

KEYWORD: Financial

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

CASENO: 07-02001.h1

DATE: 09/11/2007

DATE: September 11, 2007

_____)	
In re:)	
)	
-----)	ISCR Case No. 07-02001
SSN: -----)	
)	
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 unresolved financial problems. It is too soon to tell if she 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 her 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 May 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 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 May 30, 2007, Applicant replied to the SOR. She indicated she did not wish to have a hearing because she could not afford the trip. Thereafter, department counsel requested a hearing and notified Applicant by letter. This matter was addressed at the start of the hearing (R. 15–18). Applicant did not understand that the hearing would be conducted at a location near her as opposed to Washington, D.C., and she had no objections to 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 23, 2007, to allow Applicant an opportunity to submit additional documentary information about her financial situation. To date, she has not submitted post-hearing documentation.

FINDINGS OF FACT

Under Guideline F, the SOR alleges 14 delinquent debts for about \$19,711 in total. Applicant denied all the allegations except for SOR subparagraph 1.h. Notwithstanding her denials, she also provided a short explanation for each debt. In addition, the following facts are established.

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).

Applicant is a 52-year-old planning analyst. She has worked for her current employer since 1986. She is seeking to obtain a security clearance for the first time. A 2006 performance and development summary rated her overall performance as about average (Exhibit E).

Applicant married in 1983. She and her husband lived separately during 2002–2003. They have two children, now ages 18 and 21. Both live with Applicant and neither child makes a financial contribution to the household. The daughter has a child and is currently pregnant.

She and her husband earned a gross income in 2006 of about \$75,000 (R. 38–39). They have one car and her husband is responsible for paying the loan. She does not have money in a savings account. They have about \$100 in a joint checking account. She has about \$178 in an individual checking account. She has a 401(k) retirement account with her employer, but she has taken loans against it in the past. She estimated a balance of less than \$100 in the 401(k) account. Applicant has taken on a second job to earn more money. She has worked the second job for about one year.

Applicant has a history of unresolved financial problems. It is established by two credit reports (Exhibits 2 and 3). For example, a December 2005 credit report shows a judgment, 8 of the 11 trade accounts contain derogatory information, and there are 4 collection accounts (Exhibit 3).

At hearing, Applicant acknowledged that all the debts in the SOR were valid debts for which she was responsible to pay. Some were incurred by her children, but she was responsible for the account. She has made some efforts to resolve the debts in the SOR. The status of indebtedness is summarized in the following table.

Debt Description	Current Status
SOR ¶ 1.a–judgment entered in September 2002 for \$3,109.	Satisfied or paid (Exhibits 5, B, and C).
SOR ¶ 1.b, 1.c, 1.d, and 1.f–medical accounts in collection for \$100, \$23, \$75, and \$760.	Claims she paid the \$75 account and the others are unpaid. No documentation.
SOR ¶ 1.e–medical account in collection for \$113.	Paid in Aug. 2007 (Exhibit D).
SOR ¶ 1.g–telephone account in collection for \$235.	Claims she settled it for \$185 years ago. No documentation.
SOR ¶ 1.h–TV account in collection for \$363.	Unpaid. No documentation.
SOR ¶ 1.i–charged-off account for \$200.	Claims she paid it years ago. No documentation.
SOR ¶ 1.j–charged-off credit card account for \$2,430.	Unpaid. No documentation.
SOR ¶ 1.k–collection account for \$1,152.	Unpaid. No documentation.

SOR ¶ 1.l—collection account for \$9,491 stemming from deficiency balance after voluntary repossession of Ford F-150 truck.	Unpaid. No documentation.
SOR ¶ 1.m—cell phone account (established for son) in collection for \$1,479.	Unpaid. No documentation.
SOR ¶ 1.n—cell phone account in collection for \$181.	Claims she settled it years ago. No documentation.

To sum up, Applicant presented documentary proof-of-payment for 2 debts, and the other 12 are unresolved or unpaid.

In addition, Applicant presented documentary proof that she satisfied a judgment in April 2003 (Exhibit A). The judgment was taken in May 2000 for the total sum of \$3,732. It was taken by the same creditor (a nationally-known department store) as alleged in SOR subparagraphs 1.a and 1.k. At hearing, Exhibit A was mistakenly identified as proof-of-payment for the judgment in subparagraph 1.a. Closer review establishes that Exhibit A does not concern the debt in subparagraphs 1.a or 1.k. And the judgment in Exhibit A does not appear in either credit report (Exhibits 2 and 3), and it is not alleged in the SOR.

Her security-clearance application reflects a period of unemployment from her current employer (Exhibit 1). She was laid off in April 1998 and called back to work five months later. Her husband works for the same company and he was laid off during 2002–2003.

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.

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.

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

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.

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.

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

¹⁵ Revised Guidelines at 13.

The record evidence supports a conclusion that Applicant has a history of financial problems. Her 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 five-month layoff in 1998, her husband's unemployment during 2002–2003, and their separation. Taken together, these circumstances no doubt limited her ability to meet her financial obligations. But Applicant receives limited credit in mitigation because her layoff was relatively short and took place several years ago, as did her husband's unemployment. The same can be said for the separation. By now, sufficient time has passed to allow Applicant and her husband to overcome these circumstances.

The other MCs under the guideline have been considered and none apply. In particular, the record evidence is insufficient to establish that she has made a good-faith effort to resolve her indebtedness. She presented documentary proof that she paid or resolved 2 of the 14 debts. And she presented documentary proof that she satisfied a judgment (not alleged in the SOR) in 2003. Although she has made some efforts to address her indebtedness, her efforts have been uneven (*see* table). What is missing here is a realistic, comprehensive plan that addresses Applicant's indebtedness as a whole.

In addition, given the lack of documentation, her various claims and representations about paying or settling 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 her and proven by the credit reports.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.

To conclude, Applicant did not present sufficient evidence to rebut, explain, extenuate, or mitigate the financial considerations security concern. She has a history of unresolved financial problems and it is too soon to tell if she will resolve the financial problems in a satisfactory manner. Applicant did not meet her ultimate burden of persuasion to obtain a favorable clearance decision.

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.”

¹⁹ Examples of other large bureaucratic institutions that rely heavily on documentation include banks, insurance companies, hospitals, universities, and the Armed Forces.

²⁰ Directive, Enclosure 3, ¶ E3.1.15.

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:	Against Applicant
Subparagraphs a–n:	Against Applicant

DECISION _____

_____ In light of all the circumstances, it is not clearly consistent with the national interest to grant or continue eligibility for security clearance for Applicant. Clearance is denied.

Michael H. Leonard
Administrative Judge