

DATE: December 28, 2007

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In re: )  
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 ----- ) ISCR Case No. 07-00205  
 SSN: ----- )  
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 Applicant for Security Clearance )  
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**DECISION OF ADMINISTRATIVE JUDGE  
MICHAEL H. LEONARD**

**APPEARANCES**

**FOR GOVERNMENT**

Eric H. Borgstrom, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has a history of unresolved financial problems. He has done little to demonstrate that he will resolve the financial problems in a satisfactory manner. In addition, he deliberately omitted information about his history of financial problems when he completed a security-clearance application. Clearance is denied.

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**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,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant on August 13, 2007. The SOR is equivalent to an administrative complaint and it details the factual basis for the action. In general, the issues in this case fall under Guideline F for financial considerations based on delinquent debts 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.<sup>2</sup> 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 in writing on August 31, 2007. He elected to have his case decided on the written record in lieu of a hearing.

On September 26, 2007, the government submitted its written case consisting of all relevant and material information that could be adduced at a hearing. This so-called file of relevant material (FORM) was mailed to Applicant and it was received by him on October 9, 2007. Applicant did not submit any information within the 30-day period after receiving the FORM. The case was assigned to me on December 13, 2007.

### **RULINGS ON PROCEDURE**

In its FORM, the government conceded that the account alleged in SOR ¶ 1.g duplicates the account alleged in ¶ 1.f. Accordingly, the government withdrew the allegation in ¶ 1.g and no finding will be made.

Also in its FORM, the government included as an item of documentary evidence a subject interview of Applicant. The interview was part of a report of investigation (ROI) prepared by the U.S. Office of Personnel Management (Exhibit 9). The ROI indicates that the Applicant's subject interview was an unsworn declaration made in October 2006. The general rule is that a background ROI may not be received and considered by an administrative judge.<sup>3</sup> The exception to the general rule is "[a]n ROI may be received with an authenticating witness provided it is otherwise admissible

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

<sup>2</sup> 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).

<sup>3</sup> See Directive, Enclosure 3, ¶ E3.1.20.

under the Federal Rules of Evidence.”<sup>4</sup> Here, in offering the ROI as part of its FORM, the government did not mention the general rule against an ROI, nor did it make any argument to justify admitting the ROI. Likewise, the ROI is not accompanied by an authenticating witness or some other method of getting evidence to the trier of fact, such as a stipulation between the parties. Accordingly, the ROI has not been considered.

### FINDINGS OF FACT

Under Guideline F, the SOR alleges seven delinquent debts ranging from \$18 to \$9,004 for a total of about \$30,000 (excluding the account in ¶ 1.g). Under Guideline E, the SOR alleges Applicant gave deliberately false answers to three questions about his financial history when completing a security-clearance application in March 2006. In his reply to the SOR, he admits the delinquent indebtedness except for ¶¶ 1.d and 1.f. Also, he admits giving false answers on his security-clearance application. In addition, the following facts are established.

Applicant is a 48-year-old tool maker. He has worked for his current employer since November 1978. He has been married to the same spouse since 1978. He is seeking to retain a security clearance previously granted to him by the Defense Department.

Applicant has a history of financial problems as evidenced by delinquent debts. His adverse financial history is established by three credit reports, his response to financial interrogatories, a record of judgment, and his admissions (Exhibits 4, 5, 6, 7, and 8). The status of his indebtedness alleged in the SOR is summarized in the following table.

<b>Debt Description</b>	<b>Current Status</b>
SOR ¶ 1.a—collection account for \$4,864.	No proof of payment.
SOR ¶ 1.b—charged-off account for \$1,533.	No proof of payment.
SOR ¶ 1.c—judgment for \$8,000.	No proof of payment.
SOR ¶ 1.d—collection account for \$18.	No proof of payment.
SOR ¶ 1.e—charged-off account for \$3,146.	No proof of payment.
SOR ¶ 1.f—collection account for \$9,004.	No proof of payment.
SOR ¶ 1.h—collection account for \$3,506.	No proof of payment.

Although he denied the indebtedness alleged in ¶¶ 1.d and 1.f, the evidence establishes those accounts. The delinquent account in ¶ 1.d is established by the three credit reports. The delinquent account in ¶ 1.f is established by two of the credit reports. Also, Applicant admitted this debt in response to the financial interrogatories.

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<sup>4</sup> *Id.*

In his reply to the SOR, Applicant provided, in part, the following explanation:

- He has held a security clearance for about 20 years, has never had a security violation, and takes the matter of a security clearance seriously.
- He has paid off one account not listed in the SOR, is making payments on another account, and is taking the approach of paying off one account at a time.
- He will be able to make more payments when his home is paid off in six years. He was unable to repay the debt by refinancing his home due to poor credit.
- He elected not to pursue bankruptcy because his plan is to repay the debts.
- He is the main bread winner for his family.

In about March 2006, Applicant signed a security-clearance application (Exhibit 3). In doing so, he certified that his answers were true, complete, and correct to the best of his knowledge and belief and made in good faith. Also, he understood that a knowing and willful false statement on the application could be punished by a fine or imprisonment or both. In response to Questions 27, 28a, and 28b, he answered in the negative. He did not disclose any of the adverse financial information called for by the questions. In his reply to the SOR, Applicant explained that when he completed the security-clearance application he was embarrassed and concerned that his company would learn about his financial problems. Also, he admitted that he was not honest when answering the financial questions.

### **GENERAL PRINCIPLES OF LAW AND POLICIES**

No one has a right to a security clearance.<sup>5</sup> 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.”<sup>6</sup> A favorable decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> The government has the burden of presenting evidence to establish facts

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<sup>5</sup> *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 (10<sup>th</sup> 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.”).

<sup>6</sup> *Egan*, 484 U.S. at 531.

<sup>7</sup> Directive, ¶ 3.2.

<sup>8</sup> Directive, ¶ 3.2.

<sup>9</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

alleged in the SOR that have been controverted.<sup>10</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>11</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>12</sup> *In Egan*, the Supreme Court said that the burden of proof is less than the preponderance of the evidence.<sup>13</sup> The agency appellate authority has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.<sup>14</sup>

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.<sup>15</sup> 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.

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## **CONCLUSIONS**

Under Guideline F for financial considerations,<sup>16</sup> 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."<sup>17</sup> 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 or unwillingness

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<sup>10</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>11</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>12</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>13</sup> *Egan*, 484 U.S. at 531.

<sup>14</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>15</sup> Executive Order 10865, § 7.

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

<sup>17</sup> Revised Guidelines at p. 13.

to satisfy debts<sup>18</sup> and a history of not meeting financial obligations<sup>19</sup> within the meaning of Guideline F. The record evidence is more than sufficient to establish these two disqualifying conditions as well as a pattern of financial irresponsibility.

All of the mitigating conditions under Guideline F have been considered and none apply in Applicant's favor. He did not present sufficient evidence to rebut, explain, extenuate, or mitigate the financial considerations security concern. In particular, the record evidence is insufficient to establish that he has made a good-faith effort to pay or otherwise resolve his indebtedness. Applicant has worked for the same company since 1978 and has incurred a large amount of consumer debt, which is delinquent. He does not have a realistic plan to repay or otherwise resolve his financial problems in the near future. He has presented little evidence to show that his financial problems are resolved or under control. Given his history of financial problems, it is too soon to make a predictive judgment about his ability to resolve his indebtedness and then live a financially-responsible lifestyle. Applicant's efforts, at this point, are insufficient to mitigate the financial considerations security concern. Accordingly, Guideline F is decided against Applicant.

Personal conduct under Guideline E<sup>20</sup> addresses "conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations."<sup>21</sup> In this regard, the deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance or in other official matters is a security concern. It is deliberate if it is done knowingly and willfully. An omission of relevant and material information is not deliberate if the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or genuinely thought the information did not need to be reported.

At issue here is the truthfulness of Applicant's answers to three questions seeking information about his financial history. He admits giving false answers to the questions due to embarrassment and fear of discovery by his employer. Neither excuse is sufficient to rebut, explain, extenuate, or mitigate his falsifications. Accordingly, the record evidence is sufficient to conclude that DC 1<sup>22</sup> applies against Applicant.

All of the mitigating conditions under Guideline E have been considered and none apply in Applicant's favor. Making false statements during the security-clearance process is serious misconduct, and it is not easily explained away or mitigated. Accordingly, Guideline E is decided against Applicant.

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<sup>18</sup> DC 1 is "inability or unwillingness to satisfy debts."

<sup>19</sup> DC 3 is "a history of not meeting financial obligations."

<sup>20</sup> Revised Guidelines at pp. 10–12 (setting forth the disqualifying and mitigating conditions).

<sup>21</sup> Revised Guidelines at p. 10.

<sup>22</sup> DC 1 is "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities."

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the security concerns. 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, b, c, d, e, f, h:	Against Applicant
Subparagraph g:	Withdrawn
SOR ¶ 2–Guideline E:	Against Applicant
Subparagraphs a–c:	Against Applicant

**DECISION \_\_\_\_\_**

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

Michael H. Leonard  
Administrative Judge