



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-00773
	)	
Applicant for Security Clearance	)	

**Appearances**

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

09/21/2012

**Decision**

LAZZARO, Henry, Administrative Judge

Applicant had an automobile repossessed and he lost his house through foreclosure. He has numerous unpaid delinquent debts that he lacks the financial resources to satisfy. Clearance is denied.

On April 13, 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). Applicant submitted a response to the SOR that was received by DOHA on May 9, 2012. He admitted all SOR allegations, and he requested a hearing.

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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.

The case was assigned to me on July 18, 2012. A notice of hearing was issued on August 6, 2012, scheduling the hearing for August 22, 2012.<sup>2</sup> The hearing was 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 nine documentary exhibits that were marked as Applicant Exhibits (AE) 1-9 and admitted into the record without objection. The transcript was received on September 7, 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 32-year-old man who has been employed by a defense contractor since August 2010. He previously worked with the same defense contractor through a temporary agency from September 2009 until August 2010. Applicant's current work assignment is as a range technician responsible for setting up test sites. Applicant was paid \$10 an hour when he worked through the temporary agency. He was hired at \$13 an hour by the defense contractor, and he received a pay increase to \$15 an hour about four months ago. Applicant's performance evaluations and letters of recommendation from supervisors and co-workers establish that he is a valued employee who is considered to be hard working, dependable, trustworthy, and dedicated to his family and community.

Applicant graduated from high school in June 1997. He was self-employed doing carpentry work from July 1999 until November 2006. He worked as a customer service representative in a retail store from April 2006 until November 2006. He was employed as a carpenter from November 2006 until he was laid off sometime in or about 2008. He worked with his brother doing whatever carpentry work they could find from May 2008 until September 2009.

Applicant was first married in December 2000. That marriage ended by divorce in September 2007. He has been remarried since August 2010. Applicant has one child and one step-child who both live with him.

Applicant lost his house through foreclosure in or about 2008. He had an automobile repossessed in 2007. His credit reports disclose 20 other delinquent accounts owing in the combined amount of almost \$8,000. His delinquent accounts date as far back as March 2005, when a cable television bill became delinquent in the amount of \$224. Applicant has not made any payment on any of his delinquent debts. Although not alleged in the SOR, Applicant still has not filed his federal income tax returns for the 2010 and 2011 tax years. He does not know if he owes the Government anything or if he has a refund due, and he could not provide any reason for not filing the returns.

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<sup>2</sup> Applicant waived any potential lack of compliance with the 15-day notice requirement on the record (Tr. 13-14).

Applicant attributes his delinquent accounts to the unemployment and underemployment he experienced beginning in or about 2008. He testified his net monthly pay is currently about \$900 every two weeks, and that he used to net about \$900 per week before he lost his full-time carpentry job. He currently lacks the financial resources to make any payment toward any account. Applicant testified he has consulted with an attorney about filing for bankruptcy and is in the process of saving money to accumulate the \$1,800 required before the attorney will file a petition. He presently has saved \$600 toward the attorney's fee and the court costs.

## 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 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

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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.

<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.

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 had a vehicle repossessed in 2007, and he lost his house through foreclosure in 2008. He has numerous delinquent accounts, owing in the combined amount of almost \$8,000, that date as far back as March 2005. He has not made any payment on any of those accounts, and he lacks the financial resources to make any payment toward them or to even seek bankruptcy protection. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts* and DC 19(c): *a history of not meeting financial obligations* apply.

Applicant attributes his financial problems to periods of unemployment and underemployment he experienced from sometime in or about 2008 until he acquired replacement full-time employment in September 2009. His financial problems have only been partially alleviated due to his current income being only about one-half of what he earned when he worked as a full-time carpenter. However, Applicant allowed several accounts to become delinquent when he was working full time and earning a net weekly income of about \$900, and did nothing to resolve those accounts while he maintained that full-time employment. He was single from September 2007 until August 2010, and he did nothing to resolve any of his accounts during that time period. Applicant has only recently decided to pursue bankruptcy protection, and, based upon the fact that he appears to be living paycheck to paycheck, it is uncertain how long it will take him to accumulate the needed funds to pursue a bankruptcy option.

Based on the above, Applicant is entitled to limited application of Mitigating Condition 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.*

Applicant’s financial problems are long-term, ongoing, and unlikely to be resolved in the foreseeable future. There is no evidence to suggest he has obtained any sort of financial counseling. Although not alleged in the SOR, his failure to file his most recent

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

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

federal income tax returns, not even knowing if he is due a refund, demonstrates a complete disregard of his financial responsibilities. Nothing in the record indicates Applicant will assume a financially responsible lifestyle in the foreseeable future. I have considered the following mitigating conditions and conclude they do not 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(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*. The remaining mitigating conditions have no applicability to the facts of this case.

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 failed to mitigate the financial considerations security concern. He has neither 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 allegation 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-v:	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

