

KEYWORD: Financial

DIGEST: Applicant has a history of financial problems consisting of delinquent consumer debts and a real estate foreclosure. He has not presented sufficient information to explain, extenuate, or mitigate the financial considerations security concern. Clearance is denied.

CASENO: 06-13898.h1

DATE: 05/22/2007

DATE: May 22, 2007

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In re: )  
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 ----- ) ISCR Case No. 06-13898  
 SSN: ----- )  
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 Applicant for Security Clearance )  
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**DECISION OF ADMINISTRATIVE JUDGE  
MICHAEL H. LEONARD**

**APPEARANCES**

**FOR GOVERNMENT**

James F. Duffy, Esq., Department Counsel

**FOR APPLICANT**

Joseph L. Johnson, Esq.

**SYNOPSIS**

Applicant has a history of financial problems consisting of delinquent consumer debts and a real estate foreclosure. He has not presented sufficient information to explain, extenuate, or mitigate the financial considerations security concern. 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 November 21, 2006. 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. Applicant, through counsel, timely replied to the SOR and requested a hearing.

In addition to the Directive, this case is brought under the revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information 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 and Appendix 8 to DoD Regulation 5200.2-R, and they apply to all adjudications and other determinations where an SOR has been issued on September 1, 2006, or thereafter.<sup>2</sup> Both the Directive and the Regulation are pending formal amendment. The revised guidelines apply to this case because the SOR is dated November 21, 2006. At the hearing, Applicant acknowledged that they would apply to his case (R. 129–130).

The case was assigned to me January 24, 2007. A notice of hearing was issued scheduling the hearing for March 5, 2007. The hearing took place as scheduled. DOHA received the hearing transcript March 14, 2007.

### **RULINGS ON PROCEDURE**

The government moved to amend the SOR by adding three additional allegations of indebtedness to the Guideline F allegation (Appellate Exhibit I). Without objections, the motion was granted and subparagraphs 1.f, 1.g, and 1.h were added (R. 11–13).

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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).

## FINDINGS OF FACT

Applicant's response to the SOR allegations was mixed. His admissions and explanations are incorporated herein. I make the following findings of fact set forth below in numbered paragraphs.

1. Applicant is a 52-year-old driver for a trucking company engaged in hauling munitions and other loads for the government. He has been married and divorced four times. He is part of a two-person driving team who operates a company-owned truck. The other driver is a woman he has had a romantic relationship with for the last five years. He has worked for his current employer since February 2002, and held an interim security clearance until the SOR was issued in November 2006. Since the loss of his interim security clearance, Applicant has continued to work hauling non-restricted government freight.

2. Applicant has a history of financial problems. As part of the background investigation, a credit report was obtained in January 2005 (Exhibit 2). The public record section of the report revealed a state tax lien for \$1,591 filed in June 1997 and paid in August 1998. The trade section of the report revealed nine accounts of which only three accounts did not have a negative account history. The collections section of the report revealed an unpaid collection account. An additional credit report was obtained in November 2006, and this report further revealed or confirmed Applicant's unfavorable financial history. The specific accounts alleged in the SOR, as amended, are discussed below.

3. SOR subparagraph 1.a concerns a collection account for \$78. Applicant disputes this debt because he had previously paid this account in full. He presented documentary proof from the collection agency that the account was turned over to their office in error (Exhibit A).

4. SOR subparagraph 1.b concerns a collection account for \$157. It stemmed from a medical bill for services incurred without health insurance. Applicant resolved this account by payment in full in December 2006 (Exhibit B).

5. SOR subparagraph 1.c concerns a past-due collection account for \$3,481. It originated as a credit card account during Applicant's fourth marriage. Applicant says the account was allocated to him during the divorce proceedings. He has made \$100 monthly payments for the last three months. Applicant did not present any documentary evidence on this debt.

6. SOR subparagraph 1.d concerns a collection account for \$224. The account originated as an account for TV services, and it was placed for collection when it became delinquent. Applicant resolved this account by payment in full in December 2006 (Exhibit C).

7. SOR subparagraph 1.e concerns a collection account for \$7,903. It appears the account originated as an auto loan with payment terms of \$388 monthly (Exhibit 2 at 2). It became a bad debt and was placed for collection with the creditor alleged in the SOR (Exhibit 3 at 2). Applicant has been unable to find any information on this account and did not present any documentary evidence on this debt.

8. SOR subparagraph 1.f concerns a real estate mortgage for \$60,000 that went into foreclosure in about November 2000. Applicant explained that the debt stemmed from the home where he and his fourth wife lived. He says the house was sold and there was not a deficiency balance (R. 49–51). His assertion is verified by the most recent credit report that shows a zero balance (Exhibit 3 at 2).

9. SOR subparagraph 1.g concerns a charged-off account for \$2,531. Applicant believes this debt is the same as that alleged in subparagraph 1.c. The 2005 credit report shows this was a credit card account that became a bad debt and was placed for collection (Exhibit 2 at 2). The account was sold or transferred, and it shows a zero balance on the account with a high credit of \$2,531. The debt appears again on the credit report as a collection account 120 days or more past due with a balance of \$3,481 and a high credit of \$2,531 (Exhibit 2 at 3). Applicant did not present any documentary evidence on this debt. Reading the two entries in the credit report together and given the high credit amounts match, I find the debt in subparagraphs 1.c and 1.g are the same, and Applicant owes approximately \$3,481 on this debt.

10. SOR subparagraph 1.h concerns a collection account for \$11,358. Applicant thought this debt was the same as that alleged in subparagraph 1.e, but he did not present any documentary evidence on this debt. Under cross-examination, he acknowledged that it was possible this debt stemmed from a car loan that he cosigned for a girlfriend several years ago (R. 69–73). Moreover, the two credit reports establish two different accounts. The 2005 credit report shows this debt originated as a car loan with \$309 monthly payments (Exhibit 2 at 3). It became a bad debt and was placed for collection by transfer or sale to another creditor. The report reflects a zero balance and a high credit of \$11,358. The 2006 credit report shows another creditor holding the account with a zero balance and a high credit of \$11,358 (Exhibit 3 at 2). The debt was also transferred or sold. At bottom, both credit reports establish that Applicant was delinquent on this account in the past and that it is a different debt than that alleged in subparagraph 1.e.

11. In addition to the debts in the SOR, Applicant is making monthly payments to a creditor for a \$9,000 medical bill he incurred when he was hospitalized for several days without health insurance. He has made monthly payments on this account for the last two years or so, and, as far as he knows, the account is in good standing.

12. Applicant concedes that he is not a good money manager. His girlfriend/co-driver handles all the money matters, bill paying, etc., via a joint account. Because they are on the road for weeks at a time, they do not own or rent a residence. Instead, they live with his girlfriend's parents and assist with living expenses. Applicant does not have a personal credit card. Applicant attributes his financial problems to his last divorce in about 2000 after a brief one-year marriage and the medical expenses he incurred without health insurance in about 2004.

13. Applicant has not been arrested, charged, or convicted or any crimes. Likewise, he has not had a speeding ticket for five years.

## **POLICIES**

The Directive sets 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.<sup>3</sup> 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>4</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.

### **BURDEN OF PROOF**

The only purpose of a security-clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>5</sup> There is no presumption in favor of granting or continuing access to classified information.<sup>6</sup> The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>7</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>8</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>9</sup>

No one has a right to a security clearance.<sup>10</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>11</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.

### **CONCLUSIONS**

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<sup>3</sup> Directive, Enclosure 2, ¶ E2.2.1 (setting forth nine factors to consider under the whole-person concept).

<sup>4</sup> Executive Order 10865, § 7.

<sup>5</sup> ISCR Case No. 96-0277 (App. Bd. Jul. 11, 1997).

<sup>6</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>7</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>8</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>9</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>10</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>11</sup> *Egan*, 484 U.S. at 531.

Under Guideline F, a 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.

Here, based on the record evidence as a whole, a security concern is raised by significant unpaid debts. Applicant has a well-established history of financial problems (Exhibits 2 and 3). His derogatory financial history is a security concern because it indicates an inability or unwillingness to satisfy debts and a history of not meeting financial obligations within the meaning of the guideline.

I reviewed the MC under the guideline and conclude he receives some credit in mitigation. Each MC is briefly summarized and discussed below.

The first MC—the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur—does not apply. His financial problems are ongoing, and his financial problems involve multiple delinquent debts. Given his longstanding financial problems that continue to date, it is too soon to say that his financial problems are unlikely to recur.

The second MC—the conditions that resulted in the behavior were largely beyond the person's control—applies somewhat. Applicant experienced understandable financial problems stemming from his last divorce in about 2000. Likewise, his uninsured medical expenses in about 2004 no doubt had a negative effect on his overall financial situation and he has acted reasonably by making monthly payments on this debt. The credit is limited, however, given that his divorce was several years ago and he is still in the process of cleaning up his financial house.

The third MC—the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control—does not apply. There is no evidence to support application of this MC.

The fourth MC—the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts—applies somewhat. Applicant has resolved three collection accounts by payment in full (subparagraphs 1.a, 1.b, and 1.d). He is making monthly payments on another bad debt (subparagraph 1.c). And he is making monthly payments on a sizeable medical bill not alleged in the SOR. Taken together, these circumstances are sufficient to qualify for initiating a good-faith effort within the meaning of the guideline. The credit is limited because of the other debts where he has taken little, if any, action to resolve.

The fifth MC—the individual has a reasonable basis to dispute the legitimacy of the past-due debt—is not applicable here.

The sixth MC—the affluence resulted from a legal source—is not applicable here.

I have also considered this case in light of the whole-person concept. Applicant is 52 years old and sufficiently mature to make thoughtful, prudent decisions about his finances, but the record evidence shows otherwise. Although he has made some progress in resolving his bad debts, there is still much work to do. He owes about \$3,481 stemming from a credit card account and he just started making monthly payments on it (subparagraphs 1.c and 1.g). He owes nearly \$8,000 on a collection account stemming from an auto loan (subparagraph 1.e). Also, the current status of the auto loan that went in collection for about \$11,358 is unknown (subparagraph 1.h).

Of concern here is the lack of documentary evidence (account statements, receipts, correspondence verifying the status of accounts, etc.) from Applicant. Other than the three small debts he paid in full for less than \$500 in total (Exhibits A, B, and C), he did not present documentary evidence about his other debts or his overall financial situation. Indeed, what's missing here is: (1) a comprehensive, realistic approach or plan for resolving his indebtedness; (2) documented actions taken in furtherance of that approach; and (3) a measurable improvement to his situation. In my view, Applicant does not have a firm grasp on his finances and it is likely his financial problems will continue. These circumstances militate against a favorable decision for Applicant.

After weighing the favorable and unfavorable evidence, I conclude that Applicant has not presented sufficient information to explain, extenuate, or mitigate the financial considerations security concern. Likewise, he has not met his ultimate burden of persuasion to obtain a favorable clearance decision.

**FORMAL FINDINGS**

\_\_\_\_\_ Here are my conclusions for each allegation in the SOR:

_____ SOR ¶ 1–Guideline F:	Against Applicant
_____ Subparagraphs a–h:	Against Applicant

**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. Clearance is denied.

Michael H. Leonard  
Administrative Judge