



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



In the matter of: )  
)  
) ISCR Case No. 10-09382  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

2/24/2012

**Decision**

LAZZARO, Henry, Administrative Judge

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

On August 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 September 26, 2011, Applicant submitted a response to the SOR in which he admitted all SOR allegations. Applicant failed to indicate in his response to the SOR whether he wanted to request a hearing before an administrative judge from DOHA or a decision based on the written record without a hearing. On September 30, 2011, in response to an e-mail sent to him by a DOHA personnel security specialist, Applicant requested a decision based on the written record without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on November 17,

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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.

2011, that was mailed to Applicant on November 22, 2011. 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 December 14, 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 February 7, 2012.

### **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 44 years old and has been employed as a mechanic by a defense contractor since October 2008. As recorded in the security clearance application Applicant signed on June 25, 2010, his work history is as follows: he was employed full-time as a sales clerk from April 2002 until May 2004; part-time as a sales clerk from May 2004 until June 2004; part-time as a range helper from May 2004 until September 2004; part-time as a substitute teacher from September 2004 until October 2007; part-time as a work study clerk from July 2006 until January 2008; and full-time as a driver from February 2008 until August 2008. Applicant was unemployed from August 2008 until October 2008.

Applicant quit the full-time employment he held as a sales clerk from April 2002 until May 2004 after he was informed that he was going to be fired. Applicant explained in the security clearance application he submitted that the reason for the termination of this employment was "Parts were missing from store where my password was used with stolen parts." In a statement he provided in August 2004, Applicant claimed he resigned from this job to attend school and that there was not an adverse reason for his resignation.

Applicant attended college from October 2004 until August 2006. He was awarded an associate's degree by this institution. He attended a different college from September 2006 until January 2008, but he did not earn a degree from this second college.

Applicant served in the U.S. Army Reserve from October 1987 until April 1989. He served on active duty in the Army from May 1989 until July 2001. In August 2000, Applicant submitted a fraudulent claim for household goods alleged to have been damaged during a change of Army duty stations. He was charged with the offense of Frauds Against the United States under the Uniform Code of Military Justice (UCMJ). He was found guilty of that offense in March 2001, and he was sentenced to reduction in rank from paygrade E-5 to E-4, forfeiture of \$1652 pay, 45 days restriction, and 45 days extra duty.<sup>2</sup>

Applicant was first married in April 1994. That marriage ended by divorce in July 2001. Applicant has two children from this marriage, ages 16 and 14. Applicant owes approximately \$23,000 in child support arrearage for these two children, and \$420 per month is automatically deducted from his pay for the support of these children. Applicant

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<sup>2</sup> The record does not disclose if Applicant was convicted at a court-martial or punished at an UCMJ Article 15 hearing.

has a 17-year-old child by a woman to whom he was not married. He owes \$7,076 in child support arrearage for this child, and \$385 per month is automatically deducted from his pay for support of this child. Applicant has been remarried since June 2004. He does not have any children from this marriage.

A judgment in the amount of \$1,006 was entered against Applicant in May 2011 that remains unsatisfied. Applicant's credit reports disclose nine accounts, owed in the combined amount of \$9,444, that have either been charged off as bad debts or submitted for collection.<sup>3</sup> Some of those accounts have been delinquent for at least several years. None of those accounts have been satisfied.

Applicant's home was foreclosed on in April 2009. In a statement he provided in August 2010, Applicant claimed he began making payments to an attorney to retain the attorney's services in filing for Chapter 7 bankruptcy protection. In his response to interrogatories, dated July 1, 2011, Applicant claimed he would pay the balance of \$484 owed to the attorney by July 15, 2011. The record does not disclose any information from which to find that a bankruptcy petition has actually been filed.

Applicant included a personal financial statement with his July 2011 response to interrogatories in which he listed his and his wife's combined net monthly income as \$6,165, their recurring net monthly expenses as \$3,030, their net monthly payments as \$1,470, and their net monthly remainder as \$1,663. Applicant did not provide any explanation why he has been unable to satisfy his delinquent creditors despite having been employed full-time since October 2008 and having a substantial net monthly remainder after paying his other debts.

## **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

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<sup>3</sup> SOR subparagraphs 1.f and 1.g allege two delinquent accounts that are not included in these totals. Applicant's credit reports indicate those two accounts were "transferred or sold" and those credit reports do not establish that the accounts are currently delinquent and/or owed to the creditors listed in the SOR.

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 was found guilty of defrauding the Government in 2001. He resigned from a job after being informed that he was going to be fired due to a theft of merchandise attributed to him in 2004. He lost his house in a foreclosure proceeding in 2009. Applicant has nine delinquent debts, owed in the combined amount of \$9,444, that have either been charged off as bad debts or submitted for collection. None of those debts have been

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

<sup>5</sup> ISCR Case No. 97-0016 (December 31, 1997) at p. 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 p. 3 (citations omitted).

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

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

<sup>10</sup> ISCR Case No. 93-1390 (January 27, 1995) at pp. 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.

satisfied. He also has an unsatisfied judgment owed in the amount of \$1,006. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; DC 19(c): *a history of not meeting financial obligations*; and DC 19(d): *deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust* apply.

Applicant's military career ended a few months after he was found to have defrauded the Government. He lost his full-time employment as a sales clerk in 2004 after he was told he was going to be fired because he was suspected of stealing from his employer. His house was foreclosed on in 2009 despite the fact that he was working full-time. He has been employed full-time by a defense contractor since October 2008 and he listed a substantial net monthly remainder in the personal financial statement he submitted in July 2011. However, he has not made any payment toward any of his delinquent debts. Applicant claimed he would pay the remaining balance owed to the attorney who he claimed was going to file a Chapter 7 bankruptcy petition on his behalf by July 15, 2011. However, he failed to submit any response to the FORM to indicate that he has actually sought bankruptcy protection.

The following Mitigating Conditions (MC) 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(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): *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-e:	Against Applicant
Subparagraphs 1.f and g:	For Applicant
Subparagraphs 1.h-p:	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.

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Henry Lazzaro  
Administrative Judge

