

The evidence is not sufficient to prove that Applicant made deliberately false statements about her financial record when she completed her security-clearance application. But she has more than \$10,000 in delinquent or unpaid debts that she has just begun to pay off. Her efforts, while commendable, are not sufficient to rebut, explain, extenuate, or mitigate the security concern under Guideline F for financial considerations. Clearance is denied.

STATEMENT OF THE CASE

Applicant contests the Defense Department's preliminary decision to deny or revoke her eligibility for a security clearance. Acting under the relevant Executive Order and DoD Directive,¹ on July 21, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) detailing the basis for its action. The SOR—which is in essence the administrative complaint—alleges a security concern under Guideline F for financial considerations. Applicant timely replied to the SOR and requested a hearing.

The case was assigned to me on October 16, 2006, and a notice of hearing was issued scheduling the case for December 6, 2006. Applicant appeared without counsel and the hearing took place as scheduled. DOHA received the hearing transcript on December 15, 2006.²

Per Applicant's request, the record was left open until Wednesday, December 27, 2006, to allow her to submit additional documentary evidence. She did so in a timely manner and those matters were forwarded to me by department counsel who voiced no objections to Applicant's post-hearing submission, which consists of a one-page fax cover sheet and eight pages. The nine-page document is admitted as Applicant's Exhibit B.

RULINGS ON PROCEDURE

Before the hearing, the government moved to amend the SOR (Appellate Exhibit I). The crux of the amendment is to add a second paragraph to the SOR alleging a security concern under Guideline E for personal conduct (falsification). The second paragraph contains two allegations that Applicant gave false answers to Questions 38 and 39 on her security-clearance application. The motion was explained to Applicant during the hearing and she had no objections to it. Accordingly, the motion to amend the SOR was granted.

FINDINGS OF FACT

¹ Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended (Directive).

² The title page of the transcript reports the case number as 05-15664. The correct case number is 06-15664.

The SOR alleges that Applicant is indebted to several creditors for 12 delinquent or unpaid debts for about \$10,000 in total. In addition, it alleges Applicant gave false answers in response to two questions about her financial record. Concerning the indebtedness, Applicant's reply to the SOR was mixed, admitting several debts and denying others. Concerning the personal conduct, she denied both falsification allegations. In addition, I make the following findings of fact.

1. Applicant is a 33-year-old woman who works at a shipyard as a radiological control monitor. She is in a trainee status. She has worked in this job since September 2004. She is seeking to obtain a Defense Department security clearance for the first time.

2. Her marital status is never married. She is a college graduate with a bachelor's degree in biological sciences awarded in 1997. During 1998–2003, she was a graduate student in a master's program studying Oriental Medicine. She did not complete the program or earn a degree.

3. As part of the background investigation for her security clearance, a credit report was obtained in November 2004 (Exhibit 2), and it revealed unfavorable information. For example, the trade section of the report has about nine accounts that were then, or in the past, in a collection status. Also, the collection section of the report lists 12 collection accounts, of which 4 accounts were paid to a zero balance. Many of the collection accounts were based on unpaid medical bills. Two additional credit reports were obtained in 2006 (Exhibits 3 and 4), and these reports further reveal or confirm Applicant's unfavorable financial history.

4. The SOR alleges that she is indebted to creditors for 12 delinquent or unpaid debts for about \$10,000 in total. To date, most of the debts in the SOR are unpaid or otherwise unresolved. The debts from the SOR are discussed below.

5. The debts in subparagraphs 1.a and 1.b are student loans owed to the same creditor. Applicant was past due on each loan in the amounts of \$1,922 and \$1,111. On about October 30, 2006, Applicant entered into a repayment plan for these debts wherein she agreed to pay \$150 per month (R. 64; Exhibit B). It appears that the balance for the consolidated loans is now about \$52,686 (Exhibit B at 2). She had made one payment per the plan before the hearing.

6. The several debts in subparagraphs 1.c–1.h are unpaid medical bills that were placed for collection. The debts are owed to the same creditor. In total, Applicant owes about \$5,300 to this creditor. On about October 30, 2006, Applicant entered into a repayment plan for these debts wherein she agreed to pay \$200 per month (R. 62–63; Exhibit B at 1). She had made one payment per the plan before the hearing.

7. The debt of \$1,641 in subparagraph 1.i is for an account that was placed for collection. In reply to the SOR, Applicant denied this debt and explained that she was not aware of it or when she accrued it. During the hearing, her position did not change (R. 34–36). Based on close review of the three credit reports, it appears this debt is a medical account placed for collection and the balance is about \$1,525 (Exhibit 2 at 9).

8. The debt of \$124 in subparagraph 1.j is for an account that was placed for collection. In reply to the SOR, Applicant denied this debt and explained that she paid it in 2004–2005. At the hearing,

she said that it was a medical bill and she believed that she had paid it, but she did not have proof of payment (R. 36).

9. The debt of \$394 in subparagraph 1.k is for a charged-off account. In reply to the SOR, Applicant denied this debt and explained that she had never been indebted to this creditor. At the hearing, she said that she did not recall this debt, but was unsure about its status. Review of the March 2004 credit report shows this account was for a credit card account, which became a bad debt and was placed for collection (Exhibit 2 at 4). The account was closed when it was charged off. This debt does not appear on the 2006 credit reports.

10. The debt of \$143 in subparagraph 1.l is for an account that was placed for collection. In reply to the SOR, Applicant denied this debt and explained that the debt stemmed from a checking account that she closed in 2004. When she sought to open a checking account with her current bank, she learned that she owed this amount due to some outstanding checks that had not cleared before she closed the account. She was required to pay this debt to open a checking account with her current bank, and she did so in late 2004 or early 2005. At the hearing, Applicant's position did not change (R. 37–39).

11. To help explain her financial difficulties, Applicant presented a letter from her psychotherapist (Exhibit A). Applicant has seen the psychotherapist since March 2006, and she continues to do so weekly. In the letter, the psychotherapist explained Applicant was referred to her by a medical doctor concerned about Applicant's depression and the impact it was having on her functioning and health. Also, the letter notes that Applicant has been depressed for several years, has been in treatment several times, and her depression affects her ability to take care of day-to-day life duties.

12. To obtain a security clearance, Applicant completed submitted a security-clearance application in September 2004 (Exhibit 1). Applicant signed the form and certified that her statements were true, complete, and correct to the best of her knowledge and belief and made in good faith. She also certified that she understood that a knowing and willful false statement on the application could be punished under federal law by a fine or imprisonment or both.

13. In response to Question 38 addressing financial delinquencies, Applicant replied "Yes." She revealed a student loan with a balance of \$46,000 that had been more than 180 days delinquent in the last seven years. In response to Question 39 addressing financial delinquencies, Applicant replied "No." By answering in the negative, she denied currently having any debts more than 90 days delinquent. She did not disclose any of her other debts in response to Questions 38 and 39 or anywhere else on her security-clearance application.

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.³ 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.⁴ 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.⁵ There is no presumption in favor of granting or continuing access to classified information.⁶ The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.⁷ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.⁸ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁹

No one has a right to a security clearance.¹⁰ And 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."¹¹ 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

1. *The Personal Conduct Security Concern*

³ Directive, Enclosure 2, Item E2.2.1 (setting forth nine factors to consider under the whole-person concept).

⁴ Executive Order 10865, § 7.

⁵ ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

⁶ ISCR Case No. 02-18663 (March 23, 2004) at p. 5.

⁷ Directive, Enclosure 3, Item E3.1.14.

⁸ Directive, Enclosure 3, Item E3.1.15.

⁹ Directive, Enclosure 3, Item E3.1.15.

¹⁰ *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.") (citations omitted).

¹¹ 484 U.S. at 531.

Personal conduct under Guideline E¹² is always a security concern because it asks the central question: Does a person's past conduct justify confidence the person can be trusted to properly safeguard classified information. 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.

To prove the falsification allegations, the government offered the security-clearance application and relied on its cross-examination of Applicant. Although substantial evidence is a low standard, the evidence here is insufficient to prove that Applicant made deliberately false statements when completing her security-clearance application. At the hearing, she explained why she did not report the debts in subparagraphs 1.c–1.h and 1.j–1.l as called for in her responses to Questions 38 and 39 (R. 41–43). In summary, she explained that she was either unaware of the debt or forgot about the debt, and that she was not trying to mislead, falsify, or be untruthful. Having had a chance to listen to Applicant's testimony, observe her demeanor, and gauge her sincerity, I found Applicant's explanation to be credible, and I am not persuaded that her responses to Questions 38 and 39 were deliberately false. Accordingly, Guideline E will be decided for Applicant.

2. *The Financial Considerations Security Concern*

Under Guideline F,¹³ a security concern typically exists for two different types of situations—significant unpaid debts or unexplained affluence. 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, a security concern is raised by significant unpaid debts. Applicant has a history of not meeting financial obligations as well as inability or unwillingness to pay just debts.¹⁴ The record evidence shows a pattern of Applicant not fulfilling her financial obligations. She just (in October 2006) put a plan in place to address her student loan debt and the several medical debts owed to the same creditor. So far, she has made one payment to each creditor per the plan.

I reviewed the MCs under the guideline and conclude none apply in her favor. Applicant has not presented sufficient evidence to support application of any MC under the guideline. Applicant's financial problems are both recent and ongoing, and they are part of a pattern of conduct as opposed to an isolated incident. Her financial problems were not caused by a condition or circumstance

¹² Directive, Enclosure 2, Attachment 5 (setting forth the disqualifying and mitigating conditions).

¹³ Directive, Enclosure 2, Attachment 6 (setting forth the disqualifying and mitigating conditions).

¹⁴ Directive, Item E2.A6.1.2.1. A history of not meeting financial obligations; Item E2.A6.1.2.3. Inability or unwillingness to satisfy debts.

largely beyond her control. As Applicant just started a repayment plan with her two chief creditors, it is too soon to say that there are clear indications that her financial problems are being resolved or are under control. Finally, although she is commended for making some progress, her efforts at this point are not enough to conclude that she has made a good-faith effort to repay overdue creditors or otherwise resolve her debts. What's missing here is a substantial improvement to her financial situation. Lacking a long-term track record of financially-responsible behavior, Applicant is unable to overcome her history of significant unpaid debts.

I have considered the psychotherapist's letter in the context of MC 3,¹⁵ and conclude that information cuts both ways. On one hand, it may help explain why Applicant had financial problems in the past. On the other hand, it is not particularly helpful because her depression is an ongoing condition for which she continues to receive treatment. So long as her depression continues to hinder her ability to function in day-to-day activities (e.g., handling her finances), it is possible that her depression will hinder her ability to put her financial house in order.

Given these circumstances, I conclude Applicant failed to present sufficient evidence to rebut, explain, extenuate, or mitigate the financial considerations security concern. Likewise, she did not meet her ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, I also considered Applicant's case under the whole-person concept, which a detailed discussion thereof would not change the outcome of this case.

FORMAL FINDINGS

_____ Here are my conclusions for each allegation in the SOR:

_____ SOR ¶ 1–Guideline F: Subparagraphs a–l:	Against Applicant Against Applicant
_____ SOR ¶ 2–Guideline E: Subparagraphs a–b:	For Applicant For Applicant

DECISION

_____ In light of all the circumstances presented by the record in this case, 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

¹⁵ Directive, Item E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation).