

DATE: December 13, 2007

In re:)
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 -----) ISCR Case No. 06-26415
 SSN: -----)
)
 Applicant for Security Clearance)
)
)

**DECISION OF ADMINISTRATIVE JUDGE
MICHAEL H. LEONARD**

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of financial problems. He disclosed some, but not all, of his financial problems on his security-clearance application because he was genuinely unaware of the extent of his financial problems. Although he and his spouse are making some progress in resolving the financial problems, it is likely that the financial problems will continue or recur because Applicant has little if any involvement in managing the family finances. His continued hands-off approach to his finances indicates a lack of good judgment. Applicant did not present sufficient evidence to explain, extenuate, or mitigate the financial considerations security concern. Clearance is denied.

STATEMENT OF THE CASE

This is a security clearance case. Applicant contests the Defense Department's intent to deny or revoke his eligibility for a security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant on May 25, 2007. The SOR is equivalent to an administrative complaint and it details the factual basis for the action. The issues in this case fall under Guideline F for financial considerations based on a history of financial problems and Guideline E for personal conduct based on falsification of a security-clearance application.

In addition to the Directive, this case is brought under the revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Revised Guidelines) approved by the President on December 29, 2005. The Revised Guidelines were then modified by the Defense Department, effective September 1, 2006. They supersede or replace the guidelines published in Enclosure 2 to the Directive. They apply to all adjudications and other determinations where an SOR has been issued on September 1, 2006, or thereafter.² The Directive is pending revision or amendment. The Revised Guidelines apply here because the SOR is dated after the effective date.

Applicant replied to the SOR on July 23, 2007, and requested a hearing. The hearing took place on November 14, 2007, and the transcript was received on November 26, 2007.

FINDINGS OF FACT

Under Guideline F, the SOR alleges seven delinquent debts ranging from \$644 to \$10,271 for about \$30,336 in total, which Applicant admits. He also admits that a real estate mortgage was foreclosed upon in 2001. He denies the allegations that he made deliberately false statements when answering two questions about his financial delinquencies on a security-clearance application. Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 39-year-old applications engineer. He has worked for his current employer since August 1997. His current annual salary is about \$87,000. He appears to have a good employment record (Exhibit G). He is seeking to retain a security clearance previously granted to him by the Defense Department.

From June 1986 to August 1997, Applicant served on active duty in the U.S. Navy. He worked as an electronics technician. He held a security clearance at the secret and top-secret levels while in the Navy. Upon his discharge, his character of service was described as honorable.

Applicant has been married since 1991. He and his wife have a 12-year-old son who attends public school. Applicant's wife works as a membership director for a local chamber of commerce.

¹ Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended (Directive).

² See Memorandum from the Under Secretary of Defense for Intelligence, dated August 30, 2006, Subject: Implementation of Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (December 29, 2005).

Her current salary is about \$37,000. She was unemployed or underemployed for about six months during 2000-2001, and this unemployment contributed to their financial problems.

Applicant has a history of financial problems. It is established by the credit reports containing adverse financial information (Exhibits 2, 3, 5, 6, and 8). In Applicant's household, his wife has primary responsibility for managing the family finances and paying the bills. This arrangement is convenient for Applicant because he travels for business on a regular basis. Applicant was totally disengaged from the family finances until he was confronted with the adverse information during the background investigation. His wife did not tell him about their financial problems because she was scared, uncertain how to handle the situation, and did not want to cause conflict in their marriage (R. 39-42). Although he is now asking more questions of his wife, and he may go online to check their account, his wife continues to have primary responsibility for their finances. Indeed, in response to cross-examination from department counsel, he explained that he does not look at his paycheck and that his wife "does it all" (R. 67).

He completed a security-clearance application in June 2005 (Exhibit 1). When signing his application, he certified that his statements were true, complete, and correct to the best on his knowledge and belief and were made in good faith, and he acknowledged that a knowing and willful false statement could be punished under federal law. In particular, he answered the following questions about his financial record as follows:

- Question 34—asking if in the last seven years his wages were garnished for any reason, to which he replied "yes" and noted a garnishment in 2004 by a state tax authority.
- Question 38—asking if in the last seven years he had been over 180-days delinquent on any debts, to which he replied "no."
- Question 39—asking if he was currently over 90-days delinquent on any debts, to which he replied "yes" and noted a credit card account with a past-due balance of \$4,861.

Sometime thereafter, he met with an investigator. Other than what he disclosed on his security-clearance application, he did not know about his adverse financial condition until he was shown a credit report during the interview. He was unaware because his spouse handled all aspects of their finances and she did not tell him about the delinquent accounts or the foreclosure on a rental property located in another state.

The debt in SOR ¶ 1.a is a medical collection account for \$644. Applicant believes this account was paid when he and his wife paid off other medical collection accounts, and those payments are reflected in the credit reports. In October 2007, Applicant sent a letter to a credit service requesting that the account be described as paid in full (Exhibit F).

The debt in SOR ¶ 1.c is a collection account based on a credit card account for \$4,861. It is the credit card account Applicant disclosed in his security-clearance application. This account was settled in full in March 2007 for \$2,996 (Exhibit E).

The other five delinquent accounts in the SOR remain unpaid. Applicant and his wife have been advised to not pay these debts because they are not enforceable based on the state's statute of limitations. In October 2007, Applicant and his wife started working with a credit education

company to clean up their credit history (Exhibit A). They have sent dispute letters to the three major credit reporting agencies disputing several accounts (Exhibits B, C, and D).

Applicant was unaware of the foreclosure on the rental property in 2001. It happened during his wife's period of unemployment and underemployment that took place concurrent with the tenant moving out of the property. As far as he and his wife know, they do not owe a deficiency balance. Their belief is consistent with a credit report showing a zero balance on this account (Exhibit 2).

Applicant is current with the monthly rent payment. He has no car payments. Neither he nor his wife has an active credit card account. They manage their money, to include paying bills, from a joint bank account. They operate on a cash basis and typically pay bills online. They currently have about \$5,000 in their joint bank account as they are working on establishing an emergency fund. Applicant has about \$10,000 in investments via his employment.

GENERAL PRINCIPLES OF LAW AND POLICIES

No one has a right to a security clearance.³ As noted by the Supreme Court in *Department of Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁴ A favorable decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.⁵ An unfavorable decision: (1) denies any application; (2) revokes any existing security clearance; and (3) prevents access to classified information at any level and retention of any existing security clearance.⁶ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.⁷ The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.⁸ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.⁹ In addition, an

³ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) ("It is likewise plain that there is no 'right' to a security clearance, so that full-scale due process standards do not apply to cases such as *Duane's*").

⁴ *Egan*, 484 U.S. at 531.

⁵ Directive, ¶ 3.2.

⁶ Directive, ¶ 3.2.

⁷ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

⁸ Directive, Enclosure 3, ¶ E3.1.14.

⁹ Directive, Enclosure 3, ¶ E3.1.15.

applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁰ *In Egan*, the Supreme Court said that the burden of proof is less than the preponderance of the evidence.¹¹ The agency appellate authority has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹²

The Revised Guidelines set forth adjudicative guidelines to consider when evaluating a person's security clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based upon consideration of all the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept. A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.¹³ Instead, it is a determination that the applicant has not met the strict guidelines the President has established for granting eligibility for a security clearance.

CONCLUSIONS

1. The Personal Conduct Security Concern

Personal conduct under Guideline E¹⁴ includes issues of false statements and credible adverse information that may not be enough to support action under any other guideline. In particular, a security concern may arise due to “[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations [that may] 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 other failure to cooperate with the security clearance process.”¹⁵

The SOR alleges that Applicant made false statements when providing answers to Questions 38 and 39 concerning financial delinquencies. Applicant contends his answers were not deliberately false because he was unaware of the full extent of his financial problems when he completed the application. Applicant's explanation is credible, as it is corroborated by his wife who acknowledged that she kept their financial problems a secret. She was able to keep the secret because Applicant was totally disengaged from managing the family finances and that duty fell to his spouse. In addition, Applicant did disclose some adverse financial information in response to two questions. His

¹⁰ Directive, Enclosure 3, ¶ E3.1.15.

¹¹ *Egan*, 484 U.S. at 531.

¹² ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹³ Executive Order 10865, § 7.

¹⁴ Revised Guidelines at pp. 10–12 (setting forth the disqualifying and mitigating conditions).

¹⁵ Revised Guidelines at p. 10.

disclosures tend to undermine or undercut the case that he was trying to hide his adverse financial history when he completed the security-clearance application. Accordingly, Guideline E is decided for Applicant.

2. *The Financial Considerations Security Concern*

Under Guideline F for financial considerations,¹⁶ a security concern typically exists due to significant unpaid debts. “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.”¹⁷ Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information.

The record evidence supports a conclusion that Applicant has a history of financial problems. His history of financial problems is a security concern because it indicates inability to satisfy debts¹⁸ and a history of not meeting financial obligations¹⁹ within the meaning of Guideline F. The record evidence is more than sufficient to establish these two disqualifying conditions. Not counting the foreclosure, Applicant admits to about \$30,000 in delinquent debt, most of which is unpaid.

All of the mitigating conditions under Guideline F have been considered and three deserve discussion. First, MC 2—conditions largely beyond a person’s control—does not apply. First, his spouse’s relatively brief period of unemployment several years ago and her actions in keeping their financial problems a secret were unexpected circumstances largely beyond his control. The MC does not apply, however, because Applicant’s disengagement from his family’s finances is not reasonable conduct under the circumstances. Once he was confronted with the adverse credit report during the background investigation, Applicant should have become more involved in managing the finances, but that is not the case.

Second, MC 3—the person has received or is receiving counseling and/or there are clear signs that the problem is resolved or is under control—applies somewhat. Applicant and his wife have retained the services of a credit education company who is assisting them. The extent of the financial counseling is unclear. Although delinquent debts still exist, Applicant and his wife no longer use credit cards and they are not incurring new delinquent debt. And to that extent, their current financial situation is under control.

Third, the most pertinent mitigating condition is MC 4, which requires a person to initiate a good-faith effort to repay overdue creditors or otherwise resolve debts. Applicant has taken some positive steps to resolve the delinquent indebtedness by: (1) settling one account; (2) disputing

¹⁶ Revised Guidelines at pp. 13–14 (setting forth the disqualifying and mitigating conditions).

¹⁷ Revised Guidelines at p. 13.

¹⁸ DC 1 is “inability or unwillingness to satisfy debts.”

¹⁹ DC 3 is “a history of not meeting financial obligations.”

another account as paid; and (3) retaining the services of the credit education company. These circumstances are sufficient to qualify for some credit, but not full credit, in mitigation.

This case presents both disqualifying and mitigating information, which requires thoughtful balancing. Applicant is 39 years old and sufficiently mature to make prudent decisions about his finances and money-management practices. He and his wife have made some progress in resolving their outstanding debts. But of concern here is Applicant’s lack of involvement in managing or overseeing his finances. He was totally disengaged until confronted with the credit report during the background investigation. Since then he has had limited involvement. It appears his spouse is still responsible for their finances. Their past financial history suggests that they were not on the same sheet of music. Although it was perfectly reasonable for Applicant to trust his spouse to keep him informed of their financial situation—once confronted with the adverse information—Applicant should have taken a more proactive and hands-on approach. It is likely that the financial problems will continue or recur because Applicant has little if any involvement in managing the family finances. And more important, his continued hands-off approach to his finances indicates a lack of good judgment that is necessary to obtain access to classified information.

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the financial considerations security concern. Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the whole-person concept was given due consideration and that analysis does not support a favorable decision.

FORMAL FINDINGS

_____ SOR ¶ 1–Guideline F:	Against Applicant
Subparagraphs a–h:	Against Applicant
SOR ¶ 2–Guideline E:	For Applicant
Subparagraphs a–b:	For Applicant

DECISION _____

_____ In light of all the circumstances, it is not clearly consistent with the national interest to grant or continue eligibility for security clearance for Applicant. Clearance is denied.

Michael H. Leonard
Administrative Judge