

KEYWORD: Financial

DIGEST: Applicant has a history of financial problems. She is a 40-year-old single parent of three children who has struggled to make financial ends meet. Her financial situation was made more difficult due to a diagnosis of autoimmune hepatitis resulting in medical bills and a period of unemployment in 2003. In addition to entering into a debt settlement plan, she is making efforts to educate herself and improve her financial knowledge and skills. She is carrying a heavy load and doing her best under challenging circumstances to be a financially responsible person. Eligibility for a security clearance is granted.

CASENO: 06-19262.h1

DATE: 06/26/2007

DATE: June 26, 2007

|                                  |   |                        |
|----------------------------------|---|------------------------|
| In re:                           | ) |                        |
|                                  | ) |                        |
| -----                            | ) |                        |
| SSN: -----                       | ) | ISCR Case No. 06-19262 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

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

**APPEARANCES**

**FOR GOVERNMENT**

James F. Duffy, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has a history of financial problems. She is a 40-year-old single parent of three children who has struggled to make financial ends meet. Her financial situation was made more difficult due to a diagnosis of autoimmune hepatitis resulting in medical bills and a period of unemployment in 2003. In addition to entering into a debt settlement plan, she is making efforts to educate herself and improve her financial knowledge and skills. She is carrying a heavy load and doing her best under challenging circumstances to be a financially responsible person. Eligibility for a security clearance is granted.

---

### **STATEMENT OF THE CASE**

Applicant contests the Defense Department's intent to deny or revoke her 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 January 5, 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.

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 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 January 5, 2007, which is after the effective date. The applicability of the Revised Guidelines was made a matter of record at the start of the hearing (R. 18–19).

Applicant timely replied to the SOR and requested a hearing. In her written response to the SOR, she admitted having delinquent debts with multiple creditors in the total amount of about \$37,764. She denied having delinquent debts with multiple creditors in the total amount of \$2,452.

The case was assigned to me on February 27, 2007. A notice of hearing was issued scheduling the hearing for April 23, 2007. The hearing took place as scheduled. DOHA received the hearing transcript on May 4, 2007.

The record was kept open until May 7, 2007, to allow Applicant to submit additional documentary evidence. No materials were received by the May 7<sup>th</sup> deadline. So, a conference call was held with the parties on May 30<sup>th</sup>, and Applicant indicated that she mailed the materials before

---

<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).

the deadline. It was agreed that the record would remain open until close of business on June 15, 2007, to give Applicant an opportunity to resubmit her materials. Applicant made a timely submission, and those matters were forwarded to me by department counsel who voiced no objections to the matters, which are admitted as Exhibit B.

### **FINDINGS OF FACT**

Based on the record evidence as a whole, I find that the following facts are true:

1. Applicant is a 40-year-old contractor employee who has worked for a company engaged in federal contracting since June 2005. She is seeking to obtain a security clearance for the first time. Her job title or position is functional administrator. Her job duties primarily involve information technology (e.g., maintaining computer servers). She earns a gross monthly salary of about \$3,614. Her educational background includes graduating from high school and some college. She married in 1985 and divorced in 1989. She has three children, ages 20, 18, and 7. Her 20-year-old child recently moved out of her home. She receives about \$300 per month in child support.

2. Applicant has a history of financial problems as established by credit reports from 2001, 2005, and 2006 (Exhibits 2, 3, and 4). For example, the 2001 credit report contains substantial derogatory information. The trade section of the report lists 15 accounts, of which 4 accounts are described as bad debts placed for collection. The collections section of the report lists 21 collection accounts. The 2005 credit report is similar, as the trade section has 18 accounts, of which 11 accounts are described in the negative. The collections section of the report lists 21 collection accounts. She believes the main reasons for her financial problems were getting behind on her bills, getting sick, and then getting caught up in a vicious cycle (R. 70–71). Also, she admits that she did not know how to manage money very well.

3. Based on her admissions to the SOR, Applicant has delinquent debts owed to multiple creditors for about \$37,000. A sizable portion of the debt is medical bills. For example, the 2006 credit report lists 15 creditors for medical services in the approximate amount of \$13,398 (SOR subparagraph 1.w).

4. In an effort to address her financial problems, Applicant retained the services of company that helps individuals regain control of their personal finances by eliminating debt through settlements (Exhibit A). Applicant hire the firm in January 2007. The debt settlement plan is fairly comprehensive, as it includes 11 creditors who appear to be collection agencies (Exhibit A at 4). It does not include any debt under \$600 (R. 31). The plan addresses \$17,405 in total unsecured debt and estimates it can settle that debt for \$6,962 over a period of 36 months (Exhibit A at 2). She has made the initial two payments in February and March. She had not yet made her third payment for April at the time of the hearing.

5. In addition to the debt settlement plan, Applicant has taken other actions to address her financial problems (R. 70–75). She sought assistance and education from her church. She is learning

how to budget and how to use an Excel spreadsheet as a budgeting tool. She is learning to pay off debts by paying off the smallest one first and then moving on to the next. Also, she is reading a layman's educational book in the area of personal finance and money management. She was in the process of moving into her brother's home to reduce her living expenses and plans to devote the extra money to debt repayment.

6. Applicant has been periodically unemployed in the past. In 1992, she was unemployed for about six weeks due to a medical problem. In 1993, she was unemployed for two to three weeks due to a medical problem. More recently in 2003, she was unemployed for about two to three months, off-and-on, due to a more serious medical problem.

7. In 2003, Applicant was diagnosed with autoimmune hepatitis, a disease in which the body's immune system attacks liver cells and causes the liver to become inflamed (hepatitis). This was the medical problem that resulted in her unemployment in 2003 as well as a large amount of medical bills. When diagnosed, she was working as a temporary employee of the federal government and ineligible for health insurance (R. 69-70). She is now in remission, she takes no medications, and she sees a doctor about every six months. She has made lifestyles changes (e.g., regular exercise) to improve her health.

## **POLICIES**

The Revised Guidelines 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. 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>3</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>4</sup> There is no presumption in favor of granting or continuing access to classified information.<sup>5</sup> The government has the burden of presenting evidence to establish facts alleged in the SOR that have been

---

<sup>3</sup> Executive Order 10865, § 7.

<sup>4</sup> ISCR Case No. 96-0277 (App. Bd. Jul. 11, 1997).

<sup>5</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

controverted.<sup>6</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>7</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>8</sup>

No one has a right to a security clearance.<sup>9</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>10</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

The general concern under Guideline F for financial considerations is that 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. Her derogatory financial history is a security concern because it indicates inability (not unwillingness) to satisfy debts and a history of not meeting financial obligations within the meaning of Guideline F.

I reviewed the MC under the guideline and conclude she receives 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. Her financial problems are ongoing, and her financial problems involve multiple delinquent debts. Given her longstanding financial problems, it is too soon to say that her financial problems are unlikely to recur.

---

<sup>6</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>7</sup> Directive, Enclosure 3, ¶ E3.1.15.

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

<sup>9</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>10</sup> *Egan*, 484 U.S. at 531.

The second MC—the conditions that resulted in the behavior were largely beyond the person’s control—applies. Applicant has been unemployed for three relatively brief periods. She was most recently unemployed in 2003 when she learned she was suffering from autoimmune hepatitis. Her serious medical condition generated many unexpected medical bills she was unable to pay.

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. Applicant has not receiving counseling as part of the debt settlement plan. Likewise, although she has sought and obtained helpful assistance from her church, it cannot be viewed as counseling from a financial professional.

The fourth MC—the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts—applies. Her good-faith effort is established by her debt settlement plan entered into in January 2007 and her other actions to improve her overall financial situation. Although the debt settlement plan is a recent development, I am persuaded that Applicant is committed to making it work. Taken together, these circumstances are sufficient to qualify for initiating a good-faith effort within the meaning of the guideline.

The fifth MC—the individual has a reasonable basis to dispute the legitimacy of the past-due debt—does not apply. To the extent she is disputing any of the debts she denies, she has not provided documentary proof to verify the basis of the dispute.

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. Although Applicant has just begun the process of resolving her indebtedness, given the surrounding facts and circumstances, I have no serious doubts about her current suitability for a security clearance. In financial cases under Guideline F, it is important to remember that the point of the process is not for the government to act as a third-party collector requiring applicants to repay delinquent debts. Instead, the point of the process is to assess the security significance of an applicant’s financial record.

Here, Applicant is a 40-year-old single parent raising three children, ages 20, 18, and 7. Not surprisingly, she has struggled to make financial ends meet under these circumstances. Add to that her diagnosis of autoimmune hepatitis resulting in medical bills and a period of unemployment in 2003. In addition to entering into a debt settlement plan, she is making efforts to educate herself and improve her financial knowledge and skills. Also, she is moving in with a family member to reduce her living expenses and plans to use the extra money to repay debt. Overall, she is carrying a heavy load and doing her best under challenging circumstances to be a financially responsible person. These circumstances further mitigate the security concern stemming from her indebtedness.

While Applicant certainly has not presented the strongest possible case or a perfect case, she has presented sufficient information to explain, extenuate, or mitigate the financial considerations security concern. Likewise, she has met her 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: | For Applicant |
| _____ Subparagraphs a–y:   | For Applicant |

**DECISION**

\_\_\_\_\_ In light of all the facts and circumstances, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Eligibility for a security clearance is granted.

Michael H. Leonard  
Administrative Judge