



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



In the matter of:)	
)	
)	ISCR Case No. 11-03248
)	
Applicant for Security Clearance)	

Appearances

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

03/12/2012

Decision

LAZZARO, Henry, Administrative Judge

Applicant’s delinquent loans, secured by a first and second mortgage, were caused by his wife’s decision to quit her employment and move with their children to a different state. Applicant has retained the assistance of an attorney to represent him in the ongoing foreclosure action. His credit reports disclose that he has otherwise paid all accounts “As Agreed” throughout his lifetime. Clearance is granted.

The Defense Office of Hearings and Appeals (DOHA) issued an undated 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 submitted a response to the SOR that was received by DOHA on November 2, 2011, in which he admitted both SOR allegations and requested a hearing.

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 16, 2012. 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 five documentary exhibits that were marked as Government Exhibits (GE) 1-5 and admitted into the record without objection. Applicant testified and submitted a bound volume of documentary exhibits that was marked as Applicant Exhibit (AE) 1 and admitted into the record without objection. The transcript was received on February 28, 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 42-year-old man who has been employed as a senior engineer by a federal contractor since November 2003. He graduated from high school in 1987, and he enlisted in the United States Marine Corps in February 1988. Applicant served continuously on active duty until he was honorably discharged in February 1993. Applicant attended college using GI Bill benefits, and he obtained a bachelor of science degree in electrical engineering, a master of science degree in electrical engineering, and a master of arts degree in business administration. Applicant has been continuously employed as an engineer since he completed his undergraduate studies in 1997. Applicant possessed a security clearance while in the Marine Corps and during a three-year period of employment from 1997 until 2000. No prior action has ever been instituted to revoke or downgrade his clearance for adverse reasons.

Applicant has been married since January 2000. He and his wife have two children, ages nine and five. Applicant's wife was employed full time in a medical office earning \$14 an hour until she abruptly quit that job in August 2009, and informed Applicant she was going to leave him and move to another state. She actually separated from him and took their two children to another state in November 2009. Applicant assisted her in relocating, and he incurred about \$3,500 in moving expenses on her behalf. Applicant provided her \$1,200 for a security deposit she needed for the apartment she was renting and an additional \$1,200 for the first month's rent. Applicant began providing her monthly child support in the amount of \$1,500 on December 1, 2009.

With the loss of his wife's income, the expenses he incurred moving her, and the child support obligation that began in December 2009, Applicant was no longer able to make the payments on his home mortgage loan or on a second loan secured by a home mortgage. Applicant stopped making those payments in October 2009, and the mortgage company began foreclosure proceedings on February 1, 2010. Applicant retained the services of an attorney and filed a response to the foreclosure action on March 2, 2010. The foreclosure proceedings are continuing, and, on February 7, 2012, Applicant's attorney filed a Motion to Compel Mediation.

Applicant's credit reports disclose that all of his accounts, other than the two loans secured by the mortgages, have been paid "As Agreed." There is no notation that any other account has ever been delinquent. Applicant's gross income in 2011 was \$89,318.51. He electronically filed his 2011 federal income tax return and he is due a refund in the amount of \$4,314. Applicant submitted bank statements that disclose balances of \$1,420.36 in a

checking account, and \$1,012.04 in a savings account. A separate bank statement discloses a balance of \$1,846.73 in a savings account in a credit union as of February 13, 2012. Applicant had \$101,814.69 invested in a savings plan through his employer as of December 31, 2011. He had an additional \$34,674 invested in an individual retirement account as of December 31, 2011.

Applicant's wife moved back in with Applicant in May 2010. He incurred about \$3,500 in expenses in moving her back to his residence. She has not worked since she moved back home. She attended school for a period of time which caused Applicant to incur childcare expenses of about \$500 per month. She has now quit school and Applicant intends to terminate the childcare. Applicant is not certain if his marriage is going to survive and is attempting to prepare for the additional expenses he will incur if it becomes necessary to once again relocate his wife and children.

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

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.

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.

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’s home mortgage loan and a second loan secured by a home mortgage became delinquent when his wife quit her job and moved with their children to another state. Those loans remain delinquent and no payment has been made toward either debt. Disqualifying Condition (DC) 19(a): *inability or unwillingness to satisfy debts* applies.

Applicant’s financial problems were solely caused by his wife’s unilateral decision to quit her job and move with their children to a different state. Applicant incurred about \$6,000 in expenses in moving his family, and monthly child support payments of \$1,500 thereafter. Although his wife and children returned to the family residence in May 2010, she has not resumed working and, instead, Applicant incurred child care expenses while she attended school.

Applicant’s credit reports disclose he lived a financially secure and stable lifestyle until his wife quit her job and relocated. Every entry in his credit reports, with the exception of the two loans secured by mortgages, is noted as having been paid “As Agreed.” Applicant immediately retained the services of an attorney when the foreclosure process began, and that process continues. Applicant’s attorney has very recently sought forced mediation which may or may not resolve the delinquencies. Applicant has reasonable savings which should allow him to satisfy his mortgage debt if the mediation is unsuccessful.

The following Mitigating Conditions (MC) apply: 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*; MC 20(b): *the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., . . . divorce or separation), and the individual acted responsibly under the circumstances*: MC

⁹ *Egan*, 484 U.S. at 528, 531.

¹⁰ *Id.* at 531.

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

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 . . . 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. 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 & b: 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

