



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



In the matter of:)	
)	
)	ISCR Case No. 10-04821
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina Marine, Esq., Department Counsel
For Applicant: *Pro se*

January 26, 2012

Decision

LAZZARO, Henry, Administrative Judge

Applicant failed to disclose any of his many criminal arrests in the security clearance application he submitted in August 2008. He has numerous delinquent debts that remain unsatisfied. Clearance is denied.

On August 4, 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 E (personal conduct) and Guideline F (financial considerations). Applicant's response to the SOR was received by DOHA on August 24, 2011. He admitted all SOR allegations except subparagraph 2.t, and he requested a hearing.

The case was assigned to me on November 3, 2011. A notice of hearing was issued on November 8, 2011, scheduling the hearing for December 5, 2011. The hearing was

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.

conducted as scheduled. The government submitted eight documents that were marked as Government Exhibits (GE) 1-8 and admitted into the record without objection. Applicant testified and submitted 11 documents that were marked as Applicant Exhibits (AE) 1-11 and admitted into the record without objection. The transcript was received on December 14, 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 35-year-old man who has been employed as a steward assistant merchant mariner since January 2001. He works under contracts that generally last about four months duration, and he is then unemployed until he is offered another contract. As of the date of the hearing, Applicant had not worked since January 2011. He quit high school during his freshman year, but he received a general educational development diploma in June 1994. Applicant is single and he has no dependents.

In June 2005, Applicant was charged with possession of marijuana and money laundering (a felony) after the vehicle he was attempting to drive across the border into Mexico was stopped by border patrol agents. Upon searching the vehicle, the agents discovered marijuana residue, \$16,000 cash, and 100 condoms. Applicant's explanation is that he had been picked up by two friends driving his mother's car after he left the ship on which he had been working and one of those friends threw a marijuana cigarette into the trunk area of the car when they were stopped. He claims the \$16,000 was the salary he had been paid for his work on the ship. Applicant entered a plea of guilty to the money laundering charge and was placed on three years probation. His probation was terminated after he successfully completed about 18 months of the sentence.

In August 1996, Applicant was charged with selling crack cocaine (a felony), possessing crack cocaine (a felony), and resisting arrest without violence. He describes himself as a "drug dealer wanna be" at the time. According to Applicant, he had loaned his pager to his friend "Slippery" who was video-taped selling crack cocaine to an undercover police officer. The police thereafter called the pager and converged on a basketball court where Applicant was located. Applicant claims he decided to plead guilty to a drug offense out of fear that he would be killed if he identified the real drug dealers. He was sentenced to serve six months in jail.

In May 1995, Applicant was charged with a felony offense of carrying a concealed weapon. Applicant's version of this offense is that he was the passenger in a vehicle that was involved in a minor accident with a vehicle driven by a woman. The woman made an obscene gesture and cussed at Applicant and the driver and then drove off. They followed the woman and when Applicant opened the glove compartment in search of paper and pencil to record her license plate number a gun fell out of the compartment and into his lap just as they pulled alongside her vehicle. She reported the incident to a police officer who was stopped nearby and Applicant was arrested. The charge was dismissed.

In April 1995, Applicant was charged with trafficking in crack cocaine (a felony) and possession of marijuana. Applicant's version of this offense is that his friend set him up by sprinkling cocaine and marijuana in his vehicle and then apparently notifying the police where the drugs could be found. The charges were dismissed.

In September 1994, Applicant was charged with the felony offense of forgery. His version of this offense is that someone gave him a stolen check as payment for a car stereo. He did not know the check was stolen and was arrested when he attempted to cash it at a bank. The charge was dismissed.

Applicant signed and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on August 5, 2008. In response to questions asking if he had ever been charged with or convicted of a felony offense, a firearms offense, or an offense related to drugs, Applicant answered "No." He provided rambling and unclear explanations for his failure to disclose his multiple arrests, including that he actually filled out a different form from the e-QIP, provided it to someone who then returned the e-QIP to him which he executed without fully reading. His explanations for not disclosing the 2005 arrest and conviction included that he was not properly represented by his attorney and a second attorney told him after he was convicted that he was going to meet with the judge and get the charges dropped. His explanations also included that because the arrests did not occur within the preceding seven years and he had not been convicted he did not think he was required to disclose the offenses.

Applicant's credit reports disclose 12 delinquent medical debts, owed in the combined amount of \$11,684. Applicant attributes the largest of those debts to his underage girlfriend, who was pregnant with his child, having a miscarriage. He took her to the hospital and because she was underage he had to sign for her to receive treatment. He claims the girl's mother agreed to pay the medical bills but has not done so.

Applicant's credit reports disclose eight other delinquent debts, owed in the combined amount of \$18,799. Those debts include credit card debt, utility charges, and a repossessed automobile. Applicant submitted proof he settled one debt that was owed in the amount of \$1,000. He submitted documentation that he has entered into a contractual agreement with a debt settlement organization under which he is to make 36 monthly payments in the amount of \$243 that are to be applied to satisfy the five debts listed in the agreement, owed in the combined amount of \$10,949. Applicant testified, without submitting any proof, that he has made the required payments under the plan since he opened the account with the company in May 2011. However, he is unaware if the company has made any payment toward any of his debts.

The debts listed in Applicant's credit reports have been delinquent for many years. He testified he did not have the funds to make payments on those debts earlier because he was repaying his mother \$26,000 she loaned him to pay his legal fees, and he gave his sister \$16,000 to open a beauty salon that has now gone out of business.

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 E (personal conduct) 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.² The Government has the burden of proving controverted facts.³ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁴ although the Government is required to present substantial evidence to meet its burden of proof.⁵ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁶ 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.⁷ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁸

No one has a right to a security clearance⁹ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."¹⁰ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹¹

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

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

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

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

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

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

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

⁹ *Egan*, 484 U.S. at 528, 531.

¹⁰ *Id.* at 531.

¹¹ *Egan*, Executive Order 10865, and the Directive.

Analysis

Guideline E, Personal Conduct

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. (Adjudicative Guideline [AG] 15)

Applicant failed to disclose multiple arrests, including felonies, firearms-related, and drug-related offenses in the e-QIP he submitted in August 2008. Included in those arrests were a drug offense for which he served six months in jail, and a felony charge that occurred just three years before he submitted the e-QIP and for which he was sentenced to three years probation. Applicant's multiple explanations for not disclosing his criminal history are not credible. Disqualifying Condition (DC) 16(a): *deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities* applies. I have considered all mitigating conditions and conclude none apply.

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)

Applicant has accumulated numerous delinquent accounts, owed in the combined amount of over \$30,000. Most of those accounts have been delinquent for many years. DC 19(a): *inability or unwillingness to satisfy debts*; and DC 19(c): *a history of not meeting financial obligations* apply.

Several of Applicant's larger medical debts were caused by his underage girlfriend's miscarriage of their child. Applicant claims the girl's mother has reneged on her agreement to pay those medical bills. However, he has done nothing to satisfy the debts himself, take action to attempt to compel the girl's mother to satisfy the debts, or otherwise dispute them. Accordingly, I conclude that 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 has satisfied one debt and he entered into a contractual agreement with a debt settlement organization that is supposed to resolve a number of his other delinquent debts. He claims to have made the required payments under that program, but he failed

to submit proof of those payments. In the event he does fully comply with the requirements of the program, it will be another two and one-half years before those debts are satisfied. Further, a large number of Applicant's delinquent accounts are not included in the program. Accordingly, I conclude the following mitigating conditions 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 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 failed to mitigate the personal conduct and financial considerations security concerns. 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 E and Guideline F are 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 E:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a-s:	Against Applicant
Subparagraph 2.t:	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

