

KEYWORD: Financial

DIGEST: Applicant failed to meet his burden to successfully explain, mitigate, or extenuate the security concern stemming from his history of financial problems. Clearance is denied.

CASENO: 06-22757.h1

DATE: 05/27/2007

DATE: May 31, 2007

_____)	
In re:)	
)	
-----)	ISCR Case No. 06-22757
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

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

APPEARANCES

FOR GOVERNMENT

Jennifer I. Goldstein, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to meet his burden to successfully explain, mitigate, or extenuate the security concern stemming from his history of financial problems. Clearance is denied.

STATEMENT OF THE 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 January 27, 2007.² 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. 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.³ Both the Directive and the Regulation are pending formal amendment. The Revised Guidelines apply to this case because the SOR is dated January 27, 2007. This matter was noted on the record at the start of the hearing (R. 19).

The case was assigned to me March 12, 2007. A notice of hearing was issued scheduling the hearing for April 12, 2007. The hearing took place as scheduled. DOHA received the hearing transcript April 23, 2007.

The record was kept open until May 11, 2007, to allow Applicant an opportunity to submit additional documentary evidence. Applicant made a timely submission, and those matters were forwarded by department counsel who voiced no objections to the post-hearing exhibits, which are admitted as follows: (1) Exhibit I—cover letter; (2) Exhibit J—DD Form 214; (3) Exhibit K—account statement for debt alleged in SOR subparagraph 1.m; (4) Exhibit L—IRS account transcript for tax period 2003; (5) Exhibit M—IRS account transcript for tax period 2004; and (6) Exhibit N—debt-management program (DMP) documentation.

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

² The SOR was amended to correct a clerical error with the date, and January 27, 2007, is the correct date (R. 18–21).

³ 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).

FINDINGS OF FACT

Applicant's response to the SOR allegations was mixed. He admitted all the indebtedness except for the debt in subparagraph 1.n, which he disputes. His admissions and explanations are incorporated herein. I make the following findings of fact set forth below in numbered paragraphs.

1. Applicant is a 40-year-old senior associate for a company engaged in defense contracting. In September 2005, he completed a security-clearance application (Exhibit 1). In response to Questions 27b, 28a, and 28b, he disclosed derogatory information about his financial record (a wage garnishment and several delinquent accounts).

2. Applicant has a history of financial problems, and that history is verified by credit reports from 2001, 2005, 2006, and 2007 (Exhibits 2–5). Based on this history, the SOR sets forth 14 delinquent accounts for about \$45,000, consisting of consumer debts. Applicant traces his history of financial problems to two divorces and periods of unemployment and underemployment as discussed below.

3. Before working as a defense contractor, Applicant was a professional soldier in the U.S. Army for nearly 15 years (Exhibit J). He enlisted in December 1986, and was promoted up the ranks to sergeant first class (pay grade E-7). His initial duties were in the field of signals intelligence, which included training in a foreign language. He then applied for and successfully completed the special forces assessment and selection process. Next, he completed the special operations medical sergeant course in 1991, and went on to serve as a special forces medical sergeant for nearly nine years. He continued to attend training courses consistent with his rank and duties in the special forces. While in the Army, Applicant held a security clearance at the top-secret and secret levels. He elected to leave active duty in August 2001, and he received an honorable discharge.

3. When he was 20 years old, Applicant married his first wife in November 1986, and he joined the Army the following month. They had a son in 1987. The marriage ended in divorce in December 1988. As a result of the divorce, he incurred a child support obligation, which he paid via a monthly allotment from his military pay.

4. In 1994, Applicant married his second wife. This marriage did not produce any children, and it ended in divorce in September 1998. The divorce decree (Exhibit A) addressed liabilities to be paid by each spouse. When the parties separated in about 1997, his wife had consumer debts in her name in the approximate amount of \$16,000. As a result, Applicant was ordered to make monthly payments to his ex-wife of \$375 for 20 months beginning (and retroactive to) April 1, 1998, by allotment from his military pay. In other words, Applicant was ordered to pay \$7,500 of the debt his wife had incurred in her name. He was also assigned the debts alleged in SOR subparagraphs 1.a and 1.m, which were in the thousands of dollars. His wife was assigned to pay 13 accounts for more than \$15,000. Due to his two divorces, Applicant was paying child support from his first marriage and the \$375 monthly debt payment from his second marriage at the same time while his income was limited to his military pay.

5. Applicant married his third and current spouse in March 1999. After leaving the Army in August 2001, Applicant was unemployed until December 2001. During this time his income was limited to unemployment benefits, which was a reduction in income from his military pay of about

50% (R. 61). He began a job as a security guard in December 2001 earning \$8 to \$10 per hour. The job was initially part-time, but became a full-time 40-hour per week job. This was a reduction from the unemployment benefits and far less than he earned while in the Army. He continued, however, to have the same obligations to pay child support and credit card payments.

6. In November 2002, he obtained work as an independent contractor for a company engaged in defense contracting. The work consisted of travel to client sites where the work was performed and report writing at his residence after each trip. The trips were from one to three weeks in duration. As an independent contractor, Applicant was responsible for financing his travel expenses, which he would then seek reimbursement for by submitting vouchers. Payment of vouchers was usually 30 days after submission. During this time, Applicant was unaware that, being self-employed, he was required to make quarterly income tax payments to the IRS. This resulted in a delinquent tax bill and penalties. Applicant resolved this by entering into an installment agreement with the IRS during 2004–2006, and he satisfied his tax debt by paying \$2,981 in total (Exhibits D, L, and M). Most of the installment payments were made in 2005.

7. In April 2003, Applicant was offered and accepted a full-time position with the same company. This lessened his financial strain because he could receive advances for business travel and was reimbursed more quickly. Also, he received employee benefits. After a few months, Applicant became dissatisfied, and in July 2003 he gave notice and left the company in August 2003.

8. During June 2003, Applicant's vehicle had a major engine failure that he could not afford to repair. Consequently, Applicant and his wife got around by using public transportation or walking. Applicant has not replaced the vehicle, and he and his wife continue to use public transportation or walk.

9. As of September 2003, Applicant pursued various opportunities to work in Iraq as a security advisor, but none of the potential contracts were realized. This process unfolded during September 2003 through February 2004, and Applicant was unemployed during this period. In March and April 2004, Applicant picked up a couple of consulting jobs for a security company. He received lump-sum payments for this work, and he used the money to try to catch up on his child support arrears.

10. By summer 2004, he was struggling to pay necessary expenses like rent and utilities. In October 2004, he decided he had to get a regular paycheck coming in, and he took a job as a dish washer at a restaurant. This allowed him to walk back-and-forth to work. The job was a part-time position working 25 to 30 hours a week. He worked there until June or July 2005 when he was rehired by the defense contractor that he left in August 2003. After he was rehired, the company was acquired by a major defense contractor, and Applicant continued his employment in the same position for the new company.

11. In about June 2005, Applicant's first ex-wife initiated a garnishment action for child support arrears. This garnishment remained in effect until sometime in 2006. It resulted in about \$1,730 being withheld from his pay to satisfy the child support arrears (Exhibit E).

12. Since resuming full-time employment as a company employee in about July or August 2005, Applicant has made progress in addressing his financial problems. He paid off his tax debt to the IRS via the installment agreement by paying \$2,981, and he paid off child support arrears via the garnishment by paying \$1,730. Also, he made a lump-sum payment of \$2,857 in February 2006 via

an income tax refund intercept for the debt alleged in SOR subparagraph 1.m (Exhibit B). This particular debt was paid off in March 2007 with a lump-sum payment of \$5,524 via another income tax refund intercept (Exhibits G and K).

13. About one year after resuming full-time employment, Applicant and his wife sought help to address their debts. Given that Applicant travels often for business, his wife handles bill paying and other financial chores. Consequently, she met with and set up a voluntary DMP with a credit-counseling agency in July 2006 (Exhibit C). The gist of the DMP is that the agency sets up and manages the DMP, and they debit Applicant's account for the monthly amount. In turn, the agency uses the funds to pay the listed creditors. The plan only applies to the creditors listed on the repayment schedule. When established in July 2006, the repayment schedule listed six accounts for a total of \$34,284, and estimated it would take 50 months to complete repayment. One creditor (SOR subparagraph 1.m) has since withdrawn from the DMP. From July 2006 through April 2007, Applicant made ten monthly payments, with none missed or late, and the DMP is in good standing (Exhibit N). In total, Applicant has paid \$7,545 into the DMP for an average of about \$750 per month (Exhibits F and N). According to a letter from the agency, the program is successfully completed when all of the "listed accounts" have been paid off in full through the DMP (Exhibit N).

14. Applicant believes the DMP includes all his debts, including those in the SOR (R. 139). In his post-hearing submission, Applicant explained that he contacted the agency handling the DMP and was told that all of his outstanding debts are included in their electronic record, and that they only comment on accounts currently being serviced (Exhibit I). Once an account is satisfied, Applicant believes that payment will begin on another debt (R. 80).

15. Applicant disputes the legitimacy of the \$291 debt in SOR subparagraph 1.n. He does so because they were charged for matters not agreed to in the cell phone contract. He did not provide any documentary evidence of this dispute.

16. Applicant summarized his repayment of debt, and other expenses paid during accrual of existing debt, in a written submission (Exhibit H). By my calculations, since resuming full-time employment in August 2005, Applicant has paid \$2,981 to the IRS, \$1,730 for child support arrears, \$8,381 to the creditor in subparagraph 1.m via tax intercepts, and \$7,545 via the DMP for a total of \$20,637.

17. His current annual salary is about \$75,000. His wife works as a part-time waitress at a restaurant. Other than a corporate credit card used for business travel, neither Applicant nor his wife has a credit card, and they are not incurring new debt. He estimated a current balance of \$600 in his checking account. He participates in his company's 401(k) retirement plan, but he did not know how much he contributed to the plan and he was unaware of the account balance. He and his wife continue to live in a rented apartment and plan to do so until their debts are resolved.

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 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

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

⁴ Executive Order 10865, § 7.

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

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.

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. His 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 he 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. His financial problems are ongoing, and his financial problems involve multiple delinquent debts. Given his longstanding financial problems, it is too soon to say that his financial problems are unlikely to recur.

The second MC—the conditions that resulted in the behavior were largely beyond the person's control—applies. Applicant experienced understandable financial strain stemming from his two divorces. At one time, Applicant was paying both child support and a monthly debt payment due to the divorces. Likewise, his periods of unemployment and underemployment limited his ability to pay his debts.

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. Although Applicant has been using the DMP for the last ten months, there is no evidence of any financial counseling. In addition, given his longstanding financial problems, it is too soon to say that it is resolved or under control.

The fourth MC—the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts—applies. In less than two years, Applicant has paid off more than \$20,000 in debt. He has made ten monthly payments to the DMP for more than \$7,500 since July 2006. 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. Although he may have a basis to dispute the debt in SOR subparagraph 1.n, he has not provided documented proof to substantiate the basis of the dispute, nor has he provided evidence of actions taken to resolve the issue.

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. Applicant is 40 years old and sufficiently mature to make thoughtful, prudent decisions about his finances. He has made excellent progress in resolving his outstanding debts since he resumed full-time employment in

August 2005. Anyone who has ever dug out of a financial hole can appreciate the significance of paying off more than \$20,000 of debt in less than two years—it's a major accomplishment. The DMP appears to be a workable method for Applicant and his spouse to resolve the debts in the DMP, and they are credited for sticking to the DMP so far.

Of concern here is the comprehensiveness of the DMP. Applicant maintains that the DMP covers all his outstanding debts, including the debts in the SOR. But review of the documentary evidence suggests that the DMP is limited to the listed accounts, which is now five since one withdrew. Indeed, the DMP agreement states that it only applies to creditors listed on the repayment schedule (Exhibit C at 2). Given the plain language of the DMP agreement, I cannot conclude that the DMP is comprehensive and includes the debts in the SOR. Although he has documented the actions taken to resolve his indebtedness and made a measurable improvement to his situation, he has not established that the DMP is a comprehensive approach for resolving all of his indebtedness. These circumstances militate against a favorable decision for Applicant.

After weighing the favorable and unfavorable evidence, I conclude that Applicant has not presented sufficient information to explain, extenuate, or mitigate the financial considerations security concern. Likewise, he has not met his 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:	Against Applicant
_____ Subparagraphs a–n:	Against Applicant

DECISION

_____ In light of all the facts and circumstances, 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