He is having money automatically deducted from his pay that is deposited directly into a savings account to avoid the recurrence of the events that caused him to accumulate delinquent debt.

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 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 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

