



ISCR Case No. 07-05800

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 December 3, 2007, and requested a hearing. The case was assigned to me on January 17, 2008. The hearing took place as scheduled on March 13, 2008, and the transcript (Tr.) was received on March 21, 2008.

Applicant presented no documentary evidence at the hearing. Therefore, the record was left open until March 28, 2008, to provide him an opportunity to do so. Applicant timely submitted matters, which were forwarded by department counsel who made no objections. The post-hearing matters are admitted as follows: (1) Exhibit A—IRS documentation; and (2) Exhibit B—statements for Visa credit card account.

Findings of Fact

Under Guideline F, the SOR alleges multiple delinquent debts (§ 1.a—§ 1.j) ranging from \$100 to \$8,982 for about \$90,000 in total. His response to the SOR is mixed, admitting and denying various debts. Under Guideline E, he admits the allegations that he made deliberately false statements when answering two questions about his financial record on a security-clearance application. Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 61-year-old security guard who works for a company that provides security services to an NASA facility.³ He has worked as a security guard at the same NASA facility since 1978, initially part-time and then full-time since 1980. During his years as a security guard he has worked in positions of authority such as key-control clerk and dispatcher. He currently earns about \$13 per hour. His educational background includes completing high school and two years of junior college.

Applicant has been married since 1972. His wife is now 56 years old. They have lived at the same residence since 1973. They have two adult children, ages 27 and 24, and one grandchild. His wife was employed throughout their marriage until about 1994 when she was injured, had surgery, and was unable to work. She received disability insurance until she was adjudicated as disabled for social security purposes in about 1998. Since then, she has received disability payments and she currently receives about \$1,500 monthly.

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 Directive, § 2.2 (By mutual agreement, the Directive extends to other federal agencies, to include NASA).

Applicant has a history of financial problems. For example, a January 2007 credit report shows 17 of 49 accounts in the trade section of the report have some sort of derogatory information; the report also shows 6 accounts in the collections section (Exhibit 2). The delinquent debts in the SOR are established by the credit reports (Exhibits 2, 4, and 5). He has not contacted any of the creditors in the SOR. Nor has he paid, settled, or resolved any of the debts in the SOR. In general, he plans to pay the debts off and will do so by starting with the smallest debt and working his way up (Tr. 32–33).

He has, however, resolved two other matters. The first was an outstanding debt owed to the IRS for tax year 2004 (Exhibit A). He entered into an installment agreement with the IRS with a beginning balance of about \$1,400, and he completed his payments during 2006–2007. The second was a Visa credit card account with a credit union that had a balance of about \$1,900 (Exhibit B). Beginning in February 2007, he made several monthly payments of various amounts resulting in a zero balance by December 2007. In addition, about three to four years ago, he refinanced his home mortgage and took out about \$25,000 in equity. He used the money to make payments to various creditors.

Applicant attributes his financial problems to his wife's inability to work and the loss of her salary. His wife was earning about \$55,000 annually and their lifestyle and debts were based on two incomes (Exhibit 3). He attempted to remedy this situation with a second job as a security guard. He worked full-time at two jobs for about three years until his own health problems forced him to stop in November 2007.

In his testimony, he estimated having about \$400 in the bank. Also, he estimated a \$5,300 balance in a 401(k) account. Aside from his house, that is the totality of his financial assets. He had no idea of how much money his wife has, as they handle their money separately, including responsibility for paying bills.

Applicant completed a security-clearance application in December 2006 (Exhibit 1). When signing the application, he certified that his statements were true, complete, and correct to the best on his knowledge and belief and were made in good faith, and he acknowledged that a knowing and willful false statement could be punished under federal law. In particular, he answered two questions about his financial record as follows:

- Question 28a—asking if in the last seven years he had been over 180-days delinquent on any debts, to which he replied “no” and did not disclose any debts; and
- Question 28b—asking if he was currently over 90-days delinquent on any debts, to which he replied “no” and did not disclose any debts.

He gave negative answers to the two questions because he knew his job was on the line and he was trying to keep it (Tr. 71).

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 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

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.

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

(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 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.

All of the mitigating conditions under Guideline F have been considered and none apply. Two deserve discussion. First, MC 2—conditions largely beyond a person's control—does not apply.¹⁹ The injury and disability of Applicant's wife were factors that led to the financial problems. This circumstance reduced the family's income and

¹⁴ Executive Order 10865, § 7.

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

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."

¹⁹ 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."

strained the family budget. The MC does not apply, however, because Applicant did not act reasonably under the circumstances. Much time has passed since his wife's injury (1994) and her adjudication of disability (1998), and this should have been sufficient time to adjust. Although some slippage could be expected and tolerated under the circumstances, it appears Applicant and his wife did not make the necessary adjustments to their lifestyle in light of their reduced income. That is not reasonable conduct under the circumstances.

Second, a potential mitigating condition is MC 4, which requires a person to initiate a good-faith effort to repay overdue creditors or otherwise resolve debts.²⁰ He has taken some positive steps to resolve his financial problems as evidenced by paying off the IRS and the Visa credit card account noted above. But his efforts, in light of the remaining unaddressed financial problems, are not enough to qualify as a good-faith effort.

Although Applicant's stated intent is to resolve his financial problems, he has done little so far to demonstrate his intent. What is missing here is: (1) a realistic and workable plan to clean up his financial house; (2) documented actions taken in furtherance of the plan; and (3) a measurable improvement to the situation. Given the current circumstances, it is likely that the financial problems will continue or recur because he is facing a mountain of financial problems. Accordingly, Guideline F is decided against Applicant.

Personal conduct under Guideline E²¹ includes issues of false statements and credible adverse information that may not be enough to support action under any other guideline. In particular, a security concern may arise due to "[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations [that may] raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process."²²

The SOR alleges that Applicant made false statements when providing answers to two questions about his financial record when he completed a security-clearance application. He admitted giving false answers in his reply to the SOR, and he explained in his hearing testimony that he did so in an attempt to keep his job. Taken together, the circumstances show Applicant was trying to hide his financial problems. This situation

²⁰ MC 4 is " the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."

²¹ Revised Guidelines at pp. 10–12 (setting forth the security concern and the disqualifying and mitigating conditions under Guideline E).

²² Revised Guidelines at p. 10.

raises a security concern and falls squarely within DC 1,²³ which includes the deliberate omission, concealment, or falsification of relevant facts from a security questionnaire.

All of the mitigating conditions under Guideline E have been considered and none apply. His explanation—he wanted to keep his job—may be an understandable sentiment, but it is not an acceptable explanation in extenuation or mitigation. Making false statements during the security clearance process is serious misconduct, and it is not easily explained away, extenuated, or mitigated. Applicant has not presented sufficient evidence to do so. Accordingly, Guideline E is decided against Applicant.

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the security concerns. 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. This case is decided against 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:	Against Applicant
Subparagraphs 1.a–1j:	Against Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraphs 2.a–2.b:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Michael H. Leonard
Administrative Judge

²³ DC 1 is the “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.”