



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
-----)	ISCR Case No. 07-01321
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro Se*

January 28, 2008

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny or revoke his eligibility for an industrial 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 September 26, 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 as evidenced by delinquent debts.

In addition, 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

¹ Executive Order 10865, *Safeguarding Classified Information within Industry*, dated February 20, 1960, as amended, and DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive).

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 October 3, 2007, and indicated he did not wish to have a hearing. Accordingly, the case will be decided based on the written record in lieu of a hearing.

On November 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 November 27th and it was received by him December 5th. Applicant replied to the FORM with a one-page response on December 27th. The case was assigned to me January 15, 2008. For the reasons discussed below, this case is decided against Applicant.

Procedural Rulings

In its FORM, the government included as an item of documentary evidence a subject interview of Applicant (Exhibit 7). The interview was part of a report of investigation (ROI) prepared by the U.S. Office of Personnel Management. 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.³ The exception to the general rule is "[a]n ROI may be received with an authenticating witness provided it is otherwise admissible under the Federal Rules of Evidence."⁴

In past cases, the government has included an ROI in its FORM without an attempt to authenticate it or offer some other method of getting the evidence to the trier of fact (for example, stipulation). The ROI was excluded from consideration in those cases. Here, to its credit, the government properly authenticated the ROI through Applicant. In particular, in July 2007, it issued an interrogatory to Applicant asking if the ROI accurately reflected the information he provided during the background interview in October 2006 (Exhibit 7). Applicant indicated it did. In response to additional questions, Applicant did not suggest any corrections or additional information to the ROI. Accordingly, without objections, the ROI is admitted and it will be considered.

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 See Directive, Enclosure 3, ¶ E3.1.20.

⁴ *Id.*

Findings of Fact

Under Guideline F, the SOR alleges six delinquent debts ranging from \$162 to \$6,993 for nearly \$20,000 in total. In his response to the SOR, Applicant admitted the indebtedness except for the debts in SOR ¶¶ 1.b and 1.c. Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 27-year-old employee of a defense contractor. He is seeking to obtain a security clearance from the Defense Department for the first time. He has never married and his security-clearance application indicates he has no children (Exhibit 5). His educational background includes a high-school diploma and an associate's degree in applied science (AAS) in electronics engineering. He was awarded the AAS from a technical institute in 2000.

In the background interview in October 2006, Applicant explained that his financial problems started when he fell behind paying bills sometime after January 2002 (Exhibit 7). This happened because he was laid off from his job with another employer and had difficulty finding another job. He found another job several months later in July 2002. He did not seek unemployment benefits during this period. He indicated that he had yet to financially recover from this event.

Applicant provided additional information when he replied to the FORM. He acknowledged that his past financial decisions were less than responsible when he stated the following:

I realize that my past decisions regarding financial matters have not been wise. I know that I need to take responsibility for my lack of action and intend to do so. I have begun to make payments on some of my accounts and I will be using my income tax return to assist. I understand why my request for clearance is being scrutinized in this way but I can assure you my debts never have been nor will be satisfied by any illegal or immoral actions. I hope that you will take this letter into consideration on my behalf (Applicant's Response to FORM).

The status of his indebtedness, as alleged in the SOR, is summarized in the following table.

<i>Debt Description</i>	<i>Current Status</i>
SOR ¶ 1.a—collection account for \$3,280.	Unpaid.
SOR ¶ 1.b—collection account for \$162.	Paid. Has current account with same cell phone company (Exhibits 6 and 7).
SOR ¶ 1.c—collection account for \$1,817.	Lawsuit to collect this debt resolved in Dec. 2006 when the case was nonsuited (Exhibits 6 and 11).

SOR ¶ 1.d—delinquent account for \$1,232.	Unpaid.
SOR ¶ 1.e—delinquent account for \$6,227.	Unpaid.
SOR ¶ 1.f—charged-off account for \$6,993.	Unpaid.

To sum up, four debts remain outstanding for about \$17,732 in total.

Since the SOR was issued, Applicant has had a judgment entered against him in October 2007 for \$2,784, and there is no indication that it has been satisfied or otherwise resolved (Exhibit 12). It appears the judgment stems from the debt in SOR ¶ 1.a. In addition to the judgment, in November 2007, another creditor brought a lawsuit for collection of a debt (Exhibit 13). A hearing was scheduled to take place in December 2007. The result of that lawsuit is unknown.

Policies

This section sets forth the general principles of law and policies that apply to an industrial security clearance case. To start, no one has a right to a security clearance.⁵ As noted by the Supreme Court in 1988 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.”⁶ A favorable decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.⁷ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.⁸ 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.⁹ The government has the burden of presenting

⁵ *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.”).

⁶ *Egan*, 484 U.S. at 531.

⁷ Directive, ¶ 3.2.

⁸ Directive, ¶ 3.2.

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

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

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.¹⁵ 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.

Analysis

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.

¹⁰ Directive, Enclosure 3, ¶ E3.1.14.

¹¹ Directive, Enclosure 3, ¶ E3.1.15.

¹² Directive, Enclosure 3, ¶ E3.1.15.

¹³ *Egan*, 484 U.S. at 531.

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

¹⁵ Executive Order 10865, § 7.

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

¹⁷ Revised Guidelines at p. 13.

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, which raise a security concern. The same facts and circumstances support a conclusion of financial irresponsibility.

The mitigating conditions under Guideline F have been considered and two deserve discussion. The most pertinent is MC 2, which takes into account conditions beyond a person's control provided they acted reasonably under the circumstances.²⁰ No doubt, Applicant's period of unemployment in 2002 caused him to experience financial problems. But at this point, Applicant can no longer use that event as an excuse approximately five years later. Accordingly, MC 2 does not apply in Applicant's favor.

The other pertinent mitigating condition is MC 4, which requires a person to initiate a good-faith effort to repay overdue creditors or otherwise resolve debts.²¹ Applicant has resolved two of the six debts alleged in the SOR, one by payment and the other when the collection lawsuit was nonsuited. Four debts, which account for the vast majority of the delinquent debt, are outstanding. Moreover, he has done little to resolve those four debts. Given these circumstances, MC 4 does not apply in Applicant's favor.

Although Applicant is relatively youthful at 27, he is old enough to make prudent decisions about his finances. His intent to resolve his financial problems appears to be genuine; however, he has done little so far to demonstrate his intent. What is missing here is (1) a realistic and workable plan to clean up his financial house, (2) documented actions taken in furtherance of the plan, and (3) a measurable improvement to the situation. Given the current circumstances, it is likely that the financial problems will continue or recur. This is especially so considering the recent collection lawsuits taken against Applicant in late 2007.

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.

¹⁸ DC 1 is "inability or unwillingness to satisfy debts."

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

²⁰ MC 2 is "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances."

²¹ MC 4 is "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."

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.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a, 1.d, 1.e, & 1.f:	Against Applicant
Subparagraphs 1.b & 1.c:	For Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Michael H. Leonard
Administrative Judge