



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



In the matter of:)	
)	
)	ISCR Case No. 11-02519
)	
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’s financial problems resulted from the national economic downturn that caused his wife’s restaurant business to fail. He and she have resolved most of their delinquent debt and are making substantial payments toward their lone remaining delinquent account. Clearance is granted.

On August 4, 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 a security concern under Guideline F (financial considerations). Applicant’s response to the SOR was received by DOHA on September 7, 2011. He denied all SOR allegations except subparagraph 1.b, and he requested a hearing.

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

¹ 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 six documentary exhibits that were marked as Government Exhibits (GE) 1-6 and admitted into the record without objection. Applicant testified and submitted four documentary exhibits that were marked as Applicant Exhibits (AE) 1-4 and admitted into the record without objection. The transcript was received on December 21, 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 55-year-old man who has been employed as a supply clerk by a defense contractor since August 2009. He graduated from high school in September 1973, and he enlisted in the Navy in August 1977. Applicant served continuously on active duty in the Navy until he honorably retired as a petty officer first class in August 1997. Applicant was employed as a field inventory systems coordinator outside the defense industry from August 1997 until he was laid off due to a company downsizing in January 2009. He worked as a pass and ID clerk/supply clerk for a defense contractor from October 2008 until August 2009. Applicant has also been working a part-time job to supplement his income since 2008.

Applicant has been married since March 1982. His wife is an Australian citizen who has been granted permanent resident alien status in the United States. Applicant and his wife have two children, ages 29 and 24.

Applicant's wife, deciding to go into business for herself, opened a café in 2005. The business was financed by \$75,000 Applicant had accumulated in savings and a \$100,000 home equity loan. The income from the café was sufficient to pay expenses without Applicant's wife earning a profit. In 2007, she purchased a second more modern café with the intent to sell the first café. The purchase of the second café coincided with the national economic downturn, and, as a result, she not only was unable to sell the first café, but she also failed to earn enough income from the second café to cover operating expenses. Without Applicant's knowledge, his wife began using two credit cards to cover the operating expenses for the cafes. Still unable to make the cafes profitable, Applicant's wife closed them both in August 2009, and allowed the landlords to repossess all the equipment they contained. Neither landlord has pursued any other action against Applicant or his wife based on the early termination of the leases.

The credit card company listed in SOR subparagraph 1.a obtained a judgment in the amount of \$14,039 against Applicant in October 2008. Applicant made an initial payment of \$4,000 to satisfy the judgment and monthly payments thereafter. That judgment was fully satisfied as of January 2011. (AE 2)

Applicant began making \$500 monthly payments toward the \$24,000 delinquent debt listed in SOR subparagraph 1.b about eight months ago. As of December 5, 2011, the balance owed on that account had been reduced to \$21,510.74. (AE 3). The statement from the creditor listed in SOR subparagraph 1.b (AE 3) identifies it as a successor account

owner to the creditor listed in SOR subparagraph 1.c. Although not listed in the SOR, Applicant submitted verification that he is making in excess of the minimum payment due to the creditor from which he obtained the home equity loan to finance his wife's cafes.

Applicant's annual salary from his full-time employment is approximately \$37,500. His annual Navy retirement income is approximately \$15,600, and he annually earns about \$14,500 from his part-time employment. Applicant's wife is currently residing in Australia with her sister and working for a mining company earning \$47 an hour. They intend for her to continue that employment until they have satisfied their sole remaining delinquent credit card account. Applicant had approximately \$3,000 in his checking account at the time of the hearing. He estimated his wife had about \$5,000 in a savings account. Applicant's credit reports disclose he paid all his accounts "As agreed" before his wife's restaurant business began to fail.

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.² The Government has the burden of proving controverted facts.³ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁴ although the Government is required to present substantial evidence to meet its burden of proof.⁵ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁶ 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

² ISCR Case No. 96-0277 (July 11, 1997) at 2.

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

⁴ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 01-20700 (December 19, 2002) at 3 (citations omitted).

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

him.⁷ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁸

No one has a right to a security clearance⁹ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁰ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹¹

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 substantial amount of delinquent debt on two credit cards as a result of his wife’s failed restaurant business. One of those debts resulted in a judgment being entered against him. Disqualifying Condition (DC) 19(a): *inability or unwillingness to satisfy debts* applies.

Applicant’s credit reports disclosed he remained current on all his debts until his wife’s business began to fail. He fully satisfied the judgment that had been entered against him about eight months before the SOR in this case had been issued. Upon satisfaction of the judgment, Applicant began making \$500 monthly payments to satisfy the remaining delinquent credit card debt. As of the date of the hearing, he had reduced that debt by about \$2,500. He is working two jobs to earn the income needed to fully satisfy his remaining delinquent debt, and his wife has temporarily relocated to live with her sister where she can earn a substantial income to assist in liquidating their remaining delinquent 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*

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

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

⁹ *Egan*, 484 U.S. at 528, 531.

¹⁰ *Id.* at 531.

¹¹ *Egan*, Executive Order 10865, and the Directive.

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; and MC 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

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-c: | 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

