

KEYWORD: Financial

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

CASENO: 06-24088.h1

DATE: 09/12/2007

DATE: September 12, 2007

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In re:)	
)	
-----)	ISCR Case No. 06-24088
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

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

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of unresolved financial problems. It is too soon to tell if he 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 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 April 18, 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 delinquent debts.

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.

On April 26, 2007, Applicant replied to the SOR and requested a hearing. The hearing took place as scheduled on August 15, 2007, and the transcript was received on August 28, 2007.

The record was kept open until August 29, 2007, to allow Applicant an opportunity to submit documentary information about his financial situation, as he did not submit any during the hearing. To date, he has not submitted post-hearing documentation.

FINDINGS OF FACT

Under Guideline F, the SOR alleges ten delinquent debts for about \$17,379 in total. Applicant admitted eight of the ten debts, and he denied two debts for \$759 and \$29. In addition to his admissions, the following facts are established.

Applicant is a 36-year-old communications technician. He has worked for his current employer since May 2004. He is seeking to obtain a security clearance for his current employment.

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).

From December 1990 to November 1992, Applicant served on active duty in the U.S. Navy. He did not serve his full enlistment because he was discharged on the grounds of hardship.

Applicant married in 1990 and divorced in 1995. The marriage did not produce any children. He has not remarried. Applicant has two children, ages 16 and 18, with the same woman. Paternity was established many years ago when the children were young. He pays child support of \$410 per month. As far as he knows he is current. He does have a child-support arrearage, however, stemming from the period before paternity was established. The arrearage balance is about \$15,614 (Exhibit 2 at 2). He understands that part of his monthly payment is applied toward the arrearage.

Concerning his overall financial situation, Applicant's gross income in 2006 was about \$39,000. After paying rent (\$600) and other expenses, he usually has about \$200 to \$400 left over each month. He does not have a car payment, and he has a couple of credit-builder credit cards he is using to reestablish his credit history. Applicant is interested in buying a home and has saved about \$6,000 for that purpose. He met with a mortgage broker who advised him to wait for the old debts to drop off his credit report.

Applicant has a history of unresolved financial problems. It is established by a December 2006 credit report (Exhibit 2). It forms the basis for the ten debts in the SOR. The status of his indebtedness is summarized in the following table.

Debt Description	Current Status
SOR ¶ 1.a—wireless account in collection for \$1,081.	Unpaid. Says a former employer is responsible for account.
SOR ¶ 1.b—medical account in collection for \$759.	Unpaid. Has no recollection of debt.
SOR ¶ 1.c, 1.d, 1.e—charged-off credit card accounts with same bank for \$1,289, \$2,908, and \$2,129.	Unpaid.
SOR ¶ 1.f—charged-off account for \$29.	Unpaid. Says dropped from his credit report.
SOR ¶ 1.g—collection account for \$982.	Unpaid.
SOR ¶ 1.h—collection account for \$1,088. Credit report reflects consumer disputes account information.	No additional information provided.
SOR ¶ 1.i—collection account for \$931.	Unpaid.
SOR ¶ 1.j—charged-off account for \$8,183.	Says account is a student loan and he is making payments.

Applicant has experienced periodic unemployment. His security-clearance application reflects two periods of unemployment (Exhibit 1). The first period was November 2002 through March 2003, and the second period was November 2003 through December 2003. Although not

reflected in his application, he was laid off twice for a few months in his current employment (R. 72–73).

Applicant did not provide any documentary information about the ten debts in the SOR or about his overall financial situation.

GENERAL PRINCIPLES OF LAW AND POLICIES

No one has a right to a security clearance.³ 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.”⁴ A favorable decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.⁵ 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.⁶ 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.⁷ The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.⁸ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.⁹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁰ In *Egan*, the Supreme Court said that the burden of proof is less than the preponderance of the evidence.¹¹ The agency appellate authority has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.¹²

³ *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.”).

⁴ *Egan*, 484 U.S. at 531.

⁵ Directive, ¶ 3.2.

⁶ Directive, ¶ 3.2.

⁷ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

⁸ Directive, Enclosure 3, ¶ E3.1.14.

⁹ Directive, Enclosure 3, ¶ E3.1.15.

¹⁰ Directive, Enclosure 3, ¶ E3.1.15.

¹¹ *Egan*, 484 U.S. at 531.

¹² ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

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.¹³ 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,¹⁴ 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."¹⁵ 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. His history of financial problems is a security concern because it indicates inability or unwillingness to satisfy debts¹⁶ and a history of not meeting financial obligations¹⁷ 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 second MC¹⁸ of Guideline F. It receives consideration because of Applicant's periodic unemployment dating back to 2002. It does not apply, however, because the evidence does not show that Applicant satisfied the second clause of the MC by acting responsibly under the circumstances. He did little or nothing other than accumulating \$6,000 in savings for a down payment on a home. A responsible person would have returned from unemployment and worked to repay their just debts.

¹³ Executive Order 10865, § 7.

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

¹⁵ Revised Guidelines at 13.

¹⁶ DC 1 is "inability or unwillingness to satisfy debts."

¹⁷ DC 3 is "a history of not meeting financial obligations."

¹⁸ MC 2 is "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation), and the individual acted responsibly under the circumstances."

In addition, given the lack of documentation, his various claims and representations about the debts in the SOR cannot be accepted. Large bureaucratic institutions—like the Defense Department and the security-clearance programs it administers—do not run on word-of-mouth.¹⁹ They run on documentation. The documentation can be stored electronically or on paper, but it is up to Applicant to produce reliable evidence, to include documentary evidence, to rebut, explain, extenuate, or mitigate the facts admitted by him and proven by the credit report.²⁰ 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.

FORMAL FINDINGS

Subparagraphs a-j: Against Applicant

DECISION

Michael H. Leonard
Administrative Judge

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