

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has a history of financial problems. She did not present sufficient evidence to rebut, explain, extenuate, or mitigate the financial considerations security concern. Eligibility for a security clearance is denied.

CASENO: 06-23363.h1

DATE: 06/30/2007

DATE: June 30, 2007

In re:	)	
	)	
	)	
-----	)	ISCR Case No. 06-23363
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
	)	

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

**APPEARANCES**

**FOR GOVERNMENT**

Robert E. Coacher, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has a history of financial problems. She did not present sufficient evidence to rebut, explain, extenuate, or mitigate the financial considerations security concern. Eligibility for a security 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,<sup>1</sup> dated January 2, 1992, as amended (Directive), DOHA issued a statement of reasons (SOR) to Applicant on February 22, 2007. The SOR—which is equivalent to an administrative complaint—details the factual basis for the action and alleges a security concern under Guideline F for financial considerations based on multiple delinquent debts, to include student loans, and under Guideline E for personal conduct based on falsification of Question 39 on the 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 and Appendix 8 to DoD Regulation 5200.2-R. 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 February 22, 2007, which is after the effective date.

Applicant timely replied to the SOR in writing on March 14, 2007, and on April 27, 2007. She elected to have her case decided on the written record in lieu of a hearing. In her written reply to the SOR, she admitted all indebtedness alleged under Guideline F. Also, she provided a two-page handwritten explanation of her financial situation. She did not respond to the falsification allegation under Guideline E, and her lack of response is construed as a denial.

On May 8, 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 May 21, 2007. Her reply to the FORM is a one-page handwritten letter, which was received within the 30-day period. It was reviewed by department counsel who voiced no objections, and it is admitted into the record as Exhibit A. The case was assigned to me on June 25, 2007.

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<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).

## FINDINGS OF FACT

Applicant's admissions to the SOR allegations under Guideline F are incorporated herein as findings of fact. Based on the record evidence as a whole, I find the following facts:

1. Applicant is a 24-year-old employee of a company engaged in federal contracting. She earned an associate's degree from a technical institute in June 2004. One month later, she started her current job working as an associate designer.
2. Applicant completed a security-clearance application in July 2004. A security-clearance application requires an individual to disclose information about their background, to include their financial record. In response to Question 38 about financial delinquencies, Applicant answered the question "yes," and she reported that she had, in the last seven years, been more than 180 days delinquent on a debt. She then listed a \$1,263 credit card account. In response to Question 39 about financial delinquencies, Applicant answered the question "yes," and she reported that she was currently more than 90 days delinquent on a debt. She then listed a \$1,201 hospital bill and noted that it was involved in a legal dispute. When signing the application, Applicant certified that her statements were true, complete, and correct to the best of her knowledge and belief, and were made in good faith. Also, she acknowledged that a knowing and willful false statement could be punished under federal law.
3. Applicant has a history of financial problems, as evidenced by derogatory information in credit reports from 2005 and 2007. For example, the public record section of the 2005 report revealed a \$705 civil judgment filed in January 2003. The report also reveals past-due accounts, bad debts, and eight accounts in the collections section of the report. The 2007 credit report further revealed or confirmed Applicant's unfavorable financial history.
4. The SOR alleges that Applicant has 17 delinquent debts for about \$10,796. Based on the record evidence as a whole, I find that the 17 delinquent debts are established by substantial evidence. In particular, Applicant's delinquent debts are established by the 2005 and 2007 credit reports and her admissions. Her indebtedness includes a number of unpaid medical accounts and several past-due student loans.
5. In her written responses to the SOR and the FORM, Applicant attempted to explain the circumstances surrounding her financial problems. She said that her student loans were placed into forbearance for one year as of March 14, 2007, but she did not present any documentary evidence verifying her statement. She attributed the multiple unpaid medical bills to a series of health problems followed by periods where she was could not work. She explained that she is doing what she can to pay her delinquent debts, but has limited means to do so after paying regular living expenses. Other than her written responses to the SOR and the FORM, Applicant did not present proof of payment or other documentary evidence about the debts in question, nor did she present documentary evidence about her overall financial situation.

## 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 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**

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<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).

<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.

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 39 of her security-clearance application. Although her answer was incomplete and did not reveal the full extent of her financial delinquencies, the record evidence is insufficient to prove that she intentionally withheld or concealed her financial delinquencies. There is no evidence that Applicant was confronted and interviewed about this issue during a background investigation, and a written statement was apparently not obtained from Applicant. Likewise, there is no evidence that the agency confronted her via written interrogatories or by an interview as allowed under the Directive.<sup>11</sup> Given the skimpy record here, I cannot conclude that Applicant gave a deliberately false answer to Question 39. Accordingly, Guideline E is decided for Applicant.

Under Guideline F for financial considerations, 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 or 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 none apply. She did not present sufficient evidence to rebut, explain, extenuate, or mitigate the financial considerations concern. In particular, the record evidence is insufficient to establish that she has made a good-faith effort to pay or otherwise resolve her indebtedness. Given the lack of documentation, I cannot accept her claim that her student loans are in forbearance. Likewise, her failure to provide reliable, documentary evidence about her medical problems, the resulting unemployment, and her finances weakens her claims and explanations. Large bureaucratic institutions—like the Defense Department and the security-clearance programs it administers—do not run on word-of-mouth.<sup>12</sup> They run on documentation. The documentation can be stored electronically or on paper, but it is up to Applicant

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<sup>11</sup> Directive, Enclosure 3, ¶ E3.1.2.

<sup>12</sup> Examples of other large bureaucratic institutions that rely heavily on documentation include banks, insurance companies, hospitals, universities, and the Armed Forces.

to produce reliable evidence, to include documentary evidence, to rebut, explain, extenuate, or mitigate the facts admitted by her and proven by the credit reports.<sup>13</sup> Although Applicant is not legally required to produce documentary evidence to prevail, the lack of documentation in a financial case makes it difficult to reach a favorable decision under the clearly-consistent standard.

At this point, Applicant’s history of financial problems—including past-due student loans—militates against granting her eligibility for a security clearance. Applicant did not meet her ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, I also considered Applicant’s case under the whole-person concept and my whole-person analysis does not support a favorable outcome for Applicant.

**FORMAL FINDINGS**

\_\_\_\_\_ Here are my conclusions for each allegation in the SOR:

_____ SOR ¶ 1–Guideline F:	Against Applicant
_____ Subparagraphs a–q:	Against Applicant
_____ SOR ¶ 2–Guideline E:	For Applicant
_____ Subparagraph a:	For 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. Eligibility for a security clearance is denied.

Michael H. Leonard  
Administrative Judge

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<sup>13</sup> Directive, Enclosure 3, ¶ E3.1.15.