

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has a history of unresolved financial problems. It is too soon to tell if she will resolve the financial problems in a satisfactory manner. Clearance is denied.

CASENO: 06-20776.h1

DATE: 09/26/2007

DATE: September 26, 2007

In re:)	
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SSN: -----)	ISCR Case No. 06-20776
)	
Applicant for Security Clearance)	
)	

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

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq. , Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of unresolved financial problems. It is too soon to tell if she will resolve the financial problems in a satisfactory manner. Clearance is denied.

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,¹ the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant on February 15, 2007. The SOR is equivalent to an administrative complaint and it details the factual basis for the action. In general, 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.

Applicant replied to the SOR in writing on March 21, 2007. She elected to have her case decided on the written record in lieu of a hearing.

On May 30, 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 and it was received by her on June 11, 2007. Applicant replied to the FORM on August 14, 2007, and she submitted materials for consideration. The case was assigned to me on September 14, 2007.

RULINGS ON PROCEDURE

In its FORM, the government included an FBI Identification Record concerning Applicant (Exhibit 6). It reports that Applicant was arrested or charged (or both) with two counts of issuing bad checks in 1978. The disposition of these misdemeanors is not reported. This matter is not alleged in the SOR. And in its brief, government counsel did not explain why a 29-year-old bad check case

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).

(with an unknown disposition) is relevant and material to the debts in the SOR, to Applicant's ability to repay, or to Applicant's current overall financial situation. Accordingly, the FBI report has not been considered.

Also in its FORM, the government included a personal subject interview of Applicant that was part of a report of investigation (ROI) prepared by the U.S. Office of Personnel Management (Exhibit 7). The ROI indicates that the Applicant's subject interview was unsworn. 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 Here, the ROI is not accompanied by an authenticating witness (for example, perhaps by affidavit or adopted by Applicant). Accordingly, the ROI has not been considered.

FINDINGS OF FACT

Under Guideline F, the SOR alleges seven delinquent debts ranging from \$21 to \$10,793 for a total of about \$23,637. Under Guideline E, the SOR alleges Applicant gave deliberately false answers to two questions about her financial delinquencies when completing a security-clearance application in November 2005. She admits the indebtedness and denies the falsification allegations. In addition, the following facts are established.

Applicant is a 57-year-old technician. She has worked for her current employer since November 1996. According to her general manager/facility security officer, Applicant is a reliable and stable employee. She is punctual and produces high-quality work.

Applicant has been married twice. She was first married in 1967 and then divorced in 1982. She married her current husband in 1989. All her children are adults.

Applicant has a history of financial problems. It is established by the three credit reports in the FORM (Exhibits 8, 9, and 10) as well as her admissions. The status of her indebtedness alleged in the SOR is summarized in the following table.

Debt Description	Current Status
SOR ¶ 1.a—medical account in collection for \$21; delinquent since June 2004.	Paid in March 2007.
SOR ¶ 1.b—medical account in collection for \$107; delinquent since April 2004.	Paid in March 2007.
SOR ¶ 1.c—charged-off account for \$131.	Paid in March 2007.

³ See Directive, Enclosure 3, ¶ E3.1.20.

⁴ *Id.*

SOR ¶ 1.d—charged-off credit card account for \$10,793; delinquent since June 2005.	In collection. Making payments since January 2007; as of July 2007, balance of \$9,246.98.
SOR ¶ 1.e—charged-off account for \$2,215; charged-off in about July 2005.	Applicant cosigned loan for son who did not make payments. Voluntary repossession of truck. Settled for \$1,750 in January 2007.
SOR ¶ 1.f—past-due account for \$1,984.	In temporary hardship relief. Made \$178 payments in January, February, March, April, May, June, and July 2007.
SOR ¶ 1.g—charged-off account for \$8,386; charged-off in about July 2003.	In collection since at least 2004. Resolved for \$2,917 in 2006 or 2007.

In about November 2005, Applicant signed a security-clearance application (Exhibit 3). In doing so, she certified that her answers were true, complete, and correct to the best of her knowledge and belief and made in good faith. Also, she understood that a knowing and willful false statement on the application could be punished by a fine or imprisonment or both. In response to Questions 38 and 39 about her financial record, she answered in the negative. She did not disclose any financial delinquencies called for by the questions.

GENERAL PRINCIPLES OF LAW AND POLICIES

No one has a right to a security clearance.⁵ 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.”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 and retention of any existing security clearance.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 evidence to establish facts

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).

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 said that the burden of proof is less than the 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.

CONCLUSIONS

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.

The record evidence supports a conclusion that Applicant has a history of financial problems. Her history of financial problems is a security concern because it indicates inability or unwillingness

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 13–14 (setting forth the disqualifying and mitigating conditions).

¹⁷ Revised Guidelines at 13.

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.

The most pertinent mitigating condition is the fourth MC²⁰ of Guideline F (the other MCs have been considered and none apply). It receives consideration because of Applicant's efforts to repay or resolve her debts (*see* table). She has made good progress: (1) she paid three of the smaller debts in March 2007; (2) she settled or resolved two of the larger debts in 2006–2007; and (3) she made repayment arrangements for two debts in 2007. At present, she has about \$10,000 outstanding in unresolved delinquent debt.

The credit in mitigation, however, is lessened by two factors. First, her good-faith efforts have largely been a recent development undertaken in 2007. Second, she still has two sizable debts to resolve (SOR ¶¶ 1.d and 1.f), and one account is in a temporary hardship relief status. It is unknown if Applicant will be able to make payments when the account returns to its normal status.

In short, given her longstanding history of financial problems, it is too soon to make a predictive judgment about her ability to resolve the balance of her delinquent debt and then live a financially-responsible lifestyle. Accordingly, Applicant's efforts to resolve her financial problems, while laudable, are insufficient to mitigate the financial considerations security concern.

Personal conduct under Guideline E²¹ addresses “conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations.”²² In this regard, the 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.

At issue here is the truthfulness of Applicant's answers to two questions seeking information about financial delinquencies. She should have revealed the debts specified in the SOR in response to Questions 38 and 39 of the security-clearance application. She contends she did not intentionally omit the information. Instead, she was unaware and did not have a credit report available to her when she completed and signed the application. Her explanation is accepted as reasonable because it does not appear that she had a firm grasp on her finances in 2005 when she completed the application. Accordingly, based on the admissible evidence, her answers to the two questions were not deliberately false and Guideline E is decided for Applicant.

¹⁸ DC 1 is “inability or unwillingness to satisfy debts.”

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

²⁰ MC 4 is “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”

²¹ Revised Guidelines at 10–12 (setting forth the disqualifying and mitigating conditions).

²² Revised Guidelines at 10.

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the financial considerations security concern. She has a history of unresolved financial problems and it is too soon to tell if she will resolve the financial problems in a satisfactory manner. Applicant did not meet her 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.

FORMAL FINDINGS

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

DECISION _____

_____ In light of all the circumstances, it is not clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Clearance is denied.

Michael H. Leonard
Administrative Judge