



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



In the matter of:)	
)	
)	ISCR Case No. 11-00893
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina Marine, Esq., Department Counsel
For Applicant: *Pro se*

January 10, 2012

Decision

LAZZARO, Henry, Administrative Judge

Applicant has delinquent credit card debt, owed in the combined amount of \$48,961, on which he only recently made relatively nominal payments. His past history does not warrant a finding that he will continue to make an effort to resolve those debts. Applicant did not deliberately fail to disclose his delinquent debts in the security clearance application he submitted in May 2010. Clearance is denied.

On August 1, 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.¹ The SOR alleges security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). Applicant submitted a response to the SOR that was received by DOHA on August 16, 2011. He admitted all SOR allegations except that alleged in subparagraph 2.a, and he requested a hearing.

¹ 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.

The case was assigned to me on November 3, 2011. A notice of hearing was issued on November 9, 2011, scheduling the hearing for December 6, 2011. The hearing was conducted as scheduled. The government submitted six documents that were marked as Government Exhibits (GE) 1-6 and admitted into the record without objection. Applicant testified, called one witness to testify on his behalf, and submitted 15 documents that were marked as Applicant Exhibits (AE) 1-15 and admitted into the record without objection. The transcript was received on December 21, 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 51-year-old man who has been employed as a watch operator by a defense contractor since October 2003. He has been employed part time by a second defense contractor as a security guard since March 2009. Applicant served on active duty in the Navy from January 1982 until September 2003. He retired honorably as a petty officer first class. Applicant held a security clearance during most of his time in the Navy, including having access to sensitive compartmented information (SCI). There is no indication any adverse action was ever previously taken to revoke or downgrade his security clearance or SCI access.

Applicant has been married since December 1991. He has two children, ages 19 and 14, who both reside with Applicant and his wife. Applicant's wife is currently employed part time and earns about \$710 a month. At the time of the hearing, she was in the process of training for a full-time job at which she will earn about \$10 an hour. She plans on continuing to work the part-time job when she begins full-time employment.

Applicant submitted numerous character reference letters from people who know him through work, church, and other social settings. Those letters establish that Applicant has earned a reputation for being responsible, honest, reliable, trustworthy, loyal and hardworking. He is considered by his employer to be a valued employee.

Applicant's credit reports disclose four delinquent credit card accounts that have been charged off as bad debts or submitted for collection, owed in the combined amount of \$29,686.² A settlement agreement submitted on behalf of another credit card company discloses Applicant has entered into an agreement to repay a delinquent debt that was owed to that company in the amount of \$31,169.99, for the negotiated settlement price of \$19,675. Under the terms of that agreement, Applicant is to make \$150 monthly payments with the balance owed to accrue annual interest at the rate of 24% in the event he defaults on any payment.

Applicant submitted proof he has made two \$50 payments toward the \$13,581 debt alleged in SOR subparagraph 1.b. He submitted proof he has made two \$125 payments

² AE 1 establishes that SOR subparagraphs 1.a and 1.e are duplicate entries for the same account.

toward the \$8,781 alleged in subparagraph 1.d. He submitted proof he has made one \$150 payment on the \$3,716 debt alleged in subparagraph 1.e, and one \$150 payment toward the \$19,675 debt alleged in subparagraph 1.f.

Applicant claims the debt alleged in SOR subparagraph 1.c has been satisfied. In support of that claim, he submitted a document from the creditor stating the account had been closed. However, that document contains a different account number from the account that is listed in Applicant's credit reports as having been charged off as a bad debt. Further, the document does not indicate the account has been satisfied, but rather states that if there is a balance owed on the account he is to continue making payments on the account until it is paid in full.

Applicant initially attributed his financial problems to his wife losing her employment in 2009. However, she had only held that job for between nine and twelve months, and Applicant's accounts began falling into a delinquent status before she ever obtained that employment. Prior to that employment, Applicant's wife had not worked during their marriage.

Applicant also attributes the start of his financial problems to a miscalculation he made in his 2006 income tax returns that resulted in him entering into a repayment agreement with the Internal Revenue Service (IRS) in 2009. Under the repayment agreement Applicant had to make \$175 monthly payments to repay the \$2,900 underpayment of his 2006 income tax. Once again, Applicant's credit reports disclose his financial problems began as far back as 2007, predating by at least two years the repayment plan he entered into with the IRS.

Applicant testified he obtained financial counseling from someone through his church in November 2011, and that he is to continue to seek that person's assistance in resolving his financial problems. Applicant intends to continue making the payments to his delinquent creditors in the same amount as he has thus far made. Additionally, as soon as he repays a loan he obtained from his 401(k) account to pay for automobile repairs, Applicant plans on obtaining a loan of about \$11-13,000 to apply to his delinquent debts. Under either scenario, Applicant will not be able to satisfy his delinquent creditors for at least several years.

Applicant only listed one collection account in the security clearance application he submitted in May 2010. He credibly testified that he was under time constraints to submit the application, lacked the required information to submit additional entries, and continued receiving error messages when he tried to make entries without inputting all the required information. Further corroborating Applicant's assertions that he did not deliberately fail to disclose information about his delinquent accounts is the notation by the investigator who interviewed him in June 2010 that Applicant volunteered information about delinquent accounts before he was confronted with known information about those accounts.

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) and Guideline E (personal conduct), with their disqualifying and mitigating conditions, are 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

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.

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. . . . (AG 18)

Applicant's credit reports and the repayment agreement he entered into with a creditor disclose that he has accumulated delinquent credit card debt, owed in the combined amount of \$48,961, that has been charged off, submitted for collection, or that caused him to enter into a repayment agreement in lieu of the creditor filing a law suit. That delinquent debt dates back as far as 2007, and Applicant has only very recently begun to make any payment toward his delinquent debt. DC 19(a): *inability or unwillingness to satisfy debts*; and DC 19(c): *a history of not meeting financial obligations* apply.

Applicant attributed his delinquent debt to his wife's loss of employment and an error he made in computing his 2006 income tax returns. However, his financial problems began before either of those events could have caused an unexpected effect on his financial status. Accordingly, 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* does not apply.

Applicant submitted proof he has made a few relatively small payments toward all of his delinquent debts except one. While he claims the document he submitted for the debt alleged in SOR subparagraph 1.c establishes that debt has been fully satisfied, the account numbers contained in his credit reports and the contents of the document itself do not corroborate his claim. Applicant's financial problems are ongoing and the amount of delinquent debt he has accumulated will not be satisfied in the foreseeable future even if he continues to make the payments he has thus far made. Further, Applicant's failure to do anything to resolve his delinquent debt until very recently does not warrant a finding that he will continue to make payments such as he has recently made.

Accordingly, the following mitigating conditions 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*; and MC 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*. While Applicant has recently consulted with a financial counselor through his church there is insufficient evidence from which to conclude that his problems are currently under control. Thus, 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* does not apply. The remaining mitigating conditions have no applicability to the facts of this case.

Considering the length of time Applicant's debts have remained delinquent, his belated effort to begin to satisfy those debts, the amount of delinquent debt that remains outstanding, his apparent lack of the financial resources to resolve his delinquent debt in the foreseeable future, and his explanations for the debts becoming delinquent being events that occurred after his financial problems began, I conclude Applicant has failed to mitigate the financial considerations security concern.

Guideline E, Personal Conduct

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. (AG 15)

Applicant failed to disclose all his delinquent debts in the security clearance application he submitted in May 2010. His explanation for failing to list those debts is credible. Further, his action in volunteering information about his delinquent debts when he was questioned in June 2010 without being confronted with known information about the debt convincing establishes that he did not deliberately fail to disclose information about his financial affairs. No personal conduct disqualifying condition applies.

Considering all relevant and material facts and circumstances present in this case, including Applicant's effort in at least beginning to resolve his delinquent debts, the character reference letters he submitted, 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 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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-f:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For 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

