



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-02821
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Fahryn E. Hoffman, Esq., Department Counsel  
For Applicant: *Pro se*

02/28/2012

**Decision**

LAZZARO, Henry, Administrative Judge

Applicant's delinquent financial accounts were caused by an extended period of unemployment and two automobile accidents. He has acted responsibly is attempting to satisfy all his delinquent creditors. Clearance is granted.

On November 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.<sup>1</sup> The SOR alleges a security concern under Guideline F (financial considerations). Applicant submitted a response to the SOR, dated November 18, 2011, in which he requested a hearing. He admitted all SOR allegations except subparagraphs 1.c, 1.d, and 1.g.

The case was assigned to me on January 12, 2012. A notice of hearing was issued on January 31, 2012, scheduling the hearing for February 13, 2012.<sup>2</sup> The hearing was conducted as scheduled. The Government submitted five documentary exhibits that were

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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.

<sup>2</sup> Applicant waived the 15-day notice requirement on the record (Tr. 15).

marked as Government Exhibits (GE) 1-5 and admitted into the record without objection. Applicant testified, called one witness to testify on his behalf, and he submitted 13 documentary exhibits that were marked as Applicant Exhibits (AE) 1-13, and admitted into the record without objection. The record was held open to provide Applicant the opportunity to submit additional documents in support of his case. Four documents were timely received, marked as Applicant Exhibits (AE) 14-17, and admitted into the record without objection. Department Counsel's forwarding memorandum indicating she did not object to the documents submitted by Applicant was marked as Appellate Exhibit (App. Ex.) I and is included in the file. The transcript was received on February 22, 2012.

### **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 52-year-old man who has been employed in an information technology (IT) support position by a federal contractor since November 2010. Applicant was employed by a law firm as an IT manager and limousine driver from September 2000 until September 2007. Applicant followed one of the partners in that law firm to a different law firm where he was employed in the same capacity from September 2007 until September 2009. In September 2009, Applicant was laid off by the law firm and provided with two weeks severance pay. Applicant remained unemployed until he was hired by his current employer. Applicant's annual salary with the law firm was \$59,350. During his period of unemployment, he received weekly unemployment compensation in the amount of \$250. Applicant's wife works for the church they attend and she is paid about \$700 per month.

Applicant has been married since February 1986. He and his wife have one 25-year-old son who resides with them. The son provides about \$1,000 a month to assist in paying household expenses. Applicant began renting the house where he currently resides in February 1986. He purchased the house in December 1999.

Applicant was unable to continue making the mortgage payments on his residence when he became unemployed in September 2009. He immediately contacted his mortgage company, the creditor listed in SOR subparagraph 1.e, in an attempt to restructure the loan. The loan modification process is continuing. Applicant sought the assistance and has followed the advice of a realtor, the attorney by whom he had been employed, and his Congressman in an effort to restructure the loan. The attorney provided a detailed letter in which he explained his reasonable rationale for advising Applicant to not make any payment to the mortgage company until the loan is restructured (AE 13).

Applicant was involved in automobile accidents in 2006 and 2007 in which he was not at fault. The last of the minor lawsuits he filed from those accidents was settled in January 2012. The delinquent medical accounts alleged in SOR subparagraphs 1.a-d either arose from those accidents or Applicant mistakenly believed they arose from those accidents. Applicant has fully satisfied the account alleged in subparagraph 1.a. He is making payments toward the account alleged in subparagraph 1.b. He testified the accounts listed in subparagraphs 1.c and 1.d, owed in the combined amount of \$300, have

somehow been merged with the debt alleged in subparagraph 1.b for billing purposes, and that he will immediately pay them once they are segregated from the debt alleged in subparagraph 1.b.

The debt alleged in SOR subparagraph 1.f is based on a home equity loan Applicant obtained before he became unemployed. He has been attempting to restructure this loan since he became unemployed, and he began making \$75 monthly payments toward this debt in August 2011.

Applicant's credit reports all list that the named creditor alleged in SOR subparagraph 1.g was a mortgage company that was paid and closed in 2004. However, Applicant's credit report, dated September 24, 2010, also contains an entry indicating a collection account owed to this creditor. The last activity date on that account is January 2004, which is five months before Applicant's mortgage with that company was sold to his current mortgage company. Applicant credibly testified he only had one account with the company. The September 24, 2010 credit report also contains a notation that Applicant disputed this account.

Applicant's credit reports disclose that he paid all accounts, with the sole exception of the account alleged in subparagraph 1.g, "As Agreed" before he became unemployed in September 2009. The realtor and attorney Applicant consulted both submitted letters attesting to their efforts to assist Applicant in resolving the debt pertaining to his mortgage and that to their knowledge he was a financially secure and responsible individual before experiencing the extended period of unemployment. Applicant submitted a reasonable personal financial statement that indicates he is currently living within his financial means and that he will be able to resume making mortgage payments once his efforts to restructure his loan are completed.

## **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>3</sup> The Government has the burden of proving controverted facts.<sup>4</sup> The burden of

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<sup>3</sup> ISCR Case No. 96-0277 (July 11, 1997) at 2.

<sup>4</sup> ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, Item E3.1.14.

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

No one has a right to a security clearance<sup>10</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>11</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>12</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’s mortgage loan and home equity loan have been delinquent since he became unemployed in September 2009. He also has several medical bills that became delinquent after he was involved in automobile accidents in 2006 and 2007. Disqualifying Condition (DC) 19(a): *inability or unwillingness to satisfy debts* applies.

Applicant unexpectedly became unemployed in September 2009, and he remained unemployed until November 2010. His annual income decreased from \$59,350 to \$13,000 during that period. Applicant’s wife’ monthly income was and is only about \$700. Applicant immediately contacted his mortgage company and he sought the assistance of an attorney, a realtor, and a Congressman in an effort to restructure his loan. Those efforts are ongoing.

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<sup>5</sup> *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

<sup>6</sup> ISCR Case No. 01-20700 (December 19, 2002) at 3 (citations omitted).

<sup>7</sup> ISCR Case No. 98-0761 (December 27, 1999) at 2.

<sup>8</sup> ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, Item E3.1.15.

<sup>9</sup> ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, Item E3.1.15.

<sup>10</sup> *Egan*, 484 U.S. at 528, 531.

<sup>11</sup> *Id.* at 531.

<sup>12</sup> *Egan*, Executive Order 10865, and the Directive.

He followed the reasonable advice of the attorney in opting to not make any payment toward the mortgage debt while the restructuring efforts were ongoing. Applicant has also been attempting to restructure the debt owed on a home equity loan he acquired before becoming unemployed. That procedure is also still ongoing and Applicant has been making payments toward that debt since August 2011.

Applicant's medical expenses either arose from automobile accidents in which he was not at fault, or he reasonably believed they arose from those accidents. The last of the minor lawsuits he filed based on those accidents was settled in January 2012. Applicant has now satisfied one of the medical debts and he is making payments on a second debt. He credibly testified he will satisfy the remaining two debts, owed in the combined amount of \$300, when they are segregated from the debt on which he is making payments.

The origin of the debt alleged to be owed to Applicant's prior mortgage company is unclear. It is not listed in Applicant's most recent credit reports and his September 2010 credit report indicates the date of last activity on the account preceded the sale of his mortgage loan to his current mortgage company. Applicant credibly testified he only had one loan with the company. Further, his September 2010 credit reports discloses he disputed this account.

Applicant's credit reports and the letters from his attorney and realtor indicate he lived a financially secure and responsible lifestyle before he became unemployed in September 2009. His personal financial statement indicates he is currently living within his means and will be able to continue to do so when and if his mortgage is restructured.

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): *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*; 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. Applicant 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.

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Henry Lazzaro  
Administrative Judge

