



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-06744
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Fahryn E. Hoffman, Esq., Department Counsel	
For Applicant:	Personal Representative

03/12/2012

**Decision**

LAZZARO, Henry, Administrative Judge

Applicant's delinquent financial accounts were largely caused by the misplaced trust he placed in his mother to pay expenses he incurred on her behalf and to make payments toward his personal expenses with funds he provided her. He has acted responsibly and has now resolved most of his delinquent debt. Clearance is granted.

On November 3, 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 25, 2011, in which he requested a hearing. He denied all SOR allegations except subparagraph 1.a.

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 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.

marked as Government Exhibits (GE) 1-5 and admitted into the record without objection. Applicant testified and submitted 3 documentary exhibits that were marked as Applicant Exhibits (AE) 1-3, 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. Nine documents were timely received, marked as AE 4-12, 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 23, 2012.

### **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 24-year-old man who has been employed as a production technician by a defense contractor since February 2011. His supervisor submitted a letter of recommendation for Applicant in which he noted that Applicant has proven himself to be a reliable, dependable, and trustworthy employee.

Applicant graduated from high school in May 2006. He worked as a cook at two different restaurants from September 2005 until September 2006, and as a retail store manager from December 2006 until June 2010. Applicant was unemployed from September 2006 until December 2006, and again from June 2010 until February 2011.

Applicant was married in August 2009. He and his wife separated in June 2010. They have a two-year-old child. Applicant currently resides with his father and his two-year-old child. Applicant's wife lives and works in another city, and he and she alternate traveling to the other's residence to spend time together. They do not share their finances, and Applicant solely supports his daughter.

Applicant's parents are divorced and Applicant previously resided with his mother and sister. The delinquent debt alleged in SOR subparagraph 1.b arose from a cable television bill for Applicant's mother's residence. Applicant was the only person home when the cable service was installed. He signed for the service, and it was then placed solely in his name. His mother thereafter failed to make payments for the service. Applicant is now making payments to satisfy this debt (AE 8).

The debt alleged in SOR subparagraph 1.d is for cellular telephone service that Applicant acquired for himself, his mother, and his sister, with an understanding that they would reimburse him for their use of the phones. His mother and sister used the phones excessively, causing the bill to exceed \$1,000, and they then failed to reimburse him for their charges. Applicant paid that debt, and his mother and sister continued to use their phones excessively without reimbursing him for their charges which, created the delinquent account listed in subparagraph 1.d. Applicant has now fully satisfied this debt (AE 9).

The debt alleged in SOR subparagraph 1.a is a delinquent credit card debt. Without Applicant's knowledge, his mother used the credit card to make payments on her home

mortgage. She only partially repaid him for her charges. Applicant negotiated a reduced settlement on this debt which is now satisfied (AE 6).

The debt alleged in SOR subparagraph 1.c is the deficiency owed on a repossessed automobile. Applicant gave his mother the money to make payments on the car loan which she instead used for other purposes. Applicant testified that he disputes the amount owed on this debt and he intends to hire an attorney to dispute the debt. The debt remains unsatisfied, but, based upon Applicant's responsible resolution of his other debts, will likely be resolved in the not too distant future.

The debt alleged in SOR subparagraph 1.g is a personal loan Applicant obtained from his step-brother to pay legal fees when he was contemplating divorcing his wife. The money was paid to an attorney who refused to refund any portion of it when Applicant decided not to pursue the divorce. Applicant credibly testified that there was no agreement between him and his step-brother that the money had to be repaid, and, therefore, the debt was never delinquent. Applicant has fully repaid this debt (AE 7).

The two debts alleged in SOR subparagraphs 1.e and 1.f, owed in the combined amount of \$90, arose from unidentified medical providers. In response to financial interrogatories propounded to him by DOHA, Applicant submitted proof that he had satisfied many other delinquent debts, including many delinquent medical debts, that had previously been listed as delinquent in his credit reports (GE 5). He credibly testified he has been unable to satisfy these two minor debts because he has been unable to ascertain to whom these debts are owed.

Applicant owes student loans in the amount of \$3,669.83 that were in a deferred payment status until October 2011. The monthly payment due on those loans is \$50. Applicant submitted proof that he has been prepaying the loans by making monthly payments in amounts ranging from \$100 to \$110. As a result, he is not required to make another payment until August 2012. However, he submitted a detailed and realistic monthly budget that includes \$100 monthly payments toward his student loans.

Applicant's father works for the Government and possesses a top secret security clearance with sensitive compartmented information (SCI) access. He has earned a master's degree. Applicant's father has worked with Applicant in resolving his debts, and he has provided Applicant with financial counseling and advice.

## **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>2</sup> The Government has the burden of proving controverted facts.<sup>3</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence,<sup>4</sup> although the Government is required to present substantial evidence to meet its burden of proof.<sup>5</sup> “Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.”<sup>6</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>7</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>8</sup>

No one has a right to a security clearance<sup>9</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>10</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>11</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 acquired a number of debts that became delinquent, largely due to trust he misplaced in his mother and her action in misusing his credit card and money he gave her to make payments on his behalf. Disqualifying Conditions (DC) 19(a): *inability or*

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

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

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

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

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

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

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

<sup>9</sup> *Egan*, 484 U.S. at 528, 531.

<sup>10</sup> *Id.* at 531.

<sup>11</sup> *Egan*, Executive Order 10865, and the Directive.

*unwillingness to satisfy debts: and DC 19(c): a history of not meeting financial obligations apply.*

Applicant has fully satisfied most of his delinquent debts, including those he satisfied before issuance of the SOR, as verified by the information he provided in response to financial interrogatories propounded to him by DOHA. He is making payments toward another delinquent debt, and he credibly testified that he could not locate the unidentified medical creditors who are owed a combined \$90. Applicant has been prepaying his student loans, and he submitted a detailed and reasonable budget that indicates he will continue to make greater than required payments on those debts. He has not resolved the large debt owed as a result of a repossessed automobile, but, based on the manner in which he has dealt with his other delinquent debt, it is reasonable to conclude that debt will be resolved in some manner in the foreseeable future. Applicant has obtained counseling and advice from his father in resolving his delinquent accounts and assuming a financially responsible lifestyle.

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*; 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. 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

