



ISCR Case No. 06-24460

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.

Applicant replied to the SOR on October 3, 2007, and did not request a hearing. Department counsel exercised its prerogative under the Directive and requested a hearing on October 22, 2007. The case was assigned to me on November 9, 2007. The hearing took place as scheduled on December 19, 2007, and the transcript (Tr.) was received on January 2, 2008.

The record was left open until December 31, 2007, to allow Applicant an opportunity to submit documentary evidence in addition to Applicant's Exhibits A and B. No such matters were received and the record closed on December 31, 2007. For the reasons discussed below, this case is decided against Applicant.

Procedural Rulings

The SOR was amended to correct the spelling of Applicant's first name. Otherwise, there were no procedural or other issues raised by the parties.

Findings of Fact

Under Guideline F, the SOR alleges ten delinquent debts ranging from \$99 to \$13,812 for about \$41,000 in total. The ten debts consist of two judgments, one charged-off account, and seven collection accounts. His response to the SOR is mixed, admitting eight and denying two of the debts. Also, he contended that two of the debts were duplicates. Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 33-year-old systems analyst. He has worked for his current employer since February 2000. His day-to-day duties consist of writing software and delivering software packages across a network, including a classified network. His current annual salary is about \$50,000. Recent performance evaluations show Applicant performs his duties well (Exhibit A). He is seeking to retain a security clearance previously granted to him by the Defense Department.

Applicant has been married twice. His first marriage ended in divorce. He married his current wife in 2002. There were no children from his first marriage, but he now has a 4-year-old son and he recently adopted his wife's 11-year-old son.

His wife worked in sales until she was laid off in about October 2002. Other than some seasonal and periodic employment, none of which lasted more than about 90

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).

days, she was unemployed until about November 2007 when she was hired as a county corrections officer. She is in training and her wages will increase when she completes the training course and assumes full duties. Her unemployment starting in 2002 reduced their household income and resulted in many financial problems.

Applicant has a history of financial problems as evidenced by two unpaid judgments, the charged-off account, and the seven collection accounts. The debts alleged in the SOR, except as noted below, are established by credit reports (Exhibits 2, 3, and 4). None of these debts have been paid, settled, or otherwise resolved.

Applicant denies two debts. The first denial is to a \$277 medical collection account alleged in SOR ¶ 1.d. He denies this debt because it should have been paid through his health insurance. This debt is not established by any of the three credit reports. One credit report shows an unpaid medical collection account reported in December 2006 for \$571 (Exhibit 2 at 2). Given this inconsistency, the evidence is not sufficient to establish the debt in SOR ¶ 1.d.

The other denial is to a \$99 collection account based on cable TV services alleged in SOR ¶ 1.f. He denies this debt because he currently receives services from the same company and the account is current. He is unaware if this debt stems from living at a previous residence. He presented no documentary information on this debt. The debt is established by all three credit reports, and this evidence is sufficient to establish the debt in SOR ¶ 1.f.

Applicant contends the debts in SOR ¶¶ 1.a and 1.b are duplicates and the same goes for the debts in ¶¶ 1.e and 1.h. Review of the three credit reports shows that the debts in ¶¶ 1.a and 1.b are separate judgments for different amounts taken by different parties. Likewise, review of the credit reports shows that the debts in ¶¶ 1.e and 1.h are separate debts. Applicant did not present any documentary information to contradict or rebut the credit reports. Accordingly, these matters are considered separate debts.

Applicant has not obtained any financial or credit counseling. He and his wife have read and are using a book to repair their credit. He had no financial obligations stemming from his divorce. His rent, car payment, telephone, and utilities are current. Likewise, all other recurring monthly expenses are current. Neither he nor his wife use credit cards. They manage their money and bill paying by using a debit card and online banking. His wife takes care of the day-to-day money-management responsibilities. Essentially, they live paycheck-to-paycheck and this has been the situation since his wife lost her job in 2002. Their financial situation is starting to improve based on his wife's recent employment. They have about \$1,000 in a savings account. Applicant has a 401(k) account at work and contributes about 3% each pay period. He is unaware of the account's balance.

Applicant's employment history includes military service. He enlisted in the Army in 1992 after graduating from high school (Exhibit B). Initially, he was trained as a cavalry scout and he served with a prestigious airborne division. Thereafter, he

completed a 32-week training course in explosive ordnance disposal (EOD). He served his last three years on active duty as an EOD specialist. During this assignment, he held a security clearance and had access to classified information. He left active duty in 1999 and received an honorable discharge. His discharge paperwork reflects, among other things, three Army Achievement Medals and three Army Good Conduct Medals. In addition, he served about three years in a state national guard until his medical discharge due to back problems, and he received an honorable discharge.

Policies

This section sets forth the general principles of law and policies that apply to an industrial security clearance case. To start, no one has a right to a security clearance.³ As noted by the Supreme Court in 1988 in the case of *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.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

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.

Court stated that the burden of proof is less than a 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.

Analysis

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 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, which raise a security concern.

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.

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

¹⁵ Revised Guidelines at p. 13.

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

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

All of the mitigating conditions under Guideline F have been considered and two deserve discussion. First, MC 2—conditions largely beyond a person's control—applies.¹⁸ Obviously, the unemployment from Applicant's wife from October 2002 until November 2007 (except for some seasonal and periodic work) resulted in loss of income and was the primary cause of the financial problems. Likewise, it appears Applicant acted reasonably under the circumstances because he did the best he could with the limited income available to him. Given these circumstances, Applicant receives some credit in mitigation under MC 2.

Second, a potential mitigating condition is MC 4, which requires a person to initiate a good-faith effort to repay overdue creditors or otherwise resolve debts.¹⁹ Applicant has made few efforts to resolve the delinquent debts. Other than reading the credit-repair book, Applicant has not made any real progress. Given these circumstances, in light of the unaddressed delinquent debts, his efforts do not amount to a good-faith effort within the meaning of the guideline. Something more is required.

Applicant is 33 years old and sufficiently mature to make prudent decisions about his finances. Although his intent to resolve his financial problems appears to be genuine, he has done little so far to demonstrate his intent. What is missing here is (1) a realistic and workable plan to clean up his financial house, (2) documented actions taken in furtherance of the plan, and (3) a measurable improvement to the situation. Given the current circumstances, it is likely that the financial problems will continue or recur because Applicant is facing substantial financial problems, starting with the two unpaid judgments for more than \$18,000.

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the financial considerations security concern. 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. In this regard, I gave weight to Applicant's honorable military service, his history of holding a security clearance without an adverse incident, and his favorable work history. Nevertheless, these matters were not sufficient to change the outcome.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

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."

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

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a–1j (except 1.d)	Against Applicant
Subparagraph 1.d:	For Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Michael H. Leonard
Administrative Judge