



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-09747
	)	
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’s financial problems are the result of a career ending injury he sustained as a Coast Guard rescue swimmer and his wife’s loss of a relatively high paying job. They have both acted responsibly in attempting to resolve their financial issues. Clearance is granted.

On July 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). Applicant submitted a response to the SOR, dated August 28, 2011, in which he requested a hearing and denied all SOR allegations except the one alleged in subparagraph 1.e.

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

---

<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.

conducted as scheduled. The Government submitted four documentary exhibits that were marked as Government Exhibits (GE) 1-4 and admitted into the record without objection. Applicant testified, called his wife to testify on his behalf, and he submitted five documents that were marked as Applicant Exhibits (AE) 1-5, and admitted into the record without objection. The transcript was received on December 14, 2011.

### **Findings of Fact**

Applicant's admission to the one SOR allegation is incorporated herein. In addition, after a thorough review of the pleadings, testimony and exhibits, I make the following findings of fact:

Applicant is a 36-year-old man who has been employed as a communication and maintenance technician by a defense contractor since April 2010. He graduated from high school in May 1993. Applicant served on active duty as a rescue swimmer in the Coast Guard from October 2001 until December 2006. He was medically discharged from the Coast Guard after he sustained a serious back injury during a rescue operation in September 2005. Applicant currently is rated as 50% disabled by the Veterans Administration (VA).

Following his discharge from the Coast Guard, Applicant was unemployed from January 2007 until July 2007. He received unemployment benefits during this period, and, as alleged in SOR subparagraph 1.g, the State is now attempting to recoup a portion of those benefits, apparently because Applicant was eventually awarded retroactive VA disability to the date of his military separation. Applicant has disputed the State's claim that he is not entitled to the benefits he received based upon his understanding of information provided to him by the VA. (AE 4)

Applicant has been married since July 2003. He has two children, ages 5 and 14. In 2005, Applicant spent approximately \$15,000 for an in vitro fertilization procedure to allow for the conception of his 5-year-old child. In 2010, he spent about \$3,000 to adopt his 14-year-old child who was conceived by his wife from a relationship she had with another man before Applicant and she met.

Applicant's wife was employed as an acute dialysis technician until she was laid off in August 2009. Her annual salary had been approximately \$78,000, but it began to decline in March 2009, after her work schedule was reduced by her employer. She was unsuccessful in obtaining replacement employment, and, therefore, she began attending college in pursuit of a nursing degree. She obtained an associate's degree in 2009, and she has two classes left before she receives her bachelor's degree. She is continuing to seek employment while she completes her studies, and she had two interviews scheduled shortly after the hearing in this case.

Applicant attended college under a VA rehabilitation program following his discharge from the Coast Guard. He will begin receiving benefits under the GI Bill Post-911 educational program in 2012. Included in those benefits will be a basic allowance for housing (BAH) payment of approximately \$1,300 per month. Applicant has worked at several jobs since he was discharged, including delivering auto parts during the day and

newspapers at night. His current net monthly salary is approximately \$3,600. He receives \$936 monthly as VA disability pay. His wife was drawing unemployment compensation, but she has used up all her entitlement. Applicant's credit reports disclose he paid all his debts "As agreed" before he was separated from the Coast Guard.

Applicant submitted proof that in 2007 he satisfied the collection account alleged in SOR subparagraph 1.a, which had been owed in the amount of \$310. He provided somewhat confusing testimony about the status of the two medical debts, owed in the amounts of \$107 and \$161, alleged in subparagraphs 1.b and 1.c. However, it appears his contention is those debts should have been paid by medical insurance he had, but instead are listed as delinquent because they were miscoded by the providers.

Applicant claims he satisfied the debt alleged in SOR subparagraph 1.d, owed in the amount of \$1,937, and he submitted verification that a lawsuit filed in an effort to collect that debt was voluntarily dismissed by the creditor. However, there is no record evidence why the creditor chose to dismiss the lawsuit, nor is there evidence that the debt has actually been paid. Applicant credibly explained that the debt alleged in SOR subparagraph 1.f arose from defective work performed by a lawn care service and that he has refused to pay for the charge.

The debt alleged in SOR subparagraph 1.e, past due in the amount of \$45,579, is based on Applicant's home mortgage. He notified the mortgage holder of his financial problems when his wife lost her employment, and he has continued to attempt to restructure the loan payments to an amount he can handle. On May 19, 2011, the mortgage holder offered a loan modification proposal to Applicant. (GE 2) On June 6, 2011, Applicant rejected the offer and submitted another loan modification request. Since that time, Applicant has provided the creditor with additional documentation and is awaiting a response. In the event he is unsuccessful in modifying the loan, Applicant plans on residing with family members.

## **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.

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>

---

## 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 accumulated a number of delinquent debts after he was separated from the Coast Guard and his wife lost her job. The largest delinquent debt arises from Applicant’s home mortgage and remains unresolved. Disqualifying Condition (DC) 19(a): *inability or unwillingness to satisfy debts* applies.

---

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

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

<sup>6</sup> ISCR Case No. 98-0761 (December 27, 1999) at 2.

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

<sup>8</sup> ISCR Case No. 93-1390 (January 27, 1995) at 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.

Applicant's credit reports disclose he paid all his debts "As agreed" before he was medically separated from the Coast Guard. His financial problems, including his ability to pay his home mortgage, became unmanageable when his wife lost her employment. They immediately notified the mortgage company of their financial distress and sought a loan modification. That process continues. Applicant has worked at whatever employment he could find to support his family, including delivering newspapers at night and auto parts during the day. His wife was unsuccessful in finding replacement employment and, therefore, decided to pursue a nursing degree to make herself more employable. Applicant is continuing his education and will soon be receiving about an additional \$1,300 a month in BAH payments. Mitigating Conditions MC 20(a): *the behavior . . . 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*; and 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. . .), and the individual acted responsibly under the circumstances* apply.

Applicant satisfied one of the alleged delinquent accounts several years ago. He may or may not have satisfied the account in which the creditor voluntarily dismissed a lawsuit. He continues in his effort to restructure his mortgage, and he has reasonable prospects of having sufficient income to resume making his mortgage payments once the creditor responds to his most recent submissions. Applicant is entitled to at least some degree of consideration under MC 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*. He provided plausible explanations for why he disputes the medical debts, unemployment compensation claim, and lawn service fee, and he is entitled to additional consideration under 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, most notably Applicant's Coast Guard service which resulted in him sustaining a disabling injury during a life-saving operation which is one of the primary causes for his financial problems, and his and his wife's efforts to increase their employability by pursuing higher educations, 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-g:	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

