



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



In the matter of:)	
)	
)	ISCR Case No. 12-04253
)	
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's most recent financial problems began when he unwisely purchased a second residence. He has only recently begun to take action to resolve his delinquent accounts, and, based upon the amount he is paying toward those debts, it will take many years before they are fully satisfied even if he maintains the repayment agreements he has entered into. Clearance is denied.

On June 8, 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.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 July 5, 2012, in which he requested a hearing and admitted all SOR allegations except subparagraph 1.e.

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 July 23, 2012. A notice of hearing was issued on August 6, 2012, scheduling the hearing for August 22, 2012.² 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 three 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. One group of documents was timely received, marked as AE 4, 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 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 49-year-old man who has been employed as a sensor operator by a defense contractor since April 2011.³ Applicant went through an initial period of training during which he was paid about \$32 an hour. Following training, he was deployed out of the country for a 60-day period during which he was paid \$700 per day. Other than for a few weeks of office work, Applicant has not been employed since his initial deployment because he does not have a security clearance. If he obtains a security clearance, his future employment with this federal contractor will consist of 60-day deployments during which he will be paid \$700 per day, followed by 60 days when he will return to the United States and not be paid.

Applicant enlisted in the Air Force in January 1981. He served continuously on active duty until his retirement in March 2003. He was a technical sergeant, paygrade E-6, at the time of his retirement. Applicant obtained a bachelor's degree in pressure aeronautics in March 2004.

Following his retirement from the Air Force, Applicant did not begin working again until he obtained part-time employment in a retail store in June 2003. He obtained full-time employment with a defense contractor in August 2003. Applicant maintained steady full-

² Applicant waived any potential lack of compliance with the 15-day notice requirement on the record (Tr. 12-13).

³ Applicant testified he began this employment in 2010, but the overall substance of his testimony indicates he actually began working for this defense contractor in 2011.

time employment with a series of defense contractors and as a civilian employee of the Air Force until January 2011. He was unemployed from January 2011 until April 2011.⁴

Applicant was first married in 1981. That marriage ended by divorce in 1992. Applicant testified he was married for a few months in 1994. In a statement he provided in August 1999 (GE 7), he stated he was married in October 1994, and divorced in June 1997. Applicant married a third time in September 1997, and that marriage ended by divorce in June 2005. Applicant has two children, ages 30 and 17. The younger child lives with Applicant's parents, and Applicant testified he voluntarily sends them money to provide for the child.

Applicant provided a statement to a special agent from the Defense Investigative Service on April 2, 1993 (GE 6), in which he discussed his delinquent accounts and insufficient funds checks that were at issue at that time (GE 6). He provided another statement to a Special Agent from the Defense Investigative Service on August 31, 1999 (GE 7), in which he discussed his delinquent accounts that were then at issue (GE 6).

Applicant purchased the house in which he currently resides in 2001. The purchase of that home was financed by a Veterans Administration (VA) real estate mortgage in the amount of \$135,660 (GE 4). He apparently refinanced that house in September 2005 with a VA mortgage in the amount of \$135,178 (GE 4). In 2005, he purchased a second home.⁵ The purchase price for the second home was approximately \$240,000, which Applicant financed through two mortgages in the amounts of \$196,000 and \$49,000, both of which were opened in December 2005 (GE 4). Applicant also opened a home equity line of credit in the amount of \$30,000 in December 2005, which, as of December 23, 2012, had a balance owing in the amount of \$29,359 (GE 4). Applicant's monthly mortgage payment on his first residence was \$1,100. The combined monthly payment for the two mortgages he opened to purchase the second residence was \$1,700. His annual income when he purchased the second home was approximately \$60,000.

Applicant moved into the second house he purchased and obtained a tenant for the first house who he charged monthly rent in the amount of his first mortgage payment. That tenant vacated the house after about eight months, and Applicant was unable to locate a replacement tenant. Applicant expended his income and savings in an effort to remain current on the multiple mortgages and equity loan he had taken out for both residences. He also found it necessary to use credit cards to pay for many of his other expenses. Applicant moved back into the first residence about two years ago, and allowed a foreclosure to occur on the second home.

⁴ Again, Applicant testified the unemployment began in 2010, but the overall substance of his testimony clearly discloses he was only unemployed for a few months, and this period of unemployment had to commence in 2011.

⁵ Applicant testified he purchased the home in 2008. However, his credit report (GE 4) discloses he opened the mortgages on this home in December 2005.

After the foreclosure, Applicant owed \$48,464.30 on the second loan he acquired on the foreclosed property. A lawsuit was filed in November 2009 to collect the balance owing on that loan (AE 2). While the record does not disclose the outcome of the lawsuit, the account was acquired by the creditor listed in SOR subparagraph 1.a. Applicant entered into a repayment agreement with the creditor under which he is to make an initial payment of \$500, followed by five monthly payments of either \$100 or \$50 (he claimed both in his response to interrogatories (GE 2)), and a final payment of \$19,100 (GE 2). Applicant made the initial payment on May 2, 2012; a second payment in the amount of \$50 on June 22, 2012 (AE 3); and a third payment in the amount of \$50 on August 30, 2012 (AE 4).

The accounts listed in SOR subparagraphs 1.b and 1.c are both delinquent credit card accounts that are now being handled by the same collection firm. Applicant entered into a repayment agreement with the collection firm under which he was required to make an initial payment of \$500 toward the debt listed in subparagraph 1.b. However, he has not made any payment toward this debt because he and the collection firm agreed he should satisfy the debt listed in subparagraph 1.c before he begins to make payments toward the debt listed in subparagraph 1.b.

Applicant's agreement on the debt listed in subparagraph 1.c is that he is to make an initial payment in the amount of \$1,224.86, with monthly payments of \$50 thereafter until the account is satisfied in full. He submitted a credit union statement disclosing a withdrawal of \$1,225 from an account that he indicates was used to purchase a prepaid credit card from which the initial payment was drawn (GE 2). He made \$50 payments to this creditor by teller checks on June 22, 2012, and August 30, 2012 (GE 2 & AE 4).

The account listed in SOR subparagraph 1.d is another credit card debt. Applicant's agreement with this creditor was to make an initial payment of \$500 followed by monthly payments of \$70.20 (GE 2). He made the initial payment on May 2, 2012, and the required subsequent payments on June 22, 2012, and August 30, 2012 (GE 2 & AE 4). Applicant paid the credit card collection account listed in subparagraph 1.e in full on or about June 25, 2012 (AE 1).

The account listed in SOR subparagraph 1.f arose from a repossessed automobile. Applicant testified the company offered to settle this account, which is owed in the amount of \$6,335, by him making three payments of \$1,500 (Tr. 48-49). He does not have the ability to make those payments, and he intends to attempt to work out some other settlement agreement (Tr. 49).

After repossession of the vehicle on which the account listed in subparagraph 1.f is based, Applicant purchased a truck for about \$20,000. That vehicle was repossessed and is the basis for the collection account listed in SOR subparagraph 1.g. Applicant has entered into a repayment plan with this creditor under which he made an initial payment of \$500 on May 2, 2012 (GE 2), and subsequent \$50 payments on June 22, 2012, and August 30, 2012 (GE 2 & AE 4).

Applicant was interviewed about his delinquent accounts on January 10, 2011, at which time he stated he intended to settle all his delinquent accounts in full as soon as the property that was under foreclosure sold so he would know how much he owed on that account (GE 2). As noted earlier, a lawsuit had been filed against Applicant in November 2009 seeking to collect on the second mortgage that was secured by that property. Applicant's credit report, dated December 23, 2010 (GE 4), indicates the creditor who held the first mortgage had already "reclaimed collateral to settle defaulted mortgage." Applicant described his financial status as "good" during that interview, and he stated he had about \$1,000 of discretionary income each month.

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.⁶ The Government has the burden of proving controverted facts.⁷ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁸ although the Government is required to present substantial evidence to meet its burden of proof.⁹ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."¹⁰ 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.¹¹ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹²

⁶ ISCR Case No. 96-0277 (July 11, 1997) at 2.

⁷ ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, Item E3.1.14.

⁸ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

⁹ ISCR Case No. 01-20700 (December 19, 2002) at 3 (citations omitted).

¹⁰ ISCR Case No. 98-0761 (December 27, 1999) at 2.

¹¹ ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, Item E3.1.15.

¹² 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 clearance¹³ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁴ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹⁵

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 two vehicles repossessed and a residence that was foreclosed on. He has a number of other accounts that have been delinquent for several years. He has a history, dating as far back as 1993, of allowing accounts to become and remain delinquent. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and 19(c): *a history of not meeting financial obligations* apply.

Applicant attributes his financial problems to the loss of a tenant and his inability to find a replacement tenant in a residence he intended to use as investment property. However, his total income at the time he purchased the second home was \$60,000, and he had to take out two mortgages to completely finance the second home. His decision to buy a second residence without the funds to make a down payment on that property or make monthly payments in the absence of a tenant was an unwise decision. He should have realized the extreme risk he was taking, and, thus, 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* does not apply.

Applicant’s financial problems are continuing, and, even if he continues to make the payments on the various repayment plans he has established, will not be settled within the foreseeable future. Further, as the statements he provided in 1993 and 1999 disclose, Applicant has a long history of financial irresponsibility. MC 20(a): *the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to*

¹³ *Egan*, 484 U.S. at 528, 531.

¹⁴ *Id.* at 531.

¹⁵ *Egan*, Executive Order 10865, and the Directive.

recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment does not apply.

Applicant stated in December 2010 that he would resolve his delinquent accounts when he learned what he might owe on his mortgage accounts due to the foreclosure. However, a lawsuit had already been filed against him for the amount owed on the second mortgage and the collateral had been seized to satisfy the first mortgage. Applicant was employed full time when he said he would satisfy his delinquent accounts. He also stated he had about \$1,000 each month in discretionary income that he could have applied to his delinquent debts. Despite what he said in December 2010, Applicant did not begin to make payments on any of his delinquent accounts until May 2012. He submitted proof he made the initial payment to which he agreed, and one other payment on time and in accordance with the agreements. However, there is no evidence he made the payments required of him in July 2012, and he did not make the payments that were required in August 2012, until after the hearing of this case in which he was questioned about the agreed upon repayment plans. The totality of the evidence in this case does not provide a basis from which it can be concluded with any degree of confidence that Applicant will continue to make payments to his delinquent creditors.

I have considered the following mitigating conditions and conclude they do not apply: 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*; MC 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*; and MC 20(e): *the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.*

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. Applicant 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 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-h:	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.

Henry Lazzaro
Administrative Judge