

DATE: October 31, 2007

In re:)
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 -----) ISCR Case No. 06-18105
 SSN: -----)
)
 Applicant for Security Clearance)
)
)

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

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of unresolved financial problems, which is ongoing. He has done little to demonstrate that he will resolve the financial problems in a satisfactory manner. In addition, he made multiple false statements about his background on a security-clearance application. Clearance is denied.

STATEMENT OF THE CASE

This is a security clearance 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,¹ the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant on May 7, 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 delinquent debts 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.² The Directive is pending revision or amendment. The Revised Guidelines apply here because the SOR is dated after the effective date.

On June 25, 2007, and then again on July 21, 2007, Applicant replied to the SOR and requested a hearing. The hearing took place as scheduled on October 16, 2007, and the transcript was received on October 24, 2007.

FINDINGS OF FACT

Under Guideline F, the SOR alleges 14 delinquent debts for about \$13,769 in total. Based on his July response to the SOR, Applicant admits indebtedness of about \$8,245 and denies the balance. Under Guideline E, the SOR alleges Applicant made false statements when providing answers to four questions on his security-clearance application. His position on these allegations will be discussed below. In addition, the following facts are established.

Applicant is a 35-year-old assistant steward who has worked for a shipping company since November 2004. This is an entry-level position, and his goal is to make a career out of it by working his way up the ladder in the steward department. He married in 2002, and he and his wife had a son in 2004. His wife is 23 years old and she is not employed outside the home.

This is the first time Applicant has applied for a security clearance, and he completed a security-clearance application in December 2004 (Exhibit 1). When signing his application, he certified that his statements were true, complete, and correct to the best on his knowledge and belief and were made in good faith, and he acknowledged that a knowing and willful false statement could be punished under federal law. Applicant submitted a "clean" application; in other words, he did not

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).

disclose any background information that was negative or derogatory. In particular, he answered the following questions in the negative:

- Question 24—asking if he had ever been charged with or convicted of any drug- or alcohol-related offenses.
- Question 27—asking if he had, in the last seven years, illegally used any controlled substance, to include marijuana.
- Question 38—asking if in the last seven years he had been over 180-days delinquent on any debts.
- Question 39—asking if he was currently over 90-days delinquent on any debts.

The background investigation of Applicant revealed the following: (1) a 1999 arrest for possession of marijuana resulting in Applicant pleading no contest (Exhibit 8); (2) a history of marijuana use by Applicant from at least 1997 to about June 2001; and (3) credit reports containing numerous and longstanding delinquent debts (Exhibits 5, 6, and 7). He did not disclose any of this information on his security-clearance application as required by the scope of Questions 24, 27, 38, and 39.

Applicant has a history of unresolved financial problems as established by credit reports from 2005, 2006, and 2007 (Exhibits 5, 6, and 7). The credit reports form the basis for the debts in the SOR. He denied 4 of the 14 debts. In particular, he denied the indebtedness in SOR ¶ 1.e, because of a dispute over merchandise he purchased. He denied the indebtedness in SOR ¶ 1.h, because he was not familiar with the creditor. He denied the medical debts in SOR ¶¶ 1.k and 1.l, because he had no idea about the medical bills. And he denied, in part, the indebtedness in SOR ¶ 1.n, because he disputes the amount the creditor is seeking to collect on a judgment based on a delinquent credit card account. Applicant did not provide any documentary information to support his denials.

Concerning the debts he admits, Applicant has been unable to repay or otherwise resolve the indebtedness. In his testimony, he stressed that he needs to be able to work to pay his debts and his current position provides him a better opportunity to do so. He met with a consumer credit counseling organization in 2005 or 2006, but was unable to undertake a repayment plan due to lack of money. The soonest Applicant believes he will be able to begin to repay these debts is in March 2008, when he completes repaying a motorcycle loan (his transportation) and a family loan. Applicant did not provide any documentary information about these debts or about his overall financial situation.

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, renewing, 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 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 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

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).

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

1. The Personal Conduct Security Concern

Personal conduct under Guideline E¹⁴ includes issues of false statements and credible adverse information that may not be enough to support action under any other guideline. In particular, a security concern may arise due to “[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations [that 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.”¹⁵

The SOR alleges that Applicant made false statements when providing answers to four questions on his security-clearance application. In general, Applicant contends his statements were not deliberately false. For Question 24 about arrests, he thought the question had a five-year scope. For Question 27 about drug use, he considered it “a mandatory no” question if he wanted to get and keep the job, and he knew that his answer was false (R. 52, 63–65). For Questions 38 and 39 about delinquent debts, he knew he had debts, but did not think they were delinquent. The issue is whether Applicant’s answers to these four questions were deliberately false. Given the record evidence, the multiple allegations will be treated collectively instead of analyzing each falsification allegation individually.

The doctrine of *falsus in uno, falsus in omnibus* (false in one thing, false in everything) should be considered in assessing Applicant’s credibility. In his hearing testimony, Applicant essentially admitted that his answer to Question 27 was deliberately false when he described it as “a mandatory no” question (R. 52, 63–65). In addition, he seemed to concede some untruthfulness in his closing argument (R. 79). Taken together, these circumstances show his denial to Question 27 was deliberately false. Because his answer to Question 27 is so obviously false, his attempts to refute and rebut the other three falsification allegations are not persuasive. In short, Applicant’s testimony on these points has no credibility. On this basis, the record evidence is sufficient to prove Applicant made deliberately false statements as alleged in the SOR. Accordingly, the record evidence is sufficient to conclude that DC 1¹⁶ applies against Applicant.

¹³ Executive Order 10865, § 7.

¹⁴ Revised Guidelines at 10–12 (setting forth the disqualifying and mitigating conditions).

¹⁵ Revised Guidelines at 10.

¹⁶ DC 1 is “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.”

