



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



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| In the matter of: |) | |
| |) | |
| SSN: |) | ISCR Case No. 06-25465 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro Se*

January 23, 2008

Decision

LAZZARO, Henry, Administrative Judge:

Applicant has mitigated the security concern that arose as the result of his multiple Chapter 13 bankruptcy filings, the last of which occurred in 2003.

On July 18, 2007, 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, which is in essence the administrative complaint, alleges security concerns under Guideline F (financial considerations). Applicant submitted an answer to the SOR, dated September 5, 2007, in which he admitted all SOR allegations and provided various

¹ This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

explanations and clarifications to the allegations. Applicant requested a clearance decision based on the written record without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on October 9, 2007, that was mailed to Applicant on October 11, 2007, and informed him he had 30 days from receipt of the documents to submit his objections or information he wished to be considered. Applicant did not submit a response to the FORM or object to anything contained in the FORM within the time allowed him. The case was assigned to me on December 13, 2007.

Findings of Fact

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is a 66-year-old man who has been employed by a defence contractor since approximately 1985 with varying periods of unemployment during that time due to layoffs. The security clearance applications contained in the FORM indicate Applicant served in the Army from August 1961 until March 1970, and the Air Force from October 1970 until March 1982, although they indicate it was as an inactive reservist. However, Applicant stated in his answer to the SOR that he is a Viet Nam veteran and in a statement he provided he attributed his financial problems in 1984 to excessive debt he accumulated while in the military. Whether from active duty or as a reservist, Applicant retired from the Air Force in 1982.

Applicant has been married four times. The first marriage was from July 1960 until April 1967. The second marriage was from approximately October 1967 until October 1994. The third marriage was from February 1995 until June 2004. Applicant has been married to his current wife since August 2004. Applicant has six adult children.

Applicant filed for Chapter 13 bankruptcy protection in or about October 1984. His monthly net income at that time, including military retired pay, was \$1,621.93. His wife's monthly net income was \$430.00. Their total monthly living expenses were \$1,873.00. Applicant listed outstanding debts in the amount of \$4,521.04 in the bankruptcy petition. In a statement he provided in May 2000, Applicant attributed his 1984 financial problems to excessive debt due to over spending. Applicant successfully completed the plan and obtained a discharge in March 1987.

Applicant next filed for Chapter 13 bankruptcy protection in October 1989. His monthly net income at that time, including military retired pay, was \$2,500.00. His wife's monthly net income was \$842.00. Their total monthly living expenses were \$2,712.00. Applicant listed delinquent state and federal taxes in the total amount of \$9,317.00, mortgage payments in arrears in the amount of \$7,348.00, and unsecured debts in the amount of \$1,727.00 in this bankruptcy petition. In a statement he provided in May 2000, Applicant attributed his 1989 financial problems to being laid-off from work. The plan was dismissed because Applicant did not have funds to make payments under the plan.

Applicant again filed for Chapter 13 bankruptcy protection in February 1996. His monthly net income at that time, including military retired pay, was listed as \$1,285.00. Applicant, having listed his monthly retirement pay as \$635.00 in the 1984 petition and as \$780.00 in the 1989 petition, only claimed \$445.00 per month as retirement pay in the 1996 petition, likely because a portion of his retirement pay had been ordered paid to his ex-wife. Applicant's wife's monthly net income was listed as \$300.00. Their total income from employment was listed as \$36,000 in 1994 and only \$4,000 in 1995. Applicant also claimed as income of \$195 per week from unemployment but did not list anything for retired pay. Their total monthly living expenses were \$1,245.00. Applicant listed delinquent state and federal taxes in the total amount of \$43,628.00, secured claims in the amount of \$2,398.25, and unsecured debts in the amount of \$41,681.00, excluding \$30,000.00 that is included in the delinquent taxes noted above in this bankruptcy petition.

In the statement he provided in May 2000, Applicant attributed his 1996 financial problems to a number of factors, including his 1994 divorce and the resulting child support and alimony he was required to pay, being laid-off from work from January 1995 to January 1997, and past debts incurred during earlier lay-offs. Applicant successfully completed the plan on this bankruptcy and obtained a discharge in August 2000.

Applicant once more filed for Chapter 13 bankruptcy protection in or about November 2003. The pleadings for this bankruptcy are not included in the FORM. However, Applicant was interviewed in July 2006, at which time he stated his net monthly income, including retired pay, was \$3,400, and his net monthly expenses were \$2,346. His wife did not have any income. Applicant also provided a personal financial statement in March 2007, in which he listed his net monthly income as \$6,323 (the documents he provided in response to interrogatories in March 2007, indicate his net monthly income is actually about \$5,100), and his net monthly expenses as \$2,272. Again his wife is not listed as having any income. The significant increase in income, whether as he listed in his financial statement or as reflected in the documents he provided, is apparently due to Applicant receiving social security payments in the amount of \$1,538.00 beginning in January 2007.

Applicant listed unsecured claims in the amount of \$16,626.27, priority claims in the amount of \$2,635, and secured claims in the amount of \$20,545.09 in the 2003 bankruptcy. Amounts ranging from the current \$141 to as high as \$292 have been garnished from Applicant's pay every week since October 1, 2003, to make the payments required under the plan. During the July 2006 interview, Applicant attributed his need to file for bankruptcy protection in 2003 to a strike being called by his labor union in either late 2001 or early 2002, the resulting loss of income, and the divorce he was going through in 2002. Applicant estimated at that time that he would complete the scheduled payments under the plan in or about June 2007.

Applicant's credit reports, dated November 2005 and January 2007, indicate Applicant had two tax liens that were either released and/or paid in September 2000. Further, most, if not all, accounts listed in those credit reports were included in the 2003 bankruptcy.

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 (DC) and Mitigating Conditions (MC) 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 respective DC and MC, 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 evidence⁴, 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 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

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.

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.

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.

Applicant found it necessary to seek Chapter 13 bankruptcy protection on four occasions. The bankruptcy petitions filed in 1984, 1996 and 2003 were approved and repayment plans ordered. The petition filed in 1996 was dismissed because Applicant lacked income with which to make payments under any plan that could have been approved. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; DC 19©: *a history of not meeting financial obligations* apply.

Applicant candidly admitted that the 1984 bankruptcy resulted from he and his wife spending excessively while he was in the military. Applicant made all payments required under the plan that was ordered in this bankruptcy and obtained a discharge in March 1987.

Applicant attributed the 1989 bankruptcy to being laid off from work. Items 9 and 13 of the FORM substantiate that Applicant and his wife earned \$38,560 in 1988, and that his employment with a defense contractor was terminated on December 2, 1988. His verified answer to questions 2a, 2c and 2d in the bankruptcy petition he executed on September 30, 1989 (Item 9) indicate he was unemployed for most if not all of the time between December 1988 and September 1989. Applicant's debts listed in this bankruptcy consisted of delinquent state and federal taxes, \$1,727 of unsecured debt, and delinquent mortgage payments that appear to coincide with the period of his unemployment.

Applicant attributed his 1996 financial problems to a number of factors, including his 1994 divorce and the resulting child support and alimony he was required to pay, being laid-off from work from January 1995 to January 1997, and past debts incurred during earlier lay-offs. Again, Applicant's verified answers to questions posed to him in the bankruptcy petition substantiate his claim of unemployment with his income from employment falling from \$32,000 in 1994, to \$0.00 in 1995, and \$864 through the first two months of 1996. Applicant successfully completed the plan that was ordered in this bankruptcy and obtained a discharge in August 2000.

Applicant once again filed for bankruptcy protection in 2003, and again attributed his financial problems to the loss of income that resulted from a labor strike. The Summary of Claims listed on page 9 of Item 7 indicates that as of February 15, 2007, Applicant had paid \$35,566.85 in principal and interest under the plan toward the 26 claims totalling \$39,806.36 that had been filed. Page 6 of Item 7 discloses that \$141 per week was being garnished from his wages to make payments under the plan as of February 16, 2007.

Thus, it is reasonable to conclude that if Applicant has maintained his employment he has either successfully completed the plan as of this time or will do so in the very near future.

Applicant's repeated periods of unemployment, coupled with his divorces and the resulting child support and maintenance payments, and his legal action in seeking Chapter 13 bankruptcy protection and thereafter making all required payments under the plans entitle him to 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; and MC 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*

Department Counsel correctly points out in the FORM that a number of debts listed in Applicant's 1989 and 1996 bankruptcies became delinquent before the events which he claimed triggered his need to seek bankruptcy protection. And, while it is reasonable to assume it would take Applicant some period of time to regain financial stability after being unemployed, there is no record evidence to indicate he could not or should not have resolved some if not all of the delinquent debt, most specifically the state and federal tax liabilities, prior to having to file a subsequent bankruptcy.

However, whatever negative connotations may be drawn from Applicant's failure to address delinquent debts before those triggering events, is overwhelmingly outweighed by Applicant's current financial condition. He is now employed and receives both monthly military retirement pay and social security. The documents Applicant provided in Item 7 indicate that as of February 2007, his net monthly income is approximately \$5,100 and his net monthly expenses are \$2,272. \$2,715 of his net monthly income comes from retirement and social security payments that will continue even if he again experiences a period of unemployment. Thus, he now has the income to remain current on his expenses regardless of what happens to his employment. Or, to put it another way, Applicant for the first time since at least 1984 has found himself in a financially secure position. Accordingly, Applicant is entitled to application of 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.*

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, the factors listed in ¶¶ 6.3.1 through ¶¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, Applicant has mitigated the security concerns caused by the financial considerations that are present in this case. 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.

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:

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| Paragraph 1, Guideline F: | FOR APPLICANT |
| Subparagraphs 1.a-d: | For Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

HENRY LAZZARO
Administrative Judge