



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-06213
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

12/06/2012

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**Decision**

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LAZZARO, Henry, Administrative Judge

Applicant's Chapter 7 bankruptcy petition was dismissed because he failed to appear for a scheduled court date. He has over \$20,000 in delinquent debt on which he has not made any payment. He failed to mitigate the security concern that arises from his outstanding delinquent debts. Clearance is denied.

On May 11, 2012, 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). On September 26, 2011, Applicant submitted an undated response to the SOR in which he admitted all SOR allegations, except those alleged in subparagraphs 1.h, 1.i, and 1.l. Applicant requested a decision based on the written record without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on September

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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 adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

14, 2012, that was mailed to Applicant on September 19, 2012. Applicant was informed he had 30 days from receipt of the FORM to submit his objections to any information contained in the FORM or to submit any additional information he wished to be considered. Applicant acknowledged receipt of the FORM on September 28, 2012, but did not submit a response to the FORM or object to anything contained in the FORM within the time allowed him. The case was assigned to me on November 29, 2012.

### **Findings of Fact**

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 52 years old and has been employed as a truck driver by a number of different companies since at least November 2000. His only period of unemployment was after he was fired from a job in January 2010 for violating a company policy.<sup>2</sup> He remained unemployed until June 2010. Applicant was also fired from a job in January 2007, but he was able to almost immediately find replacement employment.

Applicant obtained a General Educational Development (GED) certificate in 1976. He married in January 2003, and that marriage ended by divorce in June 2006. He has no continuing financial obligation to his ex-wife. Applicant did not indicate in anything he submitted that he has any children or other dependents.

Applicant filed for Chapter 7 bankruptcy protection in September 2009. The petition was dismissed in December 2009 due to Applicant's failure to appear for a scheduled court date. He explained that his failure to appear was because he was on the road driving and there had been a lack of coordination with his company's dispatcher to arrange for him to be able to appear. There is no indication in the record that he has done anything to reinstate the dismissed petition or refile for bankruptcy protection.

Applicant's credit reports disclose 11 delinquent accounts, owed in the combined amount of \$20,535,<sup>3</sup> that have either been submitted for collection or charged off as bad debts. In his response to the SOR, Applicant denied three of the alleged debts claiming he either did not recognize them or thought they might belong to his ex-wife. He did not submit any evidence in support of those claims. Applicant has not made any payment on any of the alleged delinquent debts. Applicant's delinquencies date as far back as 2007.

Applicant attributes his financial problems to his divorce and unemployment. He did not explain how the end of a relatively short marriage in which there were no children born and from which he has no continuing financial obligation to his ex-wife impacted his ability to remain current on his debts. His period of unemployment certainly affected his ability to

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<sup>2</sup> Applicant listed a two-year period of unemployment in the security clearance application he submitted. However, when he was questioned in January 2011, Applicant stated this entry was in error and his only period of unemployment was from January 2010 until June 2010.

<sup>3</sup> The SOR alleges the debt identified in subparagraph 1.I is owed in the amount of \$3,624. Applicant's credit reports list the amount owed as \$3,924.

pay his debts. However, some of his delinquent debts preceded that period of unemployment, and he has not made any effort to pay any of his debts despite having been employed since June 2010.

Applicant's uncle, a retired Army chaplain, wrote a letter on Applicant's behalf in which he supports Applicant's application for a security clearance. He believes Applicant is an outstanding man, possessed of high values and principles, who would never pose a risk to national security.

## **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), 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>4</sup> The Government has the burden of proving controverted facts.<sup>5</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence,<sup>6</sup> although the Government is required to present substantial evidence to meet its burden of proof.<sup>7</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>8</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>9</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>10</sup>

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<sup>4</sup> ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

<sup>5</sup> ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

<sup>6</sup> *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

<sup>7</sup> ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

<sup>8</sup> ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

<sup>9</sup> ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

<sup>10</sup> ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

No one has a right to a security clearance<sup>11</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>12</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>13</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 filed for Chapter 7 bankruptcy protection in September 2009, but allowed that petition to be dismissed when he failed to appear for a scheduled court date. He has over \$20,000 in delinquent debt that has either been submitted for collection or charged off as bad debt. He has not satisfied any of his delinquent debts. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19(c): *a history of not meeting financial obligations* apply.

In part, Applicant attributes his financial problems to his divorce. His marriage ended after three and one-half years, and there is no evidence to indicate any children were born of that marriage. Applicant does not have any continuing financial obligation to his ex-wife. There is no evidence he has any dependents. He did not explain how the end of a relatively short marriage in which there were no children born and from which he has no continuing financial obligation to his ex-wife impacted his ability to remain current on his debts. Further, that marriage ended over six years ago and Applicant has not done anything other than file a bankruptcy petition, which he allowed to be dismissed to resolve any of his delinquent debts.

Applicant also partly attributes his delinquent debts to his six-month period of unemployment. However, while that period of unemployment effected Applicant’s ability to pay his debts at that time, almost two and one-half years have passed since he was unemployed. Further, some of his delinquent debts preceded that period of unemployment. Applicant has not made any payment on any of his delinquent debts since he regained full-time employment, and it cannot be said he has acted responsibly in regard to his delinquent debt. I have considered all mitigating considerations and conclude that none apply.

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<sup>11</sup> *Egan*, 484 U.S. at 528, 531.

<sup>12</sup> *Id.* at 531.

<sup>13</sup> *Egan*, Executive Order 10865, and the Directive.

Considering all relevant and material facts and circumstances present in this case, 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
Subparagraphs 1.a-l:	Against 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.

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Henry Lazzaro  
Administrative Judge

