

SYNOPSIS

Applicant and her husband operated a trucking business hauling auto parts to-and-from salvage yards located in multiple states. Due to a business downturn starting in about 1997, followed by a business failure in 2002, Applicant incurred excessive indebtedness. She and her husband now own-and-operate a truck driving as a team for a transit company hauling munitions and other materials for the government. She is not incurring new delinquent debt, and she is otherwise living within her means. When she completed a security-clearance application in April 2004, she did not make a deliberately false statement when responding to a question about her financial delinquencies. 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,¹ the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant on January 26, 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 and Guideline E for personal conduct (falsification). Applicant 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 (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.² Both the Directive and the Regulation are pending formal amendment. The Revised Guidelines apply to this case because the SOR is dated January 26, 2007, which is after the effective date.

The case was assigned to me April 4, 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 May 4, 2007.

FINDINGS OF FACT

Applicant's response to the SOR allegations was mixed. She admitted all the indebtedness under Guideline F. She explained that the indebtedness arose from a small business that she and her

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).

husband operated, and this indebtedness relates to business expenses and is not personal debt, although she is personally responsible for the debts. She denied the falsification allegation under Guideline E. She explained that she answered “yes” to the question about financial delinquencies and attached a copy of a credit report to her security-clearance application. Her admissions and explanations are incorporated herein. And I make the following findings of fact.

1. Applicant is a 53-year-old truck driver for a transit company engaged in defense contracting by hauling munitions and other materials for the government. She and her husband have been married for 38 years, and they own-and-operate a truck working as independent contractors for the transit company. They have a 37-year-old daughter and a 12-year-old grandson. Applicant has worked as a truck driver for about 30 years, and she has a Class A commercial driver’s license. She has a good driving and employment record in her current job (Exhibits A, B, and C). She, along with her husband, began their current employment in about April 2004. Her husband was granted a security clearance in about March 2007 (R. 52–53).

2. Applicant has a history of financial problems, and that history is verified by credit reports from 2005 and 2006 (Exhibits 4 and 5). Based on this history, the SOR sets forth ten delinquent accounts for about \$63,000. Based on the evidence at hearing, it appears that nine accounts are at issue, as the debt in SOR subparagraph 1.d is redundant with the debt in SOR subparagraph 1.h.

3. As she explained in her answer, all the debts in the SOR relate to their small business. The small business was a specialized trucking company hauling auto parts for a cooperative to-and-from salvage yards located in multiple states. The business started in 1991, and they operated it at a profit. It grew from one truck to six trucks, and they added four employees. Starting in about 1997, the business started to experience a downturn.

4. After the events of September 11, 2001, the car salvage business deteriorated. Car dealers offered lucrative deals to sell new cars, and the auto repair business declined because it was not cost effective to repair a car when you could get a great deal on a new car. Because of this decline in business, they lost money and were unable to meet all of their financial obligations. When they eventually closed the business in June 2002, they sold the assets for what they owed.

5. When they closed the business, Applicant realized they owed payroll taxes. After completing their payroll, Applicant called the IRS in an attempt to arrange a repayment agreement. The result was an IRS audit that concluded they owed about \$20,000 in taxes. They also learned during the audit that their tax preparer had failed to file their tax returns. Based on the audit, the IRS filed a lien, and Applicant and her husband paid it off in about May 2006. Paying off the tax debt limited their ability to repay the debts in the SOR.

6. In response to interrogatories issued by the agency, Applicant provided detailed information about her efforts and actions to address the debts in the SOR (Exhibit 3). Those matters are incorporated herein by reference. In summary, Applicant has made a few payments on a couple of the accounts, but otherwise the accounts remain delinquent.

7. For her current employment, Applicant completed and signed a security-clearance application in April 2004 (Exhibit 1). This application was completed by hand using a pen. When she signed the application, she certified that her statements were true, complete, and correct to the best of her

knowledge and were made in good faith. Also, she acknowledged that a knowing and willful false statement could be punished under federal law. In response to Question 28a³ about financial delinquencies, Applicant answered “yes.” In addition, she reported two credit card accounts and wrote the words “see attached.” Exhibit 1 includes a one-page attachment wherein she reported three delinquent credit card accounts.

8. In addition to the 2004 security-clearance application, another application was submitted in May 2005, and it appears to be the electronic version. In response to the same question about financial delinquencies, Applicant responded “yes,” and she reported three credit card accounts. Also, this application contains a one-page attachment wherein Applicant provided more information about the three accounts.

9. In her hearing testimony, Applicant elaborated on the explanation she provided about the falsification allegation. With the assistance of her daughter, who worked for a finance company, they pulled a credit report for Applicant (R. 62–63). This is the credit report Applicant submitted with her initial application (R. 107–110). The 2005 credit report tends to verify this because it shows that the finance company the daughter worked for did make an inquiry in December 2003, a few months before Applicant completed the initial application (Exhibit 5 at 10). Applicant then turned in the security-clearance application along with the credit report to her employer. The attached credit report is not included in the initial application admitted into the record evidence.

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.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

³ “In the last 7 years, have you been over 180 days delinquent on any debt(s)?”

⁴ Executive Order 10865, § 7.

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

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 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 Financial Considerations Security Concern*

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. 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 applicable MC is briefly summarized and discussed below.

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

⁷ Directive, Enclosure 3, ¶ E3.1.14.

⁸ Directive, Enclosure 3, ¶ E3.1.15.

⁹ Directive, Enclosure 3, ¶ 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.”).

¹¹ *Egan*, 484 U.S. at 531.

The first MC—the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur—applies. The record evidence shows that the financial problems happened due to a business downturn followed by a business failure. The personal debts were incurred in an effort to keep the business afloat, which is not an unusual occurrence with a small business. The financial problems are unlikely to recur because Applicant is no longer involved in the small business, and she and her husband are gainfully employed and otherwise financially stable. The financial problems do not cast doubt on Applicant’s current reliability, trustworthiness, or good judgment because they were not caused by high living, frivolous spending, deceptive or illegal financial practices, or personal problems (e.g., drug abuse, alcoholism, or gambling).

The second MC—the conditions that resulted in the behavior were largely beyond the person’s control—applies. The record evidence shows that the financial problems happened due to a business downturn followed by a business failure, which were circumstances beyond Applicant’s control. Although Applicant still has indebtedness from that period, she and her husband have acted responsibly under the circumstances. When the business closed in 2002, they made their last payroll and contacted the IRS to address the issue of payroll taxes. It was then they learned of their tax problems, which resulted in a federal tax lien for \$20,000. It was paid off in 2006. The repayment of the tax debt no doubt limited their ability to address old personal debts associated with their failed business. Given these circumstances, Applicant has acted responsibly in dealing with the overall financial problems created by the business failure.

2. *The Personal Conduct Security Concern*

Personal conduct under Guideline E addresses issues of questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. 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 answer to Question 28a in her April 2004 security-clearance application. It is alleged that she listed two debts from the SOR, but that she deliberately failed to list the others. Her explanation—attaching a credit report to her application in an effort to be complete and forthcoming—is credible. Moreover, her explanation is corroborated, in part, by Exhibit 5, because it shows that the finance company the daughter worked for did make an inquiry in December 2003, a few months before Applicant completed the initial application. After having had a chance to listen to and observe Applicant, I am persuaded that she made a good-faith effort to provide a full, frank, and truthful answer to Question 28a. Given all the facts and circumstances, I conclude Applicant did not deliberately conceal or omit information about her financial delinquencies.

3. *The Whole-Person Concept*

I have also considered this case in light of the whole-person concept. Applicant is a 53-year-old professional truck driver with 30 years’ experience. Although she has not resolved the

indebtedness stemming from the business failure, given the surrounding facts and circumstances, I have no 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, my assessment of Applicant's financial record is that this appears to be a case of bad things happening to a good person, as opposed to the typical case of an applicant incurring excessive credit card debt by shopping, frivolous spending, or otherwise living beyond their means. Applicant is a mature woman, a wife, mother, and grandmother, and it appears she is living a responsible and law-abiding life. These circumstances further mitigate the security concern stemming from her indebtedness.

After weighing the favorable and unfavorable evidence, I conclude that Applicant 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–j:	For Applicant
_____ SOR ¶ 2–Guideline E:	For Applicant
_____ Subparagraph a:	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