



ISCR Case No. 07-05993

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 October 3, 2007, and requested a hearing. The hearing took place as scheduled on December 19, 2007, and the transcript (Tr.) was received on January 10, 2008.

The record was left open until December 28, 2007, to allow Applicant an opportunity to submit additional documentary evidence. Those matters were timely submitted and forwarded by department counsel who made no objections. The post-hearing matters are marked and admitted as follows: (1) documentary exhibits supplementing Exhibits A through O as designated by Applicant; (2) Applicant's resume as Exhibit P; and (3) an exhibit related to Exhibits A, B, D, F, G, and O as Exhibit Q. For the reasons discussed below, this case is decided for Applicant.

Findings of Fact

Under Guideline F, the SOR alleges 15 delinquent debts ranging from \$218 to \$13,568 for about \$62,000 in total. The debts are described as charged-off bad debts and collection accounts. A large part of the indebtedness stems from seven student loans for nearly \$41,000 in total, on which Applicant was in default. In his response to the SOR, Applicant admitted all the factual allegations and provided explanations about his efforts to address the debts. Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 29-year-old programmer. He has worked for his current employer since December 2006. He is seeking to obtain a security clearance from the Defense Department the first time.

He incurred the student loan obligations while attending college. During 1996–1999, he attended an aeronautical university where he studied engineering and aerospace studies. He did not earn a degree at that time. During 2000–2003, he attended another university and was awarded a bachelor of science degree in computer science in August 2003. He then enrolled in law school, as a part-time student, and was recently awarded a J.D. He was involved in various extracurricular activities in law school, to include serving in the student bar association where he rose to serve as a vice-chair at the national level. He is now on an informal leave of absence from his defense contractor employer while he studies for the bar exam.

Applicant's father passed away in 1997. His mother was diagnosed with pancreatic cancer in 2006 and passed away in April 2007. As an only child, he assumed

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).

responsibility for watching over and caring for his mother while she was ill. He withdrew from law school twice, once to care for her after surgery and then when she was gravely ill. On both occasions, Applicant was unable to work. Also as an only child, he was his mother's sole heir. He inherited a used car worth \$1,000 to \$2,000 and a condo with an estimated market value of about \$110,000. The condo has a mortgage on it, but there is approximately \$50,000 in equity in the property. In addition, he received \$50,000 as the beneficiary of his mother's life-insurance policy.

Applicant used the windfall to address his outstanding financial obligations. He still has the car and he intends to sell it. He continues to own the condo, which has the possibility of producing a monthly income as a rental property. He is not inclined to sell the condo now as the real estate market is relatively weak. The status of his indebtedness, as alleged in the SOR, is summarized in the following table.

<i>Debt Description</i>	<i>Current Status</i>
SOR ¶ 1.a—charged-off credit card account for \$3,721.	Settled in Nov. 2007 (Exhibit A).
SOR ¶ 1.b—charged-off credit card account for \$6,482.	Settled in Sep. 2007 (Exhibit B).
SOR ¶ 1.c—charged-off credit card account for \$5,834.	Settlement offer pending (Exhibit C).
SOR ¶ 1.d—charged-off bad debt for \$1,146.	Settled in Sep. 2007 (Exhibit D).
SOR ¶ 1.e—charged-off bad debt for \$3,579.	Settled in Sep. 2007 (Exhibit E).
SOR ¶ 1.f—collection account for \$427.	Settled in Sep. 2007 (Exhibit F).
SOR ¶ 1.g—charged-off bad debt for \$631.	Settled in Oct. 2007 (Exhibit G).
SOR ¶ 1.h—student loan for \$1,595.	Repayment agreement since Oct. 2007 (Exhibits H, I, and J).
SOR ¶ 1.i—student loan for \$1,595.	Repayment agreement since Oct. 2007 (Exhibits H, I and J).
SOR ¶ 1.j—student loan for \$2,100.	Repayment agreement since Oct. 2007 (Exhibits H, I, and J).
SOR ¶ 1.k—student loan for \$9,047.	Settled in Sep. 2007 (Exhibit K).
SOR ¶ 1.l—student loan for \$2,736.	Settled in Sep. 2007 (Exhibit L).
SOR ¶ 1.m—student loan for \$10,258.	Settled in Sep. 2007 (Exhibit M).

SOR ¶ 1.n—student loan for \$13,568.	Settled in Sep. 2007 (Exhibit N).
SOR ¶ 1.o—collection account for \$218.	Paid in Sep. 2007 (Exhibit O).

To sum up, Applicant has settled or paid all the indebtedness except for the debts in SOR ¶¶ 1.c, 1.h, 1.i, and 1.j, which are discussed below.

The debt in SOR ¶ 1.c is for a charged-off credit card account for \$5,834. According to the current creditor, the current account balance is \$7,215 and they have offered to settle for \$5,772 if payment is received by January 10, 2008 (after the record closed in this case). Although he has the money to make the lump-sum payment, he would prefer to resolve the account by a repayment agreement, which would improve his cash flow.

The seven student loans belong to two creditors. Four loans belong to one creditor and were settled in September 2007. The three student loans in SOR ¶¶ 1.h, 1.i, and 1.j belong to another creditor. Applicant is resolving these three debts by a repayment agreement that began in October 2007 when he made an initial good-faith payment for more than \$5,000. The repayment agreement, which addresses all three student loans, calls for him to make monthly payments of \$533 until August 2008. He made payments in a timely manner in November and December.

Applicant has about \$15,000 in cash reserves in addition to the car and condo. This money is available to pay for his living expenses while he studies for the bar exam as well as for paying debts as discussed above. He attributes his financial problems to youth and inexperience as well as some periodic underemployment and unemployment.

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.³ 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.”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

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.

level.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 stated that the burden of proof is less than a 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.

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.

Analysis

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.

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, which raise a security concern.

Of the mitigating conditions under Guideline F, the most pertinent here is MC 4, which requires a person to initiate a good-faith effort to repay overdue creditors or otherwise resolve debts.¹⁸ Applicant has made substantial efforts to resolve the delinquent debts. He has settled or paid nearly all. One was pending settlement at the time of the hearing and another was three months into a repayment agreement. He appears to have the financial resources to resolve the remaining matters in due course. His efforts are more than sufficient to constitute a good-faith effort within the meaning of the guideline.

Applicant is 29 years old and sufficiently mature to make prudent decisions about his finances. He has demonstrated his financial maturity by using a windfall to resolve delinquent debts instead of blowing the money on a new car or a fancy vacation or both. Unlike many applicants in financial cases, Applicant has (1) a realistic and workable plan to clean up his financial house, (2) documented actions taken in furtherance of the plan, and (3) shown a measurable improvement to the situation. It appears that his financial problems are unlikely to continue or recur.

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

¹⁵ Revised Guidelines at p. 13.

¹⁶ DC 1 is “inability or unwillingness to satisfy debts.”

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

¹⁸ MC 4 is “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”

To conclude, Applicant presented sufficient evidence to explain, extenuate, or mitigate the financial considerations security concern. Applicant met his ultimate burden of persuasion to obtain a favorable clearance decision.

Formal Findings

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

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

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

Michael H. Leonard
Administrative Judge