



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



In the matter of: )  
)  
) ISCR Case No. 10-08359  
)  
Applicant for Security Clearance )

**Appearances**

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

September 6, 2011

**Decision**

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LAZZARO, Henry, Administrative Judge

Except for having his wages garnished to satisfy two delinquent creditors, Applicant has done nothing to resolve the almost \$45,000 in delinquent debt listed in his credit reports. Clearance is denied.

On February 22, 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.<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 March 28, 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.c, 1.m, and 1.p.

Department Counsel prepared a File of Relevant Material (FORM) on June 7, 2011, that was mailed to Applicant on June 10, 2011. Applicant was informed he had 30 days

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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.

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 July 7, 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 August 29, 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 36 years old. He has been employed as a field service representative by a defense contractor since February 2002. He was previously employed as a data entry clerk from February 2007 until February 2008, and as a material coordinator from April 2006 until January 2007 by different defense contractors. Applicant served on active duty in the Army from January 1993 until he was honorably discharged in April 2006.

Applicant was first married in February 1997. That marriage ended by divorce in February 2006. Applicant has been remarried since June 2009. The record does not indicate that he has any children.

Applicant's credit report indicates he has four delinquent student loans totaling \$15,865. The credit report also lists four delinquent credit card debts totaling \$8,182, two overdrawn checking accounts from two separate banks totaling \$1,173, and a personal payday loan delinquent in the amount of \$1,330. Applicant has a delinquent debt, owed in the amount of \$5,444, that arose from a broken lease. These accounts have all either been submitted for collection or charged off as bad debts. Applicant admits that he is liable for each of these debts. No payment has been made on any of these debts.

Applicant denies that he is liable for the two delinquent cellular phone debts, totaling \$399, or the delinquent utility debt, owed in the amount of \$92, that are listed in his credit report. He did not submit any verification that he is not liable for these debts or any proof that he has done anything to dispute his liability for these debts. No payment has been made on any of these debts.

Applicant joined the Army National Guard after he was discharged from active duty. He was paid a \$10,000 enlistment bonus that was required to be repaid when Applicant left the Guard rather than be deployed. He also obtained a \$3,000 GI Bill student payment that was required to be repaid when he dropped out of college. Both debts are now delinquent and Applicant's wages are being garnished to repay these debts.

Applicant attributes the delinquent debt owed in the amount of \$5,444 for a broken lease to his divorce and his need to vacate the apartment where he and his wife lived because he could not continue to afford the rent. He attributes the remaining delinquent debt to a lack of income and bad choices with his credit.

## 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 17 delinquent accounts that have either been submitted for collection or charged off as bad debts. The total owed on those accounts is \$44,643. Except for the Government garnishing Applicant's wages to recoup the \$12,158 owed to it, no payment has been made on any of the delinquent accounts. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19C(c): *a history of not meeting financial obligations* apply.

Applicant attributes the majority of his delinquent debt to a lack of income and bad choices with his credit. However, he listed continuous employment from 1993 to the present in the security clearance application he submitted. He attributes the delinquent charge from a broken lease to his divorce in 2006. However he did not provide any information to indicate he acted responsibly in connection with that debt. Instead, he apparently just vacated the apartment despite having six months remaining on the lease he had signed. He denies he is liable for three of the delinquent accounts, but he failed to provide any evidence to support those denials or any evidence that he has disputed those accounts. I have considered all potential mitigating conditions and conclude 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 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-q:	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

