

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has a history of repeated financial problems. She gave false answers in response to two questions about her financial delinquencies on a security-clearance application. She did not present sufficient evidence to rebut, explain, extenuate, or mitigate the security concerns. Eligibility for a security clearance is denied.

CASENO: 07-00550.h1

DATE: 08/07/2007

DATE: August 7, 2007

In re:)
)
)
 -----) ISCR Case No. 07-00550
 SSN: -----)
)
 Applicant for Security Clearance)
)
)

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

APPEARANCES

FOR GOVERNMENT

John Bayard Glendon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of repeated financial problems. She gave false answers in response to two questions about her financial delinquencies on a security-clearance application. She did not

present sufficient evidence to rebut, explain, extenuate, or mitigate the security concerns. Eligibility for a security clearance is denied.

STATEMENT OF THE CASE

Applicant contests the Defense Department's intent to deny or revoke eligibility for a security clearance. Acting under the relevant authority,¹ the agency issued a statement of reasons (SOR) to Applicant on March 16, 2007. The SOR—which is equivalent to an administrative complaint—details the factual basis for the action and alleges security concerns under Guideline F for financial considerations based on multiple delinquent debts, and under 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 formal amendment. The Revised Guidelines apply to this case because the SOR is dated March 20, 2007, which is after the effective date.

Applicant replied to the SOR in an undated submission. She elected to have her case decided on the written record in lieu of a hearing. Applicant admits all the allegations under Guideline F. Also, she admits the falsification allegations under Guideline E. She did not provide a further explanation to the SOR allegations.

On June 21, 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 her on June 27, 2007. Applicant timely replied to the FORM by providing proof of payment for two accounts. Department counsel reviewed those documents and had no objections to their consideration. The documents are marked and admitted as Exhibits A and B. The case was assigned for decision on July 26, 2007.

In general terms, there are two major issues: Is it clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant in light of (1) her history of

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).

repeated financial problems, and (2) her false answers in response to two questions on a security-clearance application? Both issues are decided against Applicant.

FINDINGS OF FACT

Based on the record evidence as a whole, the following facts are established.

1. Applicant is a 35-year-old employee of a company engaged in federal contracting. She has worked for a federal contractor since about January 2005. She has worked for her current employer since about October 2006.
2. In October 2006, Applicant completed a security-clearance application. When signing it, she certified that her statements were true, complete, and correct to the best of her knowledge and belief and were made in good faith. Also, she acknowledged that a knowing and willful false statement on the application could be punished by a fine or imprisonment or both. Question 28 on the application asked Applicant to disclose financial delinquencies. In response to Question 28a, she denied, in the last seven years, being more than 180 days delinquent on any debts. In response to Question 28b, she denied that she was currently more than 90 days delinquent on any debts. In her written response to the SOR, Applicant admits giving false answers in response to these two questions.
3. Applicant has a history of repeated indebtedness over many years. For example, in 1997, she obtained a Chapter 7 bankruptcy discharge for about \$5,536 in debt. A credit report from October 2006 reveals derogatory information about her financial condition. The public record section of the report reveals the bankruptcy case as well as a civil judgment she had satisfied. The report also reveals 47 accounts in the collections section. Another credit report from March 2007 further confirms Applicant's financial history.
4. The SOR alleges that Applicant has 18 unpaid debts ranging from \$13 to \$13,777 for a total of about \$18,000. Several of the unpaid debts are based on bad checks. In addition, it alleges Applicant obtained the Chapter 7 bankruptcy discharge as described above. In her written response to the SOR, Applicant admits these matters. In addition to her admissions, the credit reports from October 2006 and March 2007 further establish these matters.
5. Exhibit A is proof of payment for the unpaid \$56 debt in SOR subparagraph 1.f. Exhibit B is proof of payment for an unnamed debt. It appears to be a one-page fax from a collection agency. It indicates a certain case number was paid in full for a total amount of \$2,299.55. It cannot be determined if this debt is one of the debts in the SOR.
6. Other than Exhibits A and B, Applicant did not produce proof of payment or other documentary evidence about the debts in question. She did not produce documentary evidence about her overall financial situation. And she did not address her false answers to Question 28a and 28b.

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 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 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 in a security clearance case 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 sets forth adjudicative guidelines to consider when evaluating a person’s security clearance eligibility, including disqualifying conditions (DC) and mitigating

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.

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).

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

Under Guideline F for financial considerations,¹⁴ 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. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information.

The government contends Applicant's history of financial problems is a security concern. Applicant did not make specific contentions. The question is whether Applicant's history of repeated financial problems is consistent with eligibility for access to classified information under the clearly-consistent standard.

The record evidence supports a conclusion that Applicant has a history of repeated financial problems over many years. The 1997 Chapter 7 bankruptcy case and the more recent adverse financial information are proof of this conclusion. Her history of repeated financial problems is a security concern because it indicates inability or unwillingness to satisfy debts¹⁵ and a history of not meeting financial obligations¹⁶ 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. She did not present sufficient evidence to rebut, explain, extenuate, or mitigate the security concern. In particular, the record evidence is insufficient to establish that she made a good-faith effort to pay or otherwise resolve her indebtedness. The minimal documentation, Exhibits A and B, is not enough to show a serious, good-faith effort. Applicant's history of repeated financial problems outweighs the favorable evidence.

¹³ Executive Order 10865, § 7.

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

¹⁵ DC 1 is "inability or unwillingness to satisfy debts."

¹⁶ DC 3 is "a history of not meeting financial obligations."

Under Guideline E for personal conduct,¹⁷ a security concern may arise due to conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, which 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.

The government contends that Applicant’s false answers raise a security concern. Applicant did not make specific contentions. The question is whether Applicant’s false answers in response to two questions about her financial delinquencies on a security-clearance application are consistent with eligibility for access to classified information under the clearly-consistent standard.

The government established its case under this guideline. Applicant admits giving false answers in response to Questions 28a and 28b of her security-clearance application. The record evidence is sufficient to conclude that DC 1 of the guideline applies against Applicant.¹⁸ Making deliberately false statements to the government during the security-clearance process is serious misconduct.

All of the mitigating conditions under Guideline E have been considered and none apply in Applicant’s favor. She did not offer an explanation for her false answers. And she did not offer evidence that might otherwise explain, extenuate, or mitigate the security concern.

Viewing the record evidence as a whole, Applicant did not present sufficient evidence to rebut, explain, extenuate, or mitigate the cumulative effect of her history of financial problems and false statements. Applicant did not meet her 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 for Applicant.

FORMAL FINDINGS

| | |
|----------------------------|-------------------|
| _____ SOR ¶ 1–Guideline F: | Against Applicant |
| Subparagraphs a–r: | Against Applicant |
| SOR ¶ 2–Guideline E: | Against Applicant |
| Subparagraph a: | Against Applicant |

¹⁷ Revised Guidelines at 10–12 (setting forth the disqualifying and mitigating conditions).

¹⁸ 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.

DECISION

 In light of all the facts and circumstances, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Eligibility for a security clearance is denied.

Michael H. Leonard
Administrative Judge