

KEYWORD: Financial

DIGEST: Applicant has a history of financial problems. Although he had some circumstances beyond his control and has made some effort to repay his debts, he did not present sufficient evidence to mitigate the financial considerations security concern. Eligibility for a security clearance is denied.

CASENO: 06-24458.h1

DATE: 09/06/2007

DATE: September 6, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-24458
)	
Applicant for Security Clearance)	
)	

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

APPEARANCES

FOR GOVERNMENT

John Bayard Glendon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of financial problems. Although he had some circumstances beyond his control and has made some effort to repay his debts, he did not present sufficient evidence to 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 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 2, 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 indebtedness.

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 May 22, 2007, Applicant replied to the SOR and requested a hearing. The hearing took place as scheduled on August 9, 2007, and the transcript was received on August 23, 2007.

The record was kept open until August 23rd to allow Applicant to submit additional documentary evidence. Applicant made a timely submission consisting of a one-page letter, which was forwarded to me by department counsel who voiced no objections. The letter is marked and admitted as Exhibit G.

FINDINGS OF FACT

The SOR alleges 16 delinquent debts for about \$22,500 in total. Applicant admitted all indebtedness (except for SOR subparagraph 1.1) in his reply to the SOR. He indicated that he was

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).

uncertain if subparagraph 1.l was his debt, and that he had paid the debts in subparagraphs 1.h, 1.i, and 1.k. In addition to his admissions and explanations, the following facts are established.

Applicant is a 45-year-old outside machinist working for a contractor that provides services to the U.S. Navy. His job involves working on submarines. His supervisor describes Applicant as an exceptional employee (Exhibit A). He has held a security clearance for many years as a sailor and a civilian employee. He is seeking to retain a security clearance for his current employment.

From 1980 to 2001, Applicant served on active duty in the Navy as a torpedoman. He retired in June 2001 as a petty officer first class (paygrade E-6). His military retirement pay is about \$1,200 per month after deductions.

Applicant has been married twice. He first married in 1984 and divorced in 1993. He married his current wife in 1993. Applicant and his current wife separated and lived apart from about May 2003 to sometime in early 2006, approximately three years (R. 62–63). During this time, Applicant was trying to support two households and pay child support to his ex-wife.

He has four children, ages 23, 22, 19, and 14. The oldest is a stepdaughter. His 14-year-old son is the only child living in his household. Applicant is no longer paying child support to his ex-wife for the other two children. He made the last child-support payment in July 2007 when his son reached the age of 19 (R. 63–64).

Applicant has a history of financial problems. For example, a credit report from November 2005 reflects 30 accounts in the trade section of the report of which 8 accounts were listed in a collection or past-due status (Exhibit 5). The collections section of the report lists eight accounts.

Applicant provided documentary proof of his efforts to pay or resolve the debts in the SOR. His efforts are summarized in the following table.

Debt Description	Current Status
SOR ¶¶ 1.a–1.d, medical accounts for \$189, \$38, \$50, and \$166.	Unpaid.
SOR ¶ 1.e, telephone account for \$707.	Unpaid.
SOR ¶ 1.f, real estate account (apartment rent) for \$609.	Unpaid.
SOR ¶ 1.g, hospital account for \$50.	Unpaid.
SOR ¶ 1.h, hospital account for \$191.	Unpaid.
SOR ¶ 1.i, collection account for \$545.	Paid in Oct. 2006 (Exhibit G).
SOR ¶ 1.j, collection account for \$6,788.	Repayment agreement—to pay \$100 monthly soon.
SOR ¶ 1.k, electric account for \$50.	Paid in Apr. 2007.

SOR ¶ 1.l, charged-off credit card account in collection for \$4,948.	Unpaid; perhaps a duplicate account.
SOR ¶ 1.m, charged-off credit card account in collection for \$2,674	Repayment agreement—three payments made so far. Current balance of \$2,128.15 (Exhibit D).
SOR ¶ 1.n, charged-off account in collection for \$3,341	Repayment agreement accepted Jul. 2007 (Exhibit E).
SOR ¶ 1.o, charged-off account in collection for \$1,437	Unpaid; perhaps a duplicate account.
SOR ¶ 1.p, charged-off account in collection for \$775	Repayment agreement—current balance \$2,031.32 (Exhibits C and F).

To sum up, Applicant paid two debts for \$595 in total, he has repayment agreements for four debts, and the other ten are unpaid and with little or no action taken. To the extent he is disputing any of the debts as duplicates, he did not provide documentary proof to substantiate the basis of his claims.

In addition to the delinquent debts in the SOR, Applicant is indebted to the IRS for tax years 2004 and 2005. Also, he believes he will owe money for tax year 2006 as he just recently filed his return. He estimates an \$8,000 balance for 2004–2005 and a \$3,000 balance for 2006. He has a repayment agreement with the IRS. He recently increased the IRS monthly payment from \$200 to \$265. He believes the tax debt was caused by insufficient withholding from his retirement pay.

Applicant has not been unemployed since his retirement from the Navy in 2001. Including his retirement pay, he estimates earning a gross annual income of \$64,000 in 2006. He has not had any financial, credit, and tax counseling.

Applicant started falling behind in 2003 when he and his current wife separated (R. 58–59). Also, from September 2003 to April 2004, Applicant had a job where he earned less money. Along with this period of underemployment, he “just let it go” (R. 64). He was not smart about how he handled the situation and it got away from him when he did not act. He anticipates having an extra \$400 to make debt payments when he pays off a car loan in September 2007 (R. 27). His credit union denied his request for a debt-consolidation loan (R. 27–28).

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

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.”).

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

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

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).

¹³ Executive Order 10865, § 7.

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.

Applicant receives some credit in mitigation. The most pertinent mitigating conditions are the second MC¹⁸ and the fourth MC¹⁹ of Guideline F. The second does not apply, while the fourth applies in part.

Applicant experienced financial problems beginning in 2003 to date. During this time, he was separated from his second wife and making child-support payments from his first marriage. Also, he was underemployed during part of this period. Together, these circumstances no doubt put increased pressure on Applicant’s obligations to his family and to his creditors. MC 2 does not apply, however, because Applicant did not act responsibly when he just let things go, a decision that had the predictable consequence of making a bad situation worse.

But Applicant does receive some credit in mitigation under MC 4, because he has made a good-faith effort to repay several of the debts. The credit is limited, however, because his efforts have been uneven (*see table*). What is missing here is a realistic, comprehensive plan that addresses all the Applicant’s indebtedness.

In addition, most of the repayment agreements are recent developments, and it is too soon to tell if Applicant will honor the agreements by making the scheduled payments. Aggravating the situation is Applicant’s tax debt to the IRS. He owes more than \$10,000 for three tax years, a circumstance that may limit his ability to repay the other debts. Also, it indicates that Applicant’s financial problems are far from over and likely to continue or recur.

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 problems 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.”

¹⁹ MC 4 is “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the financial considerations security concern. Although he did present some favorable evidence, it is insufficient to outweigh his history of financial problems. Applicant did not meet his 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:	For Applicant
Subparagraphs a–p:	For Applicant

DECISION _____

_____ In light of all the 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