



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



In the matter of:)	
)	
)	ISCR Case No. 07-06579
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

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

February 15, 2008

Decision

LAZZARO, Henry, Administrative Judge:

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

On September 28, 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) and Guideline E (personal conduct). Applicant submitted an answer to the SOR, signed on October 18, 2007, in which he denied all

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

allegations and requested a clearance decision based on the written record without a hearing.²

Department Counsel prepared a File of Relevant Material (FORM) on October 25, 2007, that was mailed to Applicant on October 30, 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 acknowledged receipt of the FORM on November 2, 2007, but 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.

Procedural Rulings

Motion to Amend SOR

Department Counsel submitted a document entitled Motion to Amend the Statement of Reasons that was provided to Applicant along with the FORM on October 30, 2007. The motion seeks to add the following allegation as subparagraph 2.c:

You falsified material facts on a Security Clearance Application, signed by you on September 7, 2006, when you answered “No” in response to the following question: **“Section 23 - Your Police Record - d. Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?”** By answering “No” to this question, you deliberately failed to disclose that on August 10, 1985, you were arrested and charged with Driving Under the Influence of Alcohol/Drugs.

Applicant failed to respond to the motion. Accordingly, the motion to amend is allowed and Applicant’s failure to admit or deny the added allegation will be considered as a denial of the allegation.

Findings of Fact

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

Applicant is 42 years old and, since August 2005, has been employed by a defense contractor since August 2005, as an engineering analyst. He was previously employed as a technician by a different employer from March 2005 to August 2005. Applicant served on active duty in the United States Navy from February 1984 until his retirement in March 2005. He attained and retired at the rank of chief (paygrade E-7). Applicant held a secret level security clearance for most of the time he served on active duty.

² Department Counsel alleged in the FORM that Applicant admitted both debts alleged in the SOR. In his SOR response, Applicant actually claimed all debts were paid while agreeing they were his debts and were once delinquent. As such, I interpret his response to those allegations to be denials.

Applicant graduated from high school in May 1989, and he obtained an Associate in Applied Science degree in June 2004. He was married in June 1992, and that marriage ended in divorce in October 1992. He has been remarried since February 1993.

Applicant's October 2006 credit report discloses a judgment was entered against him in or about October 2001, in the amount of \$12,219. In his response to interrogatories propounded to him, Applicant indicated the judgment was the result of 10 years of late fees that had been charged to a closed account and the judgment creditor was looking into the issue. He also indicated he was awaiting a response from the creditor before attempting to resolve the matter. In his response to the SOR, Applicant stated he was working on payment options with the creditor. Although the account does not appear in Applicant's September 2007 credit report, there is no record evidence to indicate he has taken any action to resolve or otherwise satisfy this account.

Applicant's October 2006 credit report also discloses an account that was placed for collection in or about August 2005. In his response to the interrogatories that were propounded to him, Applicant indicated this account was to be satisfied by his checking account being debited by the creditor in August 2007. He submitted a letter from the creditor wherein the creditor acknowledged that agreement and stated it would provide him a paid in full letter upon actual receipt of the funds. In his response to the SOR, Applicant stated this account was paid in full and proof of the same was submitted to DOHA. The FORM does not contain any actual proof of payment. Again, this account does not appear in Applicant's September 2007 credit report. There is no other record evidence to indicate Applicant has actually paid the account.

Applicant failed to disclose either of the delinquent accounts in an Electronic Questionnaire for Investigations Processing (e-QIP) he executed and submitted on or about September 7, 2006, in response to questions inquiring about debts that had resulted in unpaid judgments or had been more than 180 days past due in the preceding 7 years. Applicant's only explanation for not disclosing the debts, contained in his response to the SOR, is that he was unaware of their existence. Applicant also failed to disclose in the e-QIP that he was arrested and charged with Driving Under the Influence of Alcohol/Drugs (DUI) in August 1985, in response to a question asking if had ever been charged with any offense related to alcohol or drugs. Because Applicant failed to respond to the FORM or Motion to Amend the Statement of Reasons there is no record evidence to explain this omission.

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.³ The government has the burden of proving controverted facts.⁴ The burden of proof in a security clearance case is something less than a preponderance of evidence⁵, although the government is required to present substantial evidence to meet its burden of proof.⁶ “Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.”⁷ 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.⁸ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁹

No one has a right to a security clearance¹⁰ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹¹ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹²

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.

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

⁴ ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

⁵ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

⁶ ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

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

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

⁹ ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

¹⁰ *Egan*, 484 U.S. at 528, 531.

¹¹ *Id* at 531.

¹² *Egan*, Executive Order 10865, and the Directive.

Applicant has two severely delinquent debts, totalling over \$15,000. One has been submitted for collection and the other resulted in a judgment being entered against Applicant. The judgment has been outstanding for over 6 years and the account that was submitted for collection has been delinquent for more than two years. While Applicant claims to have satisfied the collection account and indicated he was attempting to resolve the judgment, he failed to submit any proof in support of those claims. Although neither account appears in the most recent credit report that is contained in the FORM, there is no record evidence to indicate their deletion is the result of any action on the part of Applicant. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19©: *a history of not meeting financial obligations* apply.

Applicant failed to provide any meaningful explanation in his answers to the interrogatories that were propounded to him or in his response to the SOR to explain why these debts became delinquent, what actions he has taken to resolve them, or why they were not satisfied years ago. He also failed to provide any documentation in support of the limited information he did provide, namely that the judgment account is the result of late fees charged to a closed account and the collection account was satisfied by debiting his checking account. I have considered all potential mitigating conditions under Guideline F and, based on the limited information available to me contained in the FORM, I 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 failed to disclose the two delinquent accounts and his 1985 DUI charge in the e-QIP he submitted in September 2006. Other than the unsupported and unexplained assertion contained in his response to the SOR that he was unaware of the delinquent accounts, there is no record evidence to explain these omissions. 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 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 his 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.

I have considered all relevant and material facts and circumstances present in this case, including 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. I conclude 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 & b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-c:	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