

DATE: November 28, 2007

_____)	
In re:)	
)	
-----)	ISCR Case No. 07-04323
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 financial problems. Although he is making progress in resolving his indebtedness, it is likely that his financial problems will continue or recur. Applicant did not present sufficient evidence to explain, extenuate, or mitigate the financial considerations security concern. Clearance is denied.

STATEMENT OF THE CASE

This is a security clearance case. Applicant contests the Defense Department's intent to deny or revoke his 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 August 17, 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.

Applicant replied to the SOR in an undated response and requested a hearing. The hearing took place as scheduled on November 6, 2007, and the transcript was received on November 14, 2007.

FINDINGS OF FACT

Under Guideline F, the SOR alleges three delinquent debts for about \$19,952 in total, which Applicant admits. Based on the record evidence as a whole, the following facts are established.

Applicant is a 59-year-old military analyst/senior logistician. He has worked for his current employer since February 1999.

Applicant has been married since 1976. He and his wife have two children, sons, who are both young adults who do not depend on their parents for financial support. Applicant's wife is not employed outside the home, although she is currently looking for a job. Applicant and his wife have lived at the same address since 1994.

Applicant served nearly 25 years on active duty in the U.S. Air Force. He retired in 1991 at the rank of master sergeant (pay grade E7). During the last ten years of his military service, Applicant traveled frequently for business, approximately 100 days annually. As a result, his spouse managed their finances. After his retirement, this practice or habit continued and is essentially the way they manage their finances today, as Applicant still does a fair amount of business travel.

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 has a history of financial problems. It is established by an April 2006 credit report and an August 2007 credit report (Exhibits 2 and 3). For example, the first credit report lists 30 accounts in the trade section of the report, of which 3 accounts are described as 120 days or more past due and 8 accounts are described as a bad debt, placed for collection. The second credit report confirms Applicant's adverse financial history as of August 2007.

Applicant completed a security-clearance application in April 2006 (Exhibit 1). He met with an investigator in approximately October 2006 (R. 40, 43). He did not know about his adverse financial condition until he was shown a credit report during the interview. Indeed, he admits that he was totally disengaged from the household finances (R. 92). He described seeing the credit report as a "two-by-four across my nose" that resulted in he and his wife having serious discussions and he now believes he is on the road to repairing his financial condition (R. 43). He admits that he has played a "very limited" role in repayment of the debts (R. 61).

In May 2007, Applicant took a \$41,000 loan against his 401(k) retirement account (Exhibit 4). He used the loan proceeds to pay debts. He paid \$20,444 to a law firm to resolve three accounts, (Exhibits 4 and D). He paid \$10,532 to a law firm to resolve one account (Exhibit 4). And he paid \$4,585 to a collection agency to resolve one account (Exhibit 4). After making these payments, about \$5,500 remained, and Applicant believes it may have gone toward a son's college expenses, but he does not know for certain (R. 82-83).

The debt in SOR ¶ 1.a concerns a charged-off credit card account for about \$13,031. Applicant admits this debt is his obligation. The debt is now being collected by a law firm and Applicant made an initial \$300 payment in August 2007 (Exhibit A). According to a budget prepared by his wife, Applicant has budgeted \$100 monthly for repayment of this debt (Exhibit D). The account's current balance is about \$14,553.

The debt in SOR ¶ 1.b concerns a collection account (originally a credit card account) for about \$4,379. Applicant admits this debt is his obligation. In June 2007, Applicant settled this account for \$4,365 (Exhibits B). This payment may account for the \$5,500 remaining from the 401(k) loan proceeds, but the record is not clear on this point.

The debt in SOR ¶ 1.c concerns a collection account (originally a credit card account) for about \$2,542. Applicant admits this debt is his obligation. A law firm is handling the account, and Applicant began making payments in August 2006 (Exhibit C). Since then, he has made approximately ten payments of various amounts ranging from \$185 to \$1,200 for a total amount paid of \$4,685. According to the budget, Applicant has budgeted \$100 monthly for repayment of this debt and the account's current balance is about \$3,000 (Exhibit D).

In addition to the debts in the SOR, Applicant is repaying three delinquent debts (originally credit card accounts) to collection agencies (Exhibit D). According to the budget, the outstanding balances for these three debts are \$7,953, \$4,100, and \$4,308, for a total of \$16,361. Applicant has budgeted \$100 monthly for repayment of each of these debts.

Concerning his overall financial situation, Applicant's annual salary is nearly \$70,000. His gross monthly salary is about \$5,824 or \$2,912 per pay period (Exhibit D at 4). In addition to his salary, his net military retirement pay is about \$15,500 annually or \$1,290 monthly.

According to the budget, Applicant's total net monthly income is about \$4,188 (Exhibit D). Household expenses are estimated at \$1,268 monthly. Payments on four credit card accounts and one gas card account are estimated at \$490 monthly. All five of these accounts are current. Mortgage payments (including a second mortgage) and other debt payments are estimated at \$2,169 monthly. Total monthly debt payments are \$2,659. The result is a positive cash flow or net remainder of about \$261.

These numbers do not include the approximate \$834 monthly that is automatically deducted from Applicant's salary for repayment of the 401(k) loan at the rate of \$417 per pay period. So far, Applicant has repaid \$4,175 on the loan (Exhibit D at 4).

Applicant obtained a second mortgage of \$40,000 in about 1995 (R. 85). The monthly payment is about \$469, and the balance has been reduced to about \$25,000 (Exhibit D). The proceeds were used to "clean up some bills" (R. 85).

Applicant is current with the two mortgage payments. He has no car payments, and both he and his wife drive late model cars. He is current with his federal and state income tax obligations.

Because he was disengaged from his household's finances, Applicant does not really know what happened to the money that caused the indebtedness. He attributes the indebtedness to credit cards (R. 88-89).

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. 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. In addition, the record evidence supports a conclusion of consistent spending beyond one's means as indicated by the excessive indebtedness incurred over a period of years, likely dating back to at least 1995 when Applicant took a second mortgage to resolve some bills.¹⁸

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—does not apply. First, his spouse's use of credit cards that generated excessive indebtedness was a circumstance beyond his control. The MC does not apply, however, because Applicant's disengagement from his family's finances is not reasonable conduct under the circumstances. Once he was confronted with the adverse credit report in October 2006, Applicant should have become fully engaged in managing his finances, but that is not the case.

Second, the most pertinent mitigating condition is MC 4, which requires a person to initiate a good-faith effort to repay overdue creditors or otherwise resolve debts. Applicant has taken positive steps to resolve the debts. He used the 401(k) loan to resolve several debts, including settling the debt in SOR ¶ 1.b. He is making monthly payments on five delinquent credit card debts, including the debts in SOR ¶¶ 1.a and 1.c. He is current with five other credit/gas cards and his mortgage payments, and he has no car payments. He has a positive monthly cash flow after paying household expenses and all debt payments, including the 401(k) loan. Given these circumstances, Applicant's actions are sufficient to qualify as a good-faith effort within the meaning of the guideline. In addition, the current circumstances suggest he is living within his means.

This case presents both disqualifying and mitigating information, which requires thoughtful balancing. Applicant is 59 years old and sufficiently mature to make prudent decisions about his finances and money-management practices. He has made progress in resolving his outstanding debts since learning about his adverse credit report in October 2006. Nevertheless, he is servicing his debts at a minimal level (e.g., \$100 monthly payments), and it will take years to eliminate the delinquent debts at this rate of repayment. In addition, it appears that his total monthly debt payments of \$2,659 are consuming a large amount of his available income, which puts him in some financial jeopardy.

Of concern here is Applicant's lack of involvement in managing his finances. He was totally disengaged until confronted with the credit report. Since then he has had limited involvement. It appears his spouse is still primarily responsible for their finances. Given these circumstances, viewed in conjunction with the indebtedness that necessitated the second mortgage in 1995, it is more likely than not that the financial problems will continue or recur.

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

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

¹⁸ DC 5 is "consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis."

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.

FORMAL FINDINGS

____SOR ¶ 1–Guideline F:

Against Applicant

Subparagraphs a–c:

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