



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-05381
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nichole L. Noel, Esquire, Department Counsel  
For Applicant: Pro Se

January 31, 2008

---

**Decision**

---

LAZZARO, Henry, Administrative Judge:

Applicant failed to mitigate the security concerns that arise from his long-standing financial delinquencies and failure to disclose the same in a security clearance application he submitted in November 2006.

On July 24, 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.<sup>1</sup> The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). Applicant submitted an answer to the SOR, received by DOHA on August 28, 2007, in which he

---

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

admitted all Guideline F allegations and denied both Guideline E allegations. Applicant requested a clearance decision based on the written record without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on November 2, 2007, that was mailed to Applicant on November 5, 2007. Applicant was informed 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 January 28, 2008.

### **Findings of Fact**

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings and exhibits,<sup>2</sup> I make the following findings of fact:

Applicant is a 55-year-old man who has been employed by a defense contractor since April 1979, currently as a quality technician. He was married in June 1971, and that marriage ended in divorce in November 1983. He has been remarried since November 1988. Applicant has three adult children and three adult step-children. He has resided in the same residence since November 1988.

As alleged in the SOR, and admitted by Applicant, a judgment was entered against him in the amount of \$1,459 in July 2006, on an account that was charged off in October 2004. Applicant has failed to take any action to resolve this account. Also, as alleged in the SOR and admitted by Applicant, he has three accounts that have been submitted for collection, totalling \$10,659, and two additional accounts that have been charged off, totalling \$12,206. The collection and charge off accounts have been delinquent at least two years or more. Additionally, Applicant owned a timeshare that was foreclosed on in November 2004.

Applicant failed to disclose any of the delinquent accounts in an Electronic Questionnaire for Investigations Processing (e-QIP) he executed and submitted on or about November 29, 2006, in response to questions inquiring about debts that were then more than 90 days past due or had been more than 180 days past due in the preceding 7 years. Applicant's explanation for not disclosing the debts was that his wife took care of paying all bills and he was unaware he had any delinquent debts. Applicant stated in his response to the SOR that his delinquent indebtedness was due to his failure to live within his means. His only plan to pay off the indebtedness is from an inheritance he expects to receive when his father-in-law dies.

---

<sup>2</sup> The entire FORM consists of the SOR, Applicant's answer to the SOR, a security clearance application, a credit report, interrogatories that are unanswered except for a brief letter from Applicant attached thereto, and Department Counsel's written submission. Accordingly, the FORM reveals very little information about Applicant or the cause of his delinquent indebtedness.

## 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), and Guideline E (personal conduct) with their respective DC and MC, are 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 him.<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

---

<sup>3</sup> ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

<sup>4</sup> ISCR Case No. 97-0016 (December 31, 1997) at p. 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 p. 3 (citations omitted).

<sup>7</sup> ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

<sup>8</sup> ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

<sup>9</sup> ISCR Case No. 93-1390 (January 27, 1995) at pp. 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.

Applicant has six debts, totalling over \$24,000, that have been charged off, submitted for collection, or that have resulted in a judgment being entered against him. Those debts have been delinquent since July 2005 and earlier. Additionally, Applicant had a timeshare he owned foreclosed on in November 2004. He has made no payments on any of the debts and has no plan to resolved them other than to wait until his father-in-law dies with the expectation that he will inherit sufficient funds from the man to pay his delinquent creditors. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19(c): *a history of not meeting financial obligations* apply. I have considered all potential mitigating conditions under Guideline F and find none apply.

### Guideline E, Personal Conduct

Personal conduct is always a concern because conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any failure to cooperate with the security clearance process.

Applicant’s explanation for not listing the delinquent indebtedness is not credible. It is unbelievable he could be so ignorant of what is and has been occurring within his household that he would be unaware of a judgment being entered against him, a time share being foreclosed, or creditors undoubtedly making efforts to collect on long-standing delinquent accounts. Further, his knowledge of what has in fact been occurring with his finances is clearly demonstrated by his acknowledgment in his answer to the SOR that he has failed to live with his means. DC 16(a): *deliberate omission, concealment, or falsification of relevant facts from any personal security questionnaire, personal history statement, of similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or*

---

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

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

*trustworthiness, or award fiduciary responsibilities* applies. I have considered all mitigating conditions under Guideline E and find none apply.

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 based upon what little is known about Applicant, the factors listed in ¶ 6.3.1 through ¶6.3.6 of the Directive, and the applicable disqualifying conditions, Applicant has failed to mitigate the security concern caused by the financial considerations present in this case and his personal conduct. He has failed to overcome the case against him or satisfy his ultimate burden of persuasion. Guidelines F and E are decided against Applicant. It is not 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:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-h:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-b:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

---

HENRY LAZZARO  
Administrative Judge