

KEYWORD: Financial

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

CASENO: 06-24490.h1

DATE: 07/31/2007

DATE: July 31, 2007

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In re:	)	
	)	
-----	)	ISCR Case No. 06-24490
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
_____	)	

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

**APPEARANCES**

**FOR GOVERNMENT**

Julie R. Edmunds, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has a history of unresolved financial problems. He 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 his eligibility for a security clearance. Acting under the relevant authority,<sup>1</sup> the agency issued a statement of reasons (SOR) to Applicant on March 20, 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 civil judgment.

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.<sup>2</sup> The Directive is pending formal amendment. The Revised Guidelines apply to this case because the SOR is dated March 20, 2007, which is after the effective date.

Applicant timely replied to the SOR in writing on April 11, 2007. He elected to have his case decided on the written record in lieu of a hearing. He denied all indebtedness alleged under Guideline F in his written reply to the SOR. Also, he provided a one-page explanation of his financial situation.

On May 1, 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 him on May 7, 2007. Applicant did not reply to the FORM within the 30-day period. The case was assigned for decision on July 19, 2007.

In general terms, the major issue is as follows: Is it clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant in light of his alleged history of unresolved financial problems?

## **FINDINGS OF FACT**

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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).

Based on the record evidence as a whole, the following facts are established.

1. Applicant is a 48-year-old employee of a company engaged in federal contracting. He earned a B.S. in 1990. Applicant has worked in the field of finance since at least 1993. During 1993–1999, he worked as a program financial analyst. During 1999–2002, he worked as a financial analyst. During 2003–2005, he worked as a cost scheduling and control analyst II. And from 2005 to present, he has worked as a senior cost scheduling and control analyst.
2. Applicant married in 1991. He and his wife had two children, born in 1991 and 1992. Applicant divorced in 2002. Applicant is required to pay \$480 per month in child support, and he is current with his child-support obligation (Exhibit 6 at 2).
3. Applicant has a history of unresolved financial problems, as established by derogatory information in a March 2007 credit report (Exhibit 6). The report reveals a \$963 civil judgment filed in February 2005. The report also reveals nine collection accounts for \$972 in total, and two charged-off credit card accounts for \$9,494 in total. Altogether, the credit report reveals \$11,429 in delinquent debt.
4. The SOR alleges that Applicant has 12 delinquent debts for about \$11,713 in total. The credit report establishes 12 delinquent debts for \$11,429 in total with Applicant as the debtor. None of the debts are paid or otherwise resolved.
5. In his written responses to interrogatories (Exhibit 5) and to the SOR, Applicant denies the debts for various reasons. Applicant did not present any documentary evidence verifying his statements. Other than his written responses to the interrogatories and the SOR, Applicant did not present proof of payment or other documentary evidence about the debts in question. Nor did he present documentary evidence about his overall financial situation.

### **GENERAL PRINCIPLES OF LAW AND POLICIES**

No one has a right to a security clearance.<sup>3</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>4</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.

The agency appellate authority has made it clear that 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>5</sup> There is no presumption in favor of granting or continuing access to

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<sup>3</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>4</sup> *Egan*, 484 U.S. at 531.

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

classified information.<sup>6</sup> The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>7</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>8</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>9</sup> *In Egan*, the Supreme Court said that the burden of proof in a security clearance case is less than the preponderance of the evidence.<sup>10</sup> The agency appellate authority has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.<sup>11</sup>

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>12</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.

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## **CONCLUSIONS**

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Under Guideline F for financial considerations,<sup>13</sup> 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. 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.

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<sup>6</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>7</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>8</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>9</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>10</sup> *Egan*, 484 U.S. at 531.

<sup>11</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) at 3 (citations omitted).

<sup>12</sup> Executive Order 10865, § 7.

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

Citing the March 2007 credit report, the government contends Applicant has a history of unresolved financial problems. Applicant's contentions are:

- For the \$963 judgment, he contends he paid this debt before the judgment was obtained.
- For the \$256 collection account, he contends he paid this debt.
- For the \$51 collection account, he denies owing any money and claims he is a current customer in good standing with the creditor.
- For the seven medical collection accounts, he denies responsibility and claims his ex-wife forged his signature for the medical bills.
- For the two charged-off credit card accounts owed to the same creditor, he denies responsibility. He claims his ex-wife had access to the credit cards and made charges without an intent to pay.
- He contends there are errors with his credit history, which he has tried to correct.

The question is whether the record evidence is sufficient to show Applicant owes for the delinquent debts alleged in the SOR.

The record evidence supports a conclusion that Applicant owes the delinquent debts alleged in the SOR. The March 2007 credit report (Exhibit 6) establishes 12 delinquent debts for \$11,429 in total. The credit report bears Applicant's name and social security number. He did not present any reliable information to rebut the authenticity and accuracy of the credit report. Accordingly, the credit report is accepted as a genuine reflection of Applicant's financial condition as of March 2007. His derogatory financial history, as shown in the credit report, is a security concern because it indicates inability or unwillingness to satisfy debts<sup>14</sup> and a history of not meeting financial obligations<sup>15</sup> within the meaning of Guideline F. In addition, his history of unresolved financial problems indicates irresponsibility, neglect, or lack of concern, or all three.

None of the mitigating conditions under Guideline F apply in Applicant's favor. He did not present sufficient evidence to rebut, explain, extenuate, or mitigate the security concern. In particular, the record evidence is insufficient to establish that he has made a good-faith effort to pay or otherwise resolve his indebtedness. Given the lack of documentation, his contentions—claims of payment, denials of responsibility, and an erroneous credit history—are not accepted. Large bureaucratic institutions, like the Defense Department and the security-clearance programs it administers, do not run on word-of-mouth.<sup>16</sup> 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 proven by the credit report.<sup>17</sup> Examples of relevant documentation might include payment receipts, account statements, bank statements, credit card statements, a release of a lien, a satisfaction of judgment, or a current credit report. Applicant is not legally required to produce documentary evidence to prevail. But the lack

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<sup>14</sup> DC 1 is "inability or unwillingness to satisfy debts."

<sup>15</sup> DC 3 is "a history of not meeting financial obligations."

<sup>16</sup> Examples of other large bureaucratic institutions that rely heavily on documentation include banks, insurance companies, hospitals, universities, and the Armed Forces.

<sup>17</sup> Directive, Enclosure 3, ¶ E3.1.15.

Applicant's history of unresolved financial problems outweighs the favorable evidence. 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 outcome for Applicant.

_____SOR ¶ 1–Guideline F:	Against Applicant
Subparagraphs a–l:	Against Applicant

\_\_\_\_\_ 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.

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