



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



In the matter of:)	
)	
)	ISCR Case No. 10-07406
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. DeLaney, Esq., Department Counsel
For Applicant: *Pro se*

December 5, 2011

Decision

LAZZARO, Henry, Administrative Judge

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

In March 2011,¹ 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.² The SOR alleges a security concern under Guideline F (financial considerations). On April 27, 2011, Applicant submitted a response to the SOR in which he denied all SOR allegations and requested a decision based on the written record without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on September 7, 2011, that was mailed to Applicant on September 14, 2011. Applicant was informed he had 30 days from receipt of the FORM to submit his objections to any information

¹ The file stamped date on the SOR is illegible.

² 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.

contained in the FORM or to submit any additional information he wished to be considered. Applicant acknowledged receipt of the FORM on September 21, 2011, 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 November 30, 2011.

Findings of Fact

After a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 45 years old and has been employed as a manufacturing technician by a defense contractor since April 2010. As recorded in the security clearance application Applicant submitted on June 1, 2010, he has had sporadic employment since March 2003, that has been interrupted by periods of unemployment due to lay offs. More specifically, Applicant was unemployed from December 2004 until May 2005, from November 2005 until February 2006, and from February 2009 until March 2010.

Applicant has been married since April 2009. He has two children, ages 18 and 16.

The SOR lists seven delinquent accounts that have been submitted for collection. The combined total owed on those accounts is \$18,719. Applicant was questioned about his delinquent debts in June 2010. He admitted he was responsible for each of the debts listed in the SOR except the \$362 debt listed in subparagraph 1.a. Applicant explained that this debt arose from a claim by his landlord for cleaning a carpet in an apartment he had rented. He believes he left the apartment clean and the claim is unjust. Applicant's credit reports disclose that some of his delinquent accounts date back as far as 2003.

Applicant told the investigator who interviewed him in June 2010 that his net monthly income is \$3,044. He reported his recurring monthly expenses at \$2,996. He attributes his financial problems to the periods of unemployment he experienced. He told the investigator that he intended to file for bankruptcy protection. On December 18, 2010, Applicant responded to interrogatories by stating he had not filed for bankruptcy protection yet but planned on doing so within two to five months. In his response to the SOR, Applicant stated he would soon be filing for bankruptcy protection. When he was interviewed in June 2010, Applicant admitted he did not have the funds to hire an attorney to file for bankruptcy protection for him, but that he intended to borrow \$1,500 from his father.

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.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

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)

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.

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.

Applicant has seven delinquent accounts, owed in the combined amount of \$18,719, that have been submitted for collection. Some of those accounts have been delinquent for many years. 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 financial problems are the result of unemployment he has experienced. However, there is no indication he made any effort to resolve his delinquent accounts when he was employed. Further, there is no basis to conclude he will be able to resolve them in the foreseeable future. He has repeatedly asserted he was going to seek bankruptcy protection, but there is no evidence he has done so. Applicant currently spends virtually his entire net monthly income on his recurring monthly expenses, and he is not in a position to extricate himself from the financial distress that has plagued him for years. Applicant's continued inaction in doing anything to resolve his delinquent accounts allows for only minimal application of 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*. 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-g:	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

