



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 10-09038 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Caroline H. Jeffreys, Esq., Department Counsel  
For Applicant: *Pro se*

November 30, 2011

**Decision**

LAZZARO, Henry, Administrative Judge

Applicant’s financial problems were caused by an extended period of unemployment that began in August 2006. He has worked continuously for defense contractors in combat areas since July 2007. Applicant has satisfied most of his delinquent debt, and he has taken reasonable steps to assure that he and his wife will once again be able to live a financially responsible lifestyle. Clearance is granted.

On April 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.<sup>1</sup> The SOR alleges a security concern under Guideline F (financial considerations). On May 28, 2011, Applicant submitted a response to the SOR, in which he admitted all SOR allegations and requested a hearing.

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

The case was assigned to another administrative judge on September 28, 2011, and reassigned to me on September 30, 2011, to be heard in conjunction with other hearings I had scheduled in the same geographic area. A notice of hearing was issued on October 12, 2011, scheduling the hearing for October 27, 2011.<sup>2</sup> The hearing was conducted as scheduled. The Government submitted seven documentary exhibits that were marked as Government Exhibits (GE) 1-7 and admitted into the record without objection. Applicant testified, called his wife to testify on his behalf, and he submitted ten documentary exhibits that were marked as Applicant's Exhibit (AE) 1-10, and admitted into the record without objection. Department Counsel submitted one document following the hearing that was admitted into the record as GE 8 without objection. Department Counsel's forwarding memorandum for GE 8 was marked as Appellate Exhibit (App. Ex.) I, and is included in the record. The transcript was received on November 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 47-year-old man who has been employed as a heavy equipment mechanic by a defense contractor since July 2008. Applicant works with the U.S. Army in Afghanistan under contracts that are renewed annually. His current contract is due to be renewed in January 2012. Applicant worked with the Army in Iraq for a different defense contractor from July 2007 to July 2008. He was in training in the United States for his original defense contractor employer in June 2007. Applicant was unemployed from August 2006 until June 2007. Applicant was employed as a shop foreman by a trucking company from July 1991 until August 2007.

Applicant was first married in March 1983. That marriage ended by divorce in August 1985. Applicant has a 28-year-old son from that marriage. Applicant has been remarried since April 1989. He has three children, ages 26, 25, and 22, from this marriage.

Applicant dropped out of high school and did not learn to read until he was about 35 years old. His testimony, and the testimony of his wife, make it clear that he depended on his wife to manage family finances until she experienced what she described as a nervous breakdown during his extended period of unemployment.

Applicant earned about \$56,000 a year under the contract that sent him to Iraq in 2007. He currently earns approximately \$125,000 a year. He and his wife have agreed that she is no longer psychologically capable of managing their finances. As a result, Applicant has \$1,000 directly deposited into an account for her personal use. He retains a few hundred dollars each month for his incidental expenses in Afghanistan. The balance of his salary, approximately \$8,000 a month, is deposited into a joint account he maintains with his 26-year-old daughter. That daughter is married to a Marine Corps sergeant and is not

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<sup>2</sup> Applicant acknowledged on the record that he actually received the notice of hearing by e-mail on October 12, 2011 (Tr. 13-14).

co-located with her mother. However, the daughter consults with her mother, pays her living expenses, and transfers money into an account maintained by her mother to pay other debts when she is made aware of them.

After Applicant left home to work in Iraq, the family home was foreclosed on. Applicant's wife moved to a different state for a period of time and thereafter lived with one or the other of her children. Applicant saved the money he earned and provided his son \$100,000 to pay as a down payment on a house that was under construction. He and his son then each paid about \$50,000 to complete the purchase of the house. Applicant's wife now resides full-time with her son.

Applicant submitted two letters from an attorney that establish the judgment listed in SOR subparagraph 1.a was entered against his son from his first marriage and not him (AE 10). Applicant's wife credibly testified to conversations she had with an agent for the creditor listed in subparagraph 1.b and 1.e, and they are duplicate entries for the same account. She submitted proof that the account, as listed in subparagraph 1.e, has been satisfied (AE 5). The judgment listed in subparagraph 1.c has been satisfied (AE 3). The collection account listed in subparagraph 1.d was satisfied for about one-third the amount the creditor claimed was due (AE 4). The collection account listed in subparagraph 1.f was satisfied for about one-fifth the amount the creditor claimed was due (AE 6).

The debt alleged in SOR subparagraph 1.g originated with a construction loan Applicant and his wife took out in 2005 to have a new home built on property they owned. The contractor obtained the money but failed to do any work. Applicant's wife testified that she attempted to report the fraud to several police agencies, apparently without obtaining any relief. The debt remains unpaid. The debts listed in SOR subparagraphs 1.h and 1.i have been satisfied (AE 7 and AE 8<sup>3</sup>).

Applicant's credit report, dated November 20, 2008 (GE 3), discloses he appears to have lived a financially responsible lifestyle before he experienced the extended period of unemployment beginning in August 2006. With the exception of one "late 30 days" entry in that credit report, all entries before 2006 reflect Applicant paid his debts "As Agreed."

## **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.

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<sup>3</sup> The check paying the debt listed in SOR subparagraph 1.j was post-dated to a few days after the hearing. Applicant's wife credibly testified why the check was post-dated and that her daughter would transfer money to cover that check into her account before the date written on the check.

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>4</sup> The Government has the burden of proving controverted facts.<sup>5</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence,<sup>6</sup> although the Government is required to present substantial evidence to meet its burden of proof.<sup>7</sup> “Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.”<sup>8</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>9</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>10</sup>

No one has a right to a security clearance<sup>11</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>12</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>13</sup>

## 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 after he lost the job he had held for 15 years. Most of those accounts remained delinquent until recently. One delinquent debt still has not been satisfied. Disqualifying Conditions (DC) 19(a): *inability*

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<sup>4</sup> ISCR Case No. 96-0277 (July 11, 1997) at 2.

<sup>5</sup> ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, Item E3.1.14.

<sup>6</sup> *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

<sup>7</sup> ISCR Case No. 01-20700 (December 19, 2002) at 3 (citations omitted).

<sup>8</sup> ISCR Case No. 98-0761 (December 27, 1999) at 2.

<sup>9</sup> ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, Item E3.1.15.

<sup>10</sup> ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, Item E3.1.15.

<sup>11</sup> *Egan*, 484 U.S. at 528, 531.

<sup>12</sup> *Id.* at 531.

<sup>13</sup> *Egan*, Executive Order 10865, and the Directive.

or unwillingness to satisfy debts and DC 19(c): a history of not meeting financial obligations apply.

As Applicant's November 2008 credit report indicates, Applicant's delinquent accounts were solely the result of his loss of a job he had held for 15 years. His wife experienced what she described as a nervous breakdown as a result of the distress caused by his loss of employment and the impact it had on their ability to pay their debts. Applicant prudently obtained employment that provides his family with substantial income that is managed by his daughter while he works in Afghanistan. He has invested a substantial amount of money to purchase a home for the son with whom his wife resides. Applicant has satisfied the overwhelming majority of the debts alleged in the SOR. He provided proof of his basis for disputing one debt and credible testimony about the basis for a dispute of a second 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*; MC 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*; and MC 20(e): *the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.*

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-i:      | 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

