



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-04180
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ray T. Blank, Jr., Esq., Department Counsel  
For Applicant: *Pro se*

April 15, 2011

**Decision**

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LAZZARO, Henry, Administrative Judge

Applicant failed to mitigate the security concern that arises from his outstanding delinquent debts. Clearance is denied.

On November 30, 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 December 14, 2010, in which he failed to indicate whether he was requesting a hearing or a decision based on the written record without a hearing. He submitted a second response to the SOR that was received by DOHA on January 18, 2011, in which he requested a decision based on the written record without a hearing. Applicant admitted all SOR allegations except those contained in subparagraphs 1.e and 1.f.

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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 adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

Department Counsel prepared a File of Relevant Material (FORM) on February 2, 2011, that was mailed to Applicant the same day. Applicant was informed he had 30 days from receipt of the FORM to submit his objections to any information contained in the FORM or to submit any additional information he wished to be considered. Applicant acknowledged receipt of the FORM on February 10, 2010, but did not submit a response to the FORM or object to anything contained in the FORM within the time allowed him. The case was assigned to me on April 11, 2011.

### **Findings of Fact**

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 43 years old and has been employed as a structural assembler by a defense contractor since August 2009. He was previously employed outside the defense industry as a sheet metal assembler from May 1998 until July 2006; and as a composite assembler from July 2006 until April 2009. Applicant was unemployed from April 2009 until July 2009, due to being laid off because of a reduction in workforce by his employer.

Applicant was born in Viet Nam and immigrated to the United States in July 1997. He became a naturalized United States citizen in August 2003. Applicant graduated from high school in Viet Nam in September 1986. He served in the Vietnamese Army from January 1987 until January 1990. Applicant apparently immigrated to the United States with most of his immediate family. However, he has two siblings who remain citizens and residents of Viet Nam.

Applicant was married in Viet Nam in February 2002. His wife immigrated to the United States in April 2004. She currently is a permanent resident alien and her parents remain citizens and residents of Viet Nam. Applicant indicated he has one daughter who immigrated to the United States with his wife in April 2004. Applicant's daughter is a United States citizen. The record does not disclose if Applicant has other children.

Applicant and his sister opened a grocery store business sometime in 2005. The business failed due to flooding caused by a water company cleaning pipes. Applicant incurred a tax debt and security alarm debt as a result of the business failure that remain delinquent. The tax debt resulted in a state lien in the amount of \$18,660 being filed against Applicant. Applicant claims he retained an attorney to dispute the lien. However, he also submitted receipts disclosing he has made four payments, totaling \$700, toward the lien. Applicant claimed in his response to the SOR that he is making an effort to pay off the \$542 delinquent security alarm debt. However, he did not submit any evidence that he has made a payment on this debt.

Applicant is indebted on a home improvement loan that has been charged off in the amount of \$28,562. When Applicant was interviewed on December 9, 2009, he stated this debt resulted from him being a co-signature on a home loan obtained by his sister and that he was unaware the debt was delinquent. In his response to the SOR, he indicated this was a business loan obtained for the grocery store he and his sister opened on which his

personal property was pledged as collateral. There is no evidence that any payment has been made on this debt.

The SOR alleges a tax debt owed to the Internal Revenue Service (IRS) in the amount of \$4,941. This debt was listed by Applicant in the security clearance application he submitted, but it does not appear in any of the credit reports included with the FORM. In his response to the SOR, Applicant addressed the state tax lien and the IRS debt that are alleged in the SOR together. He stated the IRS alleged he owed a tax debt of \$4,000, but it later levied a penalty of \$18,000. It appears that Applicant is confused and it is likely that only the state tax lien is a valid debt.

Applicant claims he has satisfied the debt alleged in SOR subparagraph 1.e, which is owed for furniture he purchased from a rent-to-own company. He submitted a number of receipts disclosing payments to the company. In the FORM, Department Counsel takes issue with Applicant's claim to have satisfied this debt because there is no indication the payments relate to the same debt that is alleged in the SOR. However, Applicant submitted a receipt indicating a payment of \$222.72 was made on the same date the purchase contract was executed, another receipt indicating a payment of \$154.49 was made to the company on February 20, 2008, and eight monthly payments of \$154.49 were made to a payee who cannot be discerned from the information contained in the bank receipts submitted by Applicant. Considering the amounts paid are exactly the same, I am satisfied that Applicant has paid this account in full.

The SOR alleges five additional debts, owing in the total amount of \$9,241, that have either been submitted for collection or charged off as bad debts. In his response to the SOR, Applicant stated he is either paying or making an effort to pay four of those debts. He did not submit any evidence that a payment has been made on any of the four debts. As to the fifth debt, Applicant stated he does not have sufficient information to either admit or deny the amount alleged (\$3,563). There is no evidence that any payment has been made on this debt.

On July 26, 2010, Applicant provided a personal financial statement in which he listed his monthly net income as \$2,566.24, and his recurring net monthly expenses as \$2,550. He also listed the debts alleged in the SOR as his monthly debts, without indicating any payment being made on any of them. His listed savings was \$1,900, and his other listed assets consisted of two automobiles with a combined value of \$7,500.

Applicant submitted a handwritten note he executed on July 21, 2010, in which he stated he was working with a woman from a debt relief agency in an attempt to determine the best solution for his financial problems. He also submitted a letter from a tax relief organization that only indicates he made an initial inquiry about its services.

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

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

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

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

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

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

<sup>8</sup> ISCR Case No. 93-1390 (January 27, 1995) at pp. 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.

## 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 a tax lien that was filed against him and that remains owing in the approximate amount of \$18,000. He has a delinquent home improvement loan that has been charged off as a bad debt owing in the amount of \$28,562. He has six other debts, owing in the combined amount of \$9,783, that have either been submitted for collection or charged off as bad debts. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19C(c): *a history of not meeting financial obligations* apply.

Applicant's delinquent tax debt, home improvement loan, and security alarm debt are directly connected to the 2005 business venture he undertook with his sister that failed when their store flooded. Applicant claims to have sought the assistance of an attorney to dispute the tax debt, but did not submit any evidence to indicate the attorney has or will be able to obtain relief for him. He has not made any payments or submitted any evidence that he has done anything to resolve the other two debts. Applicant cannot be said to have acted responsibly in regard to these debts and, thus, 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, unexpected medical emergency, or a death, divorce or separation) and the individual acted responsibly under the circumstances* does not apply.

Applicant did make timely payments on one debt listed in the SOR. He claims he either is making payments or is making an effort to make payments on other debts listed in the SOR. However, there is no evidence that payments have actually been made on any of those debts. Applicant's delinquent debt totals over \$56,000. The personal financial statement he submitted discloses he has a net monthly remainder of \$16.24 after he pays his recurring monthly expenses. He listed his total savings at \$1,900. It is clear that Applicant lacks the resources to satisfy his delinquent creditors. Applicant indicated he has sought the assistance of a debt relief organization and made inquiry of a tax relief organization. However, there is nothing in the record to indicate either of those sources have actually provided any assistance or advice to Applicant.

I have considered the following mitigating conditions and conclude they do not apply: MC 20(a): *the behavior . . . 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 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 has 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 allegations 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-d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	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.

Henry Lazzaro  
Administrative Judge

