

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.

Applicant replied to the SOR on June 12, 2008, and he requested a hearing. The case was assigned to me on July 21, 2008. The hearing took place as scheduled on August 13, 2008. The transcript (Tr.) was received on August 21, 2008.

The record was left open until August 27, 2008, to allow Applicant an opportunity to submit additional documentary evidence. He did so, and his three-page submission is admitted as Exhibit G.

Findings of Fact

Under Guideline F, the SOR alleges ten delinquent debts for a total of about \$21,000. Also alleged is that Applicant had a Chapter 7 bankruptcy case filed and discharged in 1991–1992. Applicant's Answer was mixed. Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 52-year-old employee of a federal contractor. He served on active duty in the Army during 1986–1990. Since then, he has worked as a contractor at or near the same large Army post. He has worked as a video-conference (VTC) manager since 1994, and he has worked for his current employer since 2005. His gross annual salary is about \$65,000. He is seeking to retain a security clearance.

Applicant is married to his second wife. His first marriage ended in divorce in 1996, and he remarried in 1999. His wife is employed as a nurse for a local school district. She has a gross annual income of about \$23,000.

Applicant has a history of financial problems, which he does not dispute. His history of financial problems is established by the 1991 Chapter 7 bankruptcy case, which was based primarily on unsecured credit card debt, and the more recent problems as revealed in credit reports from 2006 and 2008 (Exhibits 2 and 3). The ten debts alleged in the SOR are summarized in the following table.³

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).

³ See Applicant's hearing testimony for a narrative description of the debts and their status (Tr. 28–32).

<i>Debts</i>	<i>Status</i>
SOR ¶ 1.a—\$67 collection account.	Settled for \$67 (Exhibit A).
SOR ¶ 1.b—\$482 medical account.	Settled for \$250 (Exhibit A).
SOR ¶ 1.c—\$207 collection account.	Settled in full (Exhibits A and F).
SOR ¶ 1.d—\$5,200 unpaid government debt.	Actual debt is \$6,116; settled for \$2,601 (Exhibit A).
SOR ¶ 1.e—\$6,268 unpaid government debt.	Same debt as SOR ¶ 1.d.
SOR ¶ 1.f—\$153 collection account.	Settled for \$76 (Exhibit A).
SOR ¶ 1.g—\$2,458 charged-off credit card account.	Settled for \$1,500 (Exhibits A and D).
SOR ¶ 1.h—\$5,383 charged-off credit card account.	Settled for \$2,933 (Exhibits A and E).
SOR ¶ 1.i—\$356 charged-off account.	Intends to settle for \$231 in Sep. 2008 (Exhibit A).
SOR ¶ 1.j—\$800 charged-off credit card account.	Disputes; account has zero balance and unable to find any information on debt. Has current credit card with same creditor (Exhibits A and C).

In addition to the debts in the SOR, Applicant has another \$236 collection account that he intends to resolve later this year (Exhibits C and G at 1).

Applicant attributes the Chapter 7 bankruptcy to financial irresponsibility. Both he and his first wife had a habit of “spend and go” (Tr. 45).

He attributes his most recent financial problems to his use of alcohol. He says 90% of his financial problems were due to his excessive alcohol consumption and 10% was due to procrastination (Tr. 54–55). He has abstained from alcohol since June 2007 (Tr. 50–54). In doing so, Applicant obtained treatment for depression, and he explained the benefits of abstaining from alcohol as follows:

I will tell you that not in 52 years have I experienced such a joy, satisfaction in life, in my marriage, with my grandchildren, my daughter. It has absolutely been a turnaround, turning point in my life, sir. I can't explain how broad of a spectrum it has improved my quality in terms of my health, how I feel just on a day-to-day basis. I still take an antidepressant every day (Tr. 52).

Applicant resolved nearly all the debts in the SOR in 2008 after he obtained an unsecured loan from two siblings. In late May 2008, he borrowed \$9,500 (interest free) and agreed to pay it off with 21 monthly payments of \$450 and one payment of \$50 (Exhibit G at 3). He made his first two \$450 monthly payments in July and August 2008.

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.⁴ 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.”⁵ A favorable decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.⁶ 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.⁷ 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.⁸ The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.⁹ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁰ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹¹ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹²

⁴ *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.”).

⁵ *Egan*, 484 U.S. at 531.

⁶ Directive, ¶ 3.2.

⁷ Directive, ¶ 3.2.

⁸ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

⁹ Directive, Enclosure 3, ¶ E3.1.14.

¹⁰ Directive, Enclosure 3, ¶ E3.1.15.

¹¹ Directive, Enclosure 3, ¶ E3.1.15.

¹² *Egan*, 484 U.S. at 531.

The agency appellate authority has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹³

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.¹⁴ 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,¹⁵ 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."¹⁶ 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 debts¹⁷ and a history of not meeting financial obligations¹⁸ within the meaning of Guideline F. The record evidence is more than sufficient to establish these two disqualifying conditions. In addition, another

¹³ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹⁴ Executive Order 10865, § 7.

¹⁵ Revised Guidelines at pp. 13–14 (setting forth the security concern and the disqualifying and mitigating conditions).

¹⁶ Revised Guidelines at p. 13.

¹⁷ DC 1 is "inability or unwillingness to satisfy debts."

¹⁸ DC 3 is "a history of not meeting financial obligations."

disqualifying condition is raised because his recent financial problems are linked to excessive consumption of alcohol.¹⁹

The guideline also provides that certain conditions may mitigate security concerns:

MC 1—the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

MC 2—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;

MC 3—the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

MC 4—the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

MC 5—the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;

MC 6—the affluence resulted from a legal source of income.

All of the mitigating conditions have been considered, and MC 1, MC 3, and MC 4 apply in Applicant's favor.

MC 1 applies for two reasons. First, it applies to Applicant's Chapter 7 bankruptcy case because it happened during Applicant's first marriage, which subsequently ended in divorce. The circumstances of that marriage, which contributed to the bankruptcy, are unlikely to recur. Second, it applies to Applicant's most recent financial problems because those problems are linked to excessive drinking. He has abstained from alcohol for more than one year, and he is enjoying the benefits of sobriety. Given these circumstances, additional financial problems linked to excessive drinking are unlikely to recur.

¹⁹ DC 6 is "financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern."

MC 3 applies under a similar rationale as MC 1. It applies because the chief cause of his financial problems—excessive drinking—is a thing of the past as he has abstained from alcohol since June 2007. It appears Applicant has made a genuine commitment to sobriety. Given these circumstances, there are clear indications that his excessive drinking is resolved and under control.

MC 4 applies based on Applicant's well-documented efforts to resolve the delinquent debts as revealed in the table above. He did so with the benefit of a family loan, but he signed a promissory note and has already made his first two monthly payments. Taken together, these circumstances qualify as initiating a good-faith effort to repay overdue creditors or otherwise resolve debts.

To conclude, Applicant presented sufficient evidence to explain, extenuate, or mitigate the security concerns. Applicant met 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 supports a favorable decision. This case is decided for Applicant.

Formal Findings

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

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a–1.i:	For Applicant

Conclusion

In light of all of the circumstances, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Michael H. Leonard
Administrative Judge