

KEYWORD: Financial; Criminal Conduct; Personal Conduct

DIGEST: Applicant has a history of unresolved financial problems. He is serving probation until sometime in 2008 as a habitual-traffic offender for driving with a suspended driver's license. It is too soon to tell if he will resolve the financial problems and complete probation in a satisfactory manner. Clearance is denied.

CASENO: 07-00678.h1

DATE: 09/11/2007

DATE: September 11, 2007

In re:	)	
	)	
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SSN: -----	)	ISCR Case No. 07-00678
	)	
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 unresolved financial problems. He is serving probation until sometime in 2008 as a habitual-traffic offender for driving with a suspended driver's license. It is

too soon to tell if he will resolve the financial problems and complete probation in a satisfactory manner. Clearance is denied.

## STATEMENT OF THE 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 April 26, 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 delinquent debts, Guideline J for criminal conduct based on his guilty plea to a habitual-traffic offender offense, 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.

On May 25, 2007, Applicant replied to the SOR and requested a hearing. The hearing took place as scheduled on August 9, 2007, and the transcript was received on August 22, 2007.

## FINDINGS OF FACT

Under Guideline F, the SOR alleges nine delinquent debts for about \$17,300 in total. Applicant admitted six and denied three of the debts. He admitted the habitual-traffic offender offense alleged under Guideline J. He denied the two falsification allegations concerning financial delinquencies under Guideline E. In addition to his admissions, the following facts are established.

Applicant is a 35-year-old aviation electronics technician working for a company that provides services to the federal government. He has worked for his current employer since June

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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).

2000. He has held a security clearance for many years as a sailor and a civilian employee. He is seeking to retain a security clearance for his current employment.

From 1991 to 2000, Applicant served on active duty in the U.S. Navy as an aviation electronics technician. He left active duty in June 2000 as a petty officer second class (paygrade E-5), and he received an honorable discharge. He did not have financial problems when he was in the Navy. Likewise, he held a security clearance in the Navy without incident.

Applicant has never married. He has two children with the same woman. His children were born in 2001 and 2003, after his discharge from the Navy. Both children live with their mother. Applicant is currently paying court-ordered child support for both children at the rate of about \$1,500 monthly. He intends to try having that amount reduced, but he has yet to begin the legal process.

He has a history of unresolved financial problems that he attributes to an increase in expenses after leaving the Navy and having two children. To reduce expenses, he has lived with an aunt since 2001. He pays his aunt \$300 to \$400 monthly for rent. He has about \$6,000 in a 401(k) retirement account, which he has taken a loan against in the past. He does not have a savings account, but has a checking account. He estimated a balance of less than \$1,000 in his checking account. He has no other financial assets besides personal property. His gross income for 2006 was about \$48,000.

His derogatory financial history is established by credit reports (Exhibits 2, 3, and 4). For example, a credit report from October 2005 reflects 11 accounts in the trade section of the report of which 7 accounts were described as past due or as a bad debt placed for collection (Exhibit 4). The collections section of the report lists four accounts.

Applicant has made some effort to resolve the nine debts in the SOR. The status of his indebtedness is summarized in the following table.

Debt Description	Current Status
SOR ¶ 1.a—collection account for \$586 based on Direct TV account.	Unpaid. Filed written dispute in Apr. 2007 (Exhibit B).
SOR ¶ 1.b, 1.c, & 1.d—collection accounts for \$203, \$185, & \$509 based on unpaid medical accounts.	Unpaid. Should have been paid via health savings account. Intends to pay in future (R. 32–34).
SOR ¶ 1.e—collection account for \$1,117 based on credit card account.	Unpaid. Filed written dispute in Apr. 2007 (Exhibit B).
SOR ¶ 1.f—collection account for \$3,559 based on credit card account.	Unpaid. Filed written dispute in Apr. 2007 (Exhibit B).
SOR ¶ 1.g—collection account for \$4,011 based on credit card account.	Unpaid (R. 34–35).
SOR ¶ 1.h—collection account for \$6,951 based on deficiency balance after auto repossession in 2004.	Unpaid (R. 35–36).

SOR ¶ 1.i—collection account for \$203 based on telephone account.

Unpaid. Received lump-sum offer to settle for \$133.59 in Mar. 2006 (Exhibit A). Intends to resolve in future (R. 37–40).

To sum up, Applicant disputes three debts for \$5,262 in total and the remaining six unpaid debts amount to \$12,062 in total.

Applicant has been continuously employed since leaving the Navy in 2000. He has not had any financial or credit counseling.

In March 2005, Applicant was arrested and charged as a habitual-traffic offender<sup>3</sup> for driving with a suspended license. Previously, the state had suspended his driver’s license when his auto insurance lapsed or went unpaid after the auto repossession in 2004. Applicant pleaded guilty to receive deferred adjudication. The court imposed a fine, three years of probation, and 100 hours of community service. He is paying the fine via monthly payments. He is serving probation until sometime in 2008. His driver’s license remains suspended.

A few months later in June 2005, Applicant completed a security-clearance application (Exhibit 1). 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. He disclosed his criminal conduct (the habitual-traffic offender offense) in response to Question 26. He also indicated that sentencing was to take place at the end of July. In response to Questions 38 and 39 about his financial record, he answered in the negative. He did not disclose any financial delinquencies called for by the questions.

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

No one has a right to a security clearance.<sup>4</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>5</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>6</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>7</sup> Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether

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<sup>3</sup> See Fla. Stat. §322.264 (2005) (defines habitual-traffic offender).

<sup>4</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>5</sup> *Egan*, 484 U.S. at 531.

<sup>6</sup> Directive, ¶ 3.2.

<sup>7</sup> Directive, ¶ 3.2.

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>8</sup> The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>9</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>10</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>11</sup> *In Egan*, the Supreme Court said that the burden of proof is less than the preponderance of the evidence.<sup>12</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>13</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>14</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>15</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>16</sup> Similarly, an individual who is

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

<sup>9</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>10</sup> Directive, Enclosure 3, ¶ E3.1.15.

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

<sup>12</sup> *Egan*, 484 U.S. at 531.

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

<sup>14</sup> Executive Order 10865, § 7.

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

<sup>16</sup> Revised Guidelines at 13.

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 debts<sup>17</sup> and a history of not meeting financial obligations<sup>18</sup> within the meaning of Guideline F. The record evidence is more than sufficient to establish these two disqualifying conditions.

Applicant receives some credit in mitigation. The most pertinent mitigating condition is the fifth MC<sup>19</sup> of Guideline F. It applies in part because Applicant disputes that three of the debts are his responsibility (SOR ¶¶ 1.a, 1.e, and 1.f). He began disputing these three accounts in April 2007, the results of which are pending (Exhibit B). The MC applies in part because it only concerns three of the nine debts. The other MCs under the guideline have been considered and none apply. In particular, he has not made a good-faith effort to resolve his indebtedness because he has taken little or no action on the six debts he does not dispute (*see* table). What is missing here is a realistic, comprehensive plan that addresses Applicant's indebtedness.

Under Guideline J for criminal conduct,<sup>20</sup> the security concern is that "criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations."<sup>21</sup>

The record evidence supports a conclusion that Applicant has a history of traffic-related criminal conduct. Currently, he is serving probation via a deferred adjudication for a habitual-traffic offender offense. These circumstances raise two disqualifying conditions<sup>22</sup> under the guideline. Although there is not a *per se* rule, his status as a probationer until sometime in 2008 is a circumstance that militates against a favorable decision.

All of the MCs under the guideline have been considered and none apply. His probationary status undercuts a claim of successful rehabilitation. Completing probation, without violation, will be a positive step toward rehabilitation. And until he obtains a driver's license and starts driving again, it is simply too soon to tell if this conduct will recur.

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<sup>17</sup> DC 1 is "inability or unwillingness to satisfy debts."

<sup>18</sup> DC 3 is "a history of not meeting financial obligations."

<sup>19</sup> MC 5 is "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions taken to resolve the issue."

<sup>20</sup> Revised Guidelines at 21–22 (setting forth the disqualifying and mitigating conditions).

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

<sup>22</sup> DC 1 is "a single serious crime or multiple lesser offenses;" and DC 4 is "individual is currently on parole or probation."

Personal conduct under Guideline E<sup>23</sup> addresses “conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations.”<sup>24</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 two questions seeking information about financial delinquencies. He should have revealed the debts in SOR ¶¶ 1.c, 1.d, 1.e, and 1.g. He contends he did not intend to mislead the government (R. 61–63). His explanation is accepted as credible, because the evidence is not sufficient to prove that he made deliberately false answers in response to Questions 38 and 39. Indeed, disclosing his criminal conduct is persuasive evidence that he was being honest and truthful when completing the security-clearance application. Accordingly, Guideline E is decided for Applicant.

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the combined effect of the financial considerations and criminal conduct security concerns. He has a history of unresolved financial problems and he is serving probation until sometime in 2008. Taken together, it is too soon to tell if he will resolve the financial problems and complete probation in a satisfactory manner. 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, e, f:	For Applicant
Subparagraphs b, c, d, g, h, & i:	Against Applicant
SOR ¶ 2–Guideline J:	Against Applicant
Subparagraph a:	Against Applicant
SOR ¶ 3–Guideline E:	For Applicant
Subparagraphs a–b:	For Applicant

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<sup>23</sup> Revised Guidelines at 10–12 (setting forth the disqualifying and mitigating conditions).

<sup>24</sup> Revised Guidelines at 10.

**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