

DATE: October 25, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 07-02305

**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, which are ongoing. She has done little to demonstrate that she will resolve the financial problems in a satisfactory manner. Clearance is denied.

STATEMENT OF THE CASE

This is a security clearance 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 July 11, 2007. The SOR is equivalent to an administrative complaint and it details the factual basis for the action. The issues in this case fall under Guideline F for financial considerations.

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 July 18, 2007, Applicant replied to the SOR and requested a hearing. The hearing took place as scheduled on October 2, 2007, and the transcript was received on October 11, 2007.

FINDINGS OF FACT

Under Guideline F, the SOR alleges 25 delinquent debts for about \$31,000 in total. Applicant admits indebtedness of about \$27,000. Also alleged is a series of Chapter 13 bankruptcy cases, the most recent of which was dismissed in 2005, which she does not dispute. And the SOR alleges a 2004–2005 event when Applicant pleaded no contest to a charge of deposit-account fraud, which she does not dispute. In addition to her admissions, the following facts are established.

Applicant is a 37-year-old records management coordinator. She has worked for her current employer since September 2005. She is seeking to obtain a security clearance for the first time (Exhibits 1 and 2).

Applicant has never married. She has three children, ages 17, 12, and 3. The 17-year-old child receives child support in the amount of \$74 every two weeks. The other two children do not receive child support from their fathers. In addition to the children, Applicant's fiancée lives with Applicant. Her fiancée is currently seeking employment.

Applicant has a history of unresolved financial problems. The history is established by an October 2005 credit report and a February 2007 credit report (Exhibits 7 and 8), which form the basis for the debts in the SOR. Applicant has been unable to repay any of the creditors in the SOR or

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).

otherwise resolve her indebtedness. She believes that she will be able to take some action in about two years after paying off her current car loan.

In March 2006, she met with a consumer credit counseling service (Exhibit 6). They estimated her indebtedness at \$11,470 for 13 creditors with a payout forecast of \$351 per month. Applicant did not pursue the repayment plan as she was unable to afford the monthly payment.

In addition to her indebtedness, Applicant has a history of bankruptcy court proceedings (Exhibits 3, 4, and 5). It started with a Chapter 13 petition in 1992. It appears this petition was modified a couple of times until it was finalized in 1995. Applicant then made the required installment payments (amount unknown). The case was closed, and the court issued a discharge order in 1999.

The next bankruptcy proceeding began in 2004 when Applicant filed a Chapter 13 petition in an effort to prevent foreclosure on her home. She had been laid off from her job in 2004 and was trying to save her house. The 2004 Chapter 13 petition and a subsequent 2005 Chapter 13 petition both ended in dismissal when Applicant did not have sufficient funds to pursue the cases. Applicant's house was foreclosed in 2005.

In 2004, Applicant was charged with the offense of deposit-account fraud. She pleaded no contest and was fined. She did not pay the fine in a timely fashion resulting in her arrest in 2005. She served about two days in jail and paid the fine.

Concerning her overall financial situation, Applicant's gross income in 2006 was about \$30,000. She is the sole financial provider in her household. She had about \$100 in a checking account the day of the hearing. Since starting her current job, Applicant has been participating in the company 401(k) retirement plan at the 1% level. Otherwise, she has no financial assets.

Applicant did not provide any documentary information about the debts in the SOR. Likewise, other than her own testimony, she did not present any witnesses, on paper or in person, in support of her application for a security clearance.

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

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.

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

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

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.

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

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. Her 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. In addition, her no contest plea to deposit-account fraud falls with the meaning of a deceptive or illegal financial practice under the guideline.¹⁸

All of the mitigating conditions under Guideline F have been considered and none apply in her favor. Although unemployed in 2004, her financial problems are longstanding and cannot be traced solely to that event. Applicant presented little in the way of favorable information, and her good intentions and future plans are not sufficient evidence to overcome the security concern raised by the government's evidence. Indeed, what is missing here is: (1) a realistic approach for resolving her delinquent debts; (2) documented actions taken in furtherance of that approach; and (3) a measurable improvement to her situation. At this point, it is likely that her history of financial problems will continue.

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the financial considerations security concern. Applicant did not meet her 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:	Against Applicant
Subparagraphs a–ee:	Against Applicant

DECISION

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 DC 4 is “deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional breaches of trust.”

_____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