



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



In the matter of:)	
)	
)	ISCR Case No. 07-06719
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel
For Applicant: *Pro Se*

December 30, 2008

Decision

LAZZARO, Henry, Administrative Judge

Applicant mitigated the security concern that arose from the delinquent accounts listed in his credit bureau reports.

On June 19, 2008, 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 the DOHA on July 28, 2008, denied all SOR allegations and requested a decision based on the written record without a hearing. On August 29, 2008, Department Counsel, pursuant to Paragraph E3.1.7 of the Additional Procedural Guidance at Enclosure 3 of DoD Directive 5220.6, requested a hearing. Appellate Exhibit (App. Ex.) I

¹ This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive), and revised adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

The case was assigned to me on September 17, 2008. A notice of hearing was issued on October 6, 2008, scheduling the hearing for October 22, 2008. The hearing was conducted as scheduled. The government submitted six documentary exhibits that were marked as Government Exhibits (GE) 1-6 and admitted into the record without objection. Applicant testified but did not submit any documentary exhibits. The record was held open to provide Applicant the opportunity to submit documentation in support of his case. Nine documents were timely received, marked as Applicant Exhibits (AE) 1-9 and admitted into the record without objection. Department Counsel's forwarding memorandum was marked as App. Ex. II and is included in the file. The transcript was received on November 6, 2008.

Findings of Fact

After a thorough review of the pleadings, testimony and exhibits, I make the following findings of fact:

Applicant is 48 years old. He graduated from high school in 1979 and has been employed as a machine repairman by a defense contractor since 1981. He was laid off by this defense contractor from June 2003 to December 2004, during which time he supported himself from his savings. He has never held a security clearance.

Applicant was married in November 1981. The marriage ended by divorce in either March 1998 or March 1999. He has two daughters from the marriage, ages 20 and 26. Until recently, the younger daughter resided with him and was primarily supported by him.

The SOR lists 16 accounts that have either been charged off as bad debts or submitted for collection. The debt listed in SOR subparagraph 1.a is a medical account owing in the amount of \$150 with a listed date of last activity of June 2006. (GE 5) Applicant does not recognize this account but acknowledges it may be a charge for medical care received by his daughter that should have been paid by his ex-wife but was not. (Tr. pp. 37-39) He credibly testified he will pay this debt if he gets a bill from the creditor and his ex-wife doesn't pay it. (Tr. p. 40)

The last activity on the debts listed in SOR subparagraphs 1.b through 1.f and 1.h through 1.k occurred between December 2000 and November 2001. The last activity for the debts listed in SOR subparagraphs 1.g, 1.l and 1.m occurred in December 2003, November 2002, and September 2004, respectively. A review of Applicant's credit reports indicates the last activity on the debts listed in SOR subparagraphs 1.g, 1.l and 1.m were dates when the accounts were purchased by a collection agency. Applicant denies he is responsible for any of these debts.

Applicant began dating a woman in or about April 2000, and allowed her to move into his home in or about November 2000. Almost immediately thereafter, she stole his vehicle and credit cards. He filed a police report on November 8, 2000, in which he identified the woman and reported the theft of the credit cards. (AE 5 & AE 6) Analysis of the dates of last activity on the accounts listed in SOR subparagraphs 1.b through 1.m and the date Applicant reported the theft of his credit cards strongly corroborates his assertion

that the woman used the stolen credit cards extensively in addition to possibly opening other accounts using his name.

Applicant initially made payment on some of the accounts until he realized the extent of her thievery. He also disputed some of the accounts with credit reporting services. When creditors began to aggressively pursue him, he contacted an attorney. He was advised to make no further payments on the accounts and not to respond or discuss the accounts with any creditor who might try to contact him. (Tr. pp. 42-43 and p. 64) Law suits have been filed against him by creditors on three occasions. On each occasion, his attorney has gotten the suits dismissed. (AE 4 and AE 7-9)

Applicant has not used a credit card since about the time his credit cards were stolen in 2000. Instead, he either pays cash or uses a debit card attached to his checking account. He earns approximately \$70,000 a year, lives within his means, and owns a house valued at about \$170,000, in which he has approximately \$110,000 in equity.

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. Additionally, each clearance decision must be a fair and impartial commonsense 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.² The government has the burden of proving controverted facts.³ The burden of 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

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

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

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

⁵ ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

⁶ ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

him.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 is likely jointly responsible with his ex-wife for the \$150 medical debt listed in SOR subparagraph 1.a. He credibly testified he will pay the debt when and if he receives a bill his ex-wife does not pay. His testimony, the information contained in his credit reports, the police report he filed, and the court records he submitted clearly establish the remaining debts resulted from the theft of his credit cards in or about November 2000. He currently lives within his income and has not relied upon revolving credit since his credit cards were stolen. No disqualifying condition applies.

The objective of the security-clearance process is the fair-minded, commonsense assessment of a person’s trustworthiness and fitness for access to classified information. Indeed, the “whole person” concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, including Applicant’s appearance and demeanor while testifying, the corroborating evidence he submitted, the factors listed in ¶ 6.3.1 through ¶6.3.6 of the Directive, and the lack of any disqualifying condition, I find Applicant has mitigated the

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

⁸ ISCR Case No. 93-1390 (January 27, 1995) at pp. 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.

financial considerations security concern. He 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 allegations 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

Subparagraph 1.a-m: 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

