

DATE: October 18, 2007

In re:)
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)
 -----) ISCR Case No. 07-00276
 SSN: -----)
)
 Applicant for Security Clearance)
)
)

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

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of unresolved financial problems. He has done nothing to demonstrate that he will resolve the financial problems in a satisfactory manner. 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 April 27, 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 delinquent debts.

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 Revised Guidelines apply here because the SOR is dated after the effective date.

Applicant replied to the SOR with an incomplete response dated May 12, 2007. Upon request, he submitted an undated second response received by DOHA on June 22, 2007. He elected to have his case decided on the written record in lieu of a hearing.

On July 16, 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 July 25, 2007. Applicant did not reply within the 30-day period after receipt of the FORM.³ The case was assigned to me on September 26, 2007.

FINDINGS OF FACT

Applicant is a 54-year-old mobile-equipment operator for a company engaged in defense contracting. He has worked for his current employer since 1977. In addition to this employment, he has worked a part-time job as a cleaner for a real estate firm since 1998.

Applicant has been married to the same woman since 1977. He has three children, born in 1978, 1981, and 1983, all of whom are adults.

Applicant has a history of financial problems. The SOR alleges 14 delinquent debts ranging from \$31 to \$7,075 for a total of about \$16,103. He admits the indebtedness except for a \$1,509 charged-off account alleged in SOR ¶ 1.g. The 14 delinquent debts are established by credit reports from 2005 and 2007 (Exhibits 8 and 9). None of the accounts have been paid.

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).

³ Directive, Enclosure 3, ¶ E3.1.7.

Applicant claims that the \$1,509 charged-off account was paid in April 1999 (Exhibit 7). He submitted paperwork to support his claim, but this paperwork appears to be for another debt and is not connected to the \$1,509 charged-off account.

GENERAL PRINCIPLES OF LAW AND POLICIES

No one has a right to a security clearance.⁴ 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.”⁵ A favorable decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.⁶ 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.⁷ 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.⁸ The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.⁹ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁰ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹¹ In *Egan*, the Supreme Court said that the burden of proof is less than the preponderance of the evidence.¹² The agency appellate authority has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.¹³

The Revised Guidelines set forth adjudicative guidelines to consider when evaluating a person’s security clearance eligibility, including disqualifying conditions (DC) and mitigating

⁴ *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.”).

⁵ *Egan*, 484 U.S. at 531.

⁶ Directive, ¶ 3.2.

⁷ Directive, ¶ 3.2.

⁸ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

⁹ Directive, Enclosure 3, ¶ E3.1.14.

¹⁰ Directive, Enclosure 3, ¶ E3.1.15.

¹¹ Directive, Enclosure 3, ¶ E3.1.15.

¹² *Egan*, 484 U.S. at 531.

¹³ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

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.¹⁴ 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

Under Guideline F for financial considerations,¹⁵ 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."¹⁶ 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 to satisfy debts¹⁷ and a history of not meeting financial obligations¹⁸ within the meaning of Guideline F. The record evidence is more than sufficient to establish these two disqualifying conditions.

All of the mitigating conditions under Guideline F have been considered and none apply in Applicant's favor. Applicant did not respond to the FORM, and other than his limited response to interrogatories, he did not provide sufficient evidence to overcome the security concern raised by the government's evidence. Indeed, what is missing here is: (1) a realistic approach for resolving his delinquent debts; (2) documented actions taken in furtherance of that approach; and (3) a measurable improvement to his situation. At this point, it is likely that his history of financial problems will continue.

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the financial considerations security concern. He has a history of unresolved financial problems, and he has done nothing to demonstrate that he will resolve the financial problems in a satisfactory manner. Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance

¹⁴ Executive Order 10865, § 7.

¹⁵ Revised Guidelines at 13–14 (setting forth the disqualifying and mitigating conditions).

¹⁶ Revised Guidelines at 13.

¹⁷ DC 1 is "inability or unwillingness to satisfy debts."

¹⁸ DC 3 is "a history of not meeting financial obligations."

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–n:	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