



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



In the matter of:)	
)	
)	ISCR Case No. 11-09108
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: *Pro se*

01/31/2013

Decision

LAZZARO, Henry, Administrative Judge

Applicant’s financial problems were all the result of the severe economic downturn in the area in which he resides. A residence he owned has been foreclosed on and there is apparently no balance owed. He has satisfied all his other delinquent accounts. Clearance is granted.

On August 29, 2012, the Department of Defense 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 submitted a response, dated September 28, 2012, in which he admitted SOR allegations 1.a, 1.d and 1.e, denied allegations 1.c and 1.b, and requested a hearing.

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.

The case was assigned to me on December 20, 2012. A notice of hearing was issued on December 21, 2012, scheduling the hearing for January 8, 2013. The hearing was conducted as scheduled. The Government submitted seven documentary exhibits that were marked as Government Exhibits (GE) 1-7 and admitted into the record without objection. Applicant testified and submitted 14 documentary exhibits that were marked as Applicant Exhibits (AE) 1-14 and admitted into the record without objection. The record was held open to provide Applicant the opportunity to submit additional documentation in support of his case. Two documents were timely received, marked as AE 15 and AE 16, and admitted into the record without objection. Department Counsel's e-mails indicating she did not object to Applicant's post-hearing submissions were marked as Appellate Exhibits (App. Ex.) I and II, and are included in the record. The transcript was received on January 16, 2013.

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 38-year-old man who has been employed in various jobs by a defense contractor since May 2009. Applicant was self-employed as an architectural designer from June 1996 until February 2008. However, due to a severe decline in the economy in the region where Applicant lives and operated his business, he apparently had little to no income from July 2007 until he found employment in February 2008. That employer was forced to go out of business in February 2009, and Applicant remained unemployed until he began working for his current employer.

Applicant graduated from high school in June 1993. He attended college from September 1993 until June 1998 without receiving a degree. He has been married since January 2005, and he has two children, ages six and three, from this marriage.

Applicant resided in the same residence from his birth until January 2009. Documents Applicant provided (GE 5) indicate Applicant obtained a mortgage on the residence in September 2006 in the amount of \$136,000. It appears that Applicant purchased the family home from his parents shortly after he married. His parents continue to live with Applicant and his family. Applicant's mother suffers from Alzheimer's disease and is cared for by Applicant's father.

In 2007, while his business was still providing him a steady income, Applicant decided to sell the family home and build a new residence for his family. He placed the original family home on the market after it was appraised for \$170,000. However, almost immediately thereafter the housing market collapsed and he was unable to either rent or sell the original residence. The mortgage company even failed to approve several attempts he made at a short sale of the residence.

Applicant had already obtained a construction loan and began construction on the new residence. With his inability to sell the original residence, the loss of income from his business, and the following loss of the replacement employment he had obtained, Applicant was financially unable to continue making the mortgage payments on the original residence. Foreclosure proceedings resulted in the sale of that residence. Applicant submitted documentation from the mortgage company that reflects the current principal balance is \$0.00. (GE 5) He also submitted information from the Internal Revenue Service (IRS) indicating a 1099-A Acquisition or Abandonment of Secured Property was issued for tax year 2010, that reflects the mortgage owed on the property was \$132,375, and the fair market value of the property was \$72,622. (GE 6)

Due to his loss of income and expenses related to completing construction of the second residence, Applicant incurred a number of delinquent debts that he discussed during a personal subject interview conducted on May 17, 2011. He satisfied most of those debts prior to issuance of the SOR. However, the two judgments listed in SOR subparagraphs 1.b and 1.c remained outstanding when the SOR was issued. Those judgments are duplicates of the debts listed in subparagraphs 1.d and 1.e. Applicant has now satisfied both judgments. (AE 15 and AE 16)

Applicant's annual income is \$52,000. His wife is employed full time and her annual income is about \$32,000. They are current on all debts. Applicant's references include supervisors and a co-worker. They attest that Applicant is a valued employee who performs his duties in an above average manner. He is considered to be honorable, honest, trustworthy, and hard working.

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

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.

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 her.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’s residence was the subject of a foreclosure. Additionally, he had a number of debts become delinquent, including the two credit card debts listed in the SOR that resulted in judgments being entered against him. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and 19(c): *a history of not meeting financial obligations* apply.

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.

⁹ *Egan*, 484 U.S. at 528, 531.

¹⁰ *Id.* at 531.

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

Applicant was successfully self-employed until a severe economic downturn destroyed his business and resulted in an extended period of unemployment. He found replacement employment that ended after only a year because his employer was also forced to go out of business. Since regaining full-time employment, Applicant has resolved all his delinquent debts. The mortgage lender issued a document indicating there is no balance due on the mortgage and a 1099-A to the IRS. Applicant and his wife are both employed full-time and earning a substantial income. They are current all their living expenses and debts.

The following Mitigating Condition (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., loss of employment, a business downturn . . .), 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. 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-e:	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

